

ACTU

Joint Standing Committee on Foreign Affairs, Defence and Trade

Inquiry into Human Rights Mechanisms and the Asia Pacific

Submission by the Australian Council of Trade Unions (ACTU)

November 2008

Introduction

1. The ACTU welcomes this opportunity to make a submission to the Joint Standing Committee's Inquiry into Human Rights Mechanisms and the Asia Pacific.
2. The ACTU welcomes the Australian Government's recognition that existing structures for regional cooperation should be complemented by mechanisms to promote and protect human rights in the region. For too long, inter-governmental structures and initiatives in the Asia Pacific has focused on strategic, political and economic concerns and have not given sufficient regard to cooperation on human rights issues.
3. The ACTU takes this opportunity to emphasise the importance of ensuring that any regional or sub-regional human rights mechanism recognises and protects the fundamental rights of workers and trade unions. This submission also briefly addresses emerging structures for regional cooperation on human rights in the Asia Pacific, and identifies a number of principles which we believe should guide the development of any regional or sub-regional human rights mechanism.
4. In this submission, we also identify a number of bilateral, regional and multilateral initiatives through which respect for human rights can be promoted in our region. This list is not exhaustive: rather, we identify several key mechanisms which we believe should be used to promote the recognition of fundamental workers' rights. We believe these mechanisms remain under-utilised and encourage the Australian Government to make further use of these initiatives to promote respect for human rights in the Asia-Pacific.

The role of the ACTU

5. The ACTU has long been active in promoting human rights in the Asia Pacific, with a particular focus on the rights of workers and trade unions. We maintain close relations with trade unions across the region, including through the ASEAN Trade Union Council (ATUC), the Regional Organisation of the International Trade Union for Asia and the Pacific (ITUC-AP), the Global Union Federations and national trade union organisations. A number of ACTU affiliates also have bilateral relations with industry specific unions in Asia Pacific countries and with their regional and global industry unions.

6. In 2007, trade unions in the ASEAN region contributed to the development of the ASEAN Social Charter, which is proposed as a social counterpart to ASEAN's economic, trade, and investment architecture. The Charter is an instrument and a minimum benchmark that obliges governments and non-state social actors to protect workers' right to decent work and to advance social development. The Charter is premised on internationally recognised rights and principles, as embodied in various United Nations declarations, conventions, and charters, ILO instruments as well as in various ASEAN declarations and statements. The ASEAN Social Charter requires ASEAN member nations to respect, ratify and promote the ILO's Core Labour Standards as a minimum requirement.¹
7. In many countries in our region, efforts to promote and protect the rights of workers and trade unions are interwoven with broader civil society movements to promote human rights and democracy. The ACTU engages with and supports the activities of a range of non-governmental organisations which promote respect for human rights and democracy in Australia and our region.
8. The ACTU is a regular and active participant in the annual bilateral human rights consultations organised by the Department of Foreign Affairs and Trade.

Labour rights are human rights

9. There are a number of labour standards which are recognised as constituting basic human rights. These standards, embodied in the International Labor Organisation's (ILO's) *Declaration on Fundamental Principles and Rights at Work 1998*, include:
 - (i) Freedom of association and the effective recognition of the right to collective bargaining;
 - (ii) Elimination of all forms of forced or compulsory labour;
 - (iii) Effective abolition of child labour; and
 - (iv) Elimination of discrimination with respect of employment and occupation.²

¹ See www.asean-socialcharter.net/

² See <http://www.ilo.org/declaration/lang--en/index.htm>

10. These four basic principles or 'core labour standards' are underpinned by 8 ILO conventions: the *Freedom of Association and the Right to Organise Convention, 1948 (C87)*; *Right to Organise and Collective Bargaining Convention, 1949 (C98)*; *Forced Labour Convention, 1930 (C29)*; *Abolition of Forced Labour Convention, 1957 (C105)*; *Minimum Age Convention, 1973 (C138)*; *Worst Forms of Child Labour Convention, 1999 (C182)*; *Equal Remuneration Convention, 1951 (C100)* and the *Discrimination (Employment and Occupation) Convention, 1958 (C111)*.
11. The ACTU notes that the United Nations and the International Financial Institutions have recognised the need to promote and protect core labour standards.³
12. A number of other international human rights instruments also contain provisions on workers' human rights. These include the Universal Declaration on Human Rights; the International Covenant on Civil and Political Rights; and the International Covenant on Economic, Social and Cultural Rights.
13. The ACTU notes that existing regional human rights mechanisms in Africa, the Americas and Europe recognise and protect the fundamental rights of workers. A number of regional human rights mechanisms go beyond the core labour standards in protecting other labour rights associated with decent work, such as the right to work;⁴ the right to just conditions of work;⁵ the right to safe and health working conditions;⁶ the right to social security;⁷ and the right of migrant workers and their families to protection and assistance.⁸

³ See, for example, United Nations General Assembly Resolution 2005 (A/RES/59/57)); Ministerial Declaration, WTO Ministerial Conference, Singapore, 1996; and International Finance Corporation, *IFC Policy and Performance Standards on Social and Environmental Sustainability*, Washington, April 2006.

⁴ See, eg, article 15 of the *African Charter on Human and Peoples' Rights*; article 6 of the *Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights*; and article 1 of the *European Social Charter*.

⁵ See, for example, article 7 of the *Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights* and article 2 of the *European Social Charter*.

⁶ See, for example, article 3 of the *European Social Charter*.

⁷ See, for example, article 9 of the *Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights* and article 12 of the *European Social Charter*.

⁸ See, for example, article 19 of the *European Social Charter*.

14. Finally, the ACTU notes the core labour standards are not only human rights but are also one of the four pillars underpinning the ILO's Decent Work Agenda. The other three pillars are employment creation, social protection, and social dialogue. The Decent Work Agenda has been endorsed by the United Nations General Assembly and the United Nations Economic and Social Council, both of which have recognised the role of the Agenda in achieving a fair globalisation and the Millennium Development Goals.⁹

Labour rights in the Asia Pacific

15. The serious and persistent violations of workers' rights by governments in the Asia Pacific are well-documented. The ILO conventions underpinning the *Declaration on Fundamental Principles and Rights at Work* are either not ratified or not implemented. Trafficking, lack of freedom of association, neglect of collective bargaining, child exploitation, discrimination in employment and forced and compulsory labour remain widespread.¹⁰ The extensive cross-border movement of individuals in the Asia Pacific region also involves violations of human rights, as migrant workers often have few legal protections and are subject to exploitation.¹¹
16. In 2007, the International Trade Union Confederation reported that there were more mass dismissals and arrests in response to workers' collective action in Asia than in any other region in the world. At a conservative estimate, at least 4,800 workers were dismissed for their trade union activities during the year, and over 2,800 were arrested.¹²
17. The ACTU notes that the widespread use of forced labour in Myanmar has been the subject of condemnation by trade unions, other civil society organisations, governments and international organisations. The ACTU, Australian employers and the Australian Government has participated in years of work at the

⁹ The eight Millennium Development Goals – which range from halving extreme poverty to halting the spread of HIV/AIDS and providing universal primary education, all by the target date of 2015 – were adopted in 2000 and form a blueprint agreed to by all the world's countries and all the world's leading development institutions. See <http://www.un.org/millenniumgoals/>

¹⁰ See, for example, ITUC, *2007 Annual Survey of Violations of Trade Union Rights*, available at <http://survey07.ituc-csi.org/getcontinent.php?IDContinent=3&IDLang=EN>.

¹¹ The ACTU notes the importance of Australia setting a positive example with respect to the treatment of migrant workers and urges the Australian Government to ratify the *United Nations Convention on the Protection of the Rights of All Migrant Workers and their Families*.

¹² ITUC, *2007 Annual Survey of Violations of Trade Union Rights*.

International Labour Organisation seeking to achieve the elimination of those practices in Burma/Myanmar. The ACTU supports and encourages a policy of economic and financial sanctions against Burma/Myanmar in order to apply maximum economic and diplomatic pressure on the junta to respect human rights and restore democracy and peace. The international trade union movement, including unions from ASEAN countries, actively campaign against trade and investment in Burma/Myanmar. The ITUC report, "Rich Pickings: How Trade and Investment Keep the Burmese Junta Alive and Kicking" outlines the case of how foreign investment and trade, especially in resources extraction, oil and gas, has consolidated the power of the military junta.¹³

18. The case of workers and trade union rights is part of a broader pattern of disregard of human rights in the Asia Pacific. International non-governmental organisations such as Amnesty International and Human Rights Watch continue to document a wide range of human rights violations in the region. In 2007, the Special Representative of the Secretary General on Human Rights Defenders, which receives and examines information on the situation of human rights defenders in all parts of the world, reported that the Asia Pacific accounts for the highest number of communications (just under one third) sent by her to Governments.¹⁴

Existing state-based architecture for regional and sub-regional cooperation in the Asia Pacific

19. There are now a myriad of sub-regional structures in Asia for cooperation on economic and strategic matters. These include the Association of South East Asian Nations (ASEAN); the ASEAN Regional Forum; the ASEAN-Australia Post Ministerial Conference; the ASEAN-Australia Forum; the ASEAN Economic Ministers – Closer Economic Relations Consultations; the East Asia Summit, Asia Pacific Economic Cooperation (APEC); and the South Asian Association for Regional Cooperation (SAARC). In the Pacific, there is the Pacific Islands Forum and the Pacific Community.

¹³ Rich Pickings: how trade and investment keep the Burmese junta alive and kicking": ITUC April 2008: <http://www.ituc-csi.org/IMG/pdf/BirmanieEN.pdf>.

¹⁴ A/HRC/7/28.

20. The ever-increasing level of cooperation on political, economic and strategic matters has not been matched by a corresponding level of cooperation on human rights matters. As the UN High Commissioner for Human Rights observed in an address to the Asia Pacific Forum of National Human Rights Institutes in 2007:

*Governments in the region are often reluctant to cooperate with the international human rights system, either through the ratification of international human rights treaties, through the extension of standing invitations to Special Procedure mandate holders, through regular and timely reporting to human rights treaty bodies, or through effective follow up to the recommendations coming out of the international human rights system. In addition, at the national level, civil society and national human rights institutions are often weak and constrained by Governments.*¹⁵

21. The Asia Pacific is now the only region in the world without a regional human rights mechanism. This is despite appeals by the United Nations, as far back as the late 1970s, for the establishment of regional mechanisms for the promotion and protection of human rights.¹⁶ In 1993, the World Conference on Human Rights Declaration and Action Plan (subsequently endorsed by the UN General Assembly) reiterated the 'fundamental role' that regional organisations play in promoting and protecting international human rights and the need to consider the establishment of regional and sub-regional arrangements where they do not already exist.¹⁷
22. While there is no regional or sub-regional mechanism for the protection and promotion of human rights in the Asia Pacific, there are a number of initiatives directed at institutionalizing sub-regional cooperation in this area. These include the Office of the High Commissioner on Human Rights supported framework, the Asia Pacific Forum of National Human Rights Institutes and the ASEAN human rights body.
23. In the absence of any regional human rights mechanism, the Asia Pacific Forum of National Human Rights Institutes (APF) has assumed an important role in coordinating regional cooperation on human rights. The APF formally has the right to participate as observers in the UN Human Rights Council. In 1998, the APF established the Advisory Council of Jurists (ACJ) – a specialist advisory body to

¹⁵ Message by the United Nations High Commissioner for Human Rights, Ms Louise Arbour, Twelfth Annual Meeting of the Asia Pacific Forum of National Human Rights Institutions, 24-27 September 2007, Sydney, Australia.

¹⁶ See, for example, Resolution 34/171 of 17 December 1979 (UN General Assembly).

¹⁷ Vienna Declaration and Programme of Action, A/CONF.157/23, 12 July 1993.

provide comment and advice to the Forum and its member institutions on the interpretation and application of international human rights standards.

24. In November 2007, ASEAN members signed the ASEAN Charter, article 14 of which provided for the establishment of an ASEAN human rights body (ASEAN HRB). This body will operate in conformity with terms of reference determined by ASEAN Foreign Ministers. The High Level Panel, responsible for drafting the terms of reference for the ASEAN HRB, is due to report to the Foreign Ministers at the ASEAN Summit in December 2008.
25. The ACTU notes that it has already been decided that the ASEAN Human Rights Body (ASEAN HRB) will not have the power to impose sanctions or to seek prosecution of human rights violators.¹⁸ There continues to be concerns over the extent to which the ASEAN HRB will be permitted to transcend the historical ASEAN principle of non-interference in the internal affairs of states and to undertake any effective monitoring functions.¹⁹ In particular, Myanmar has repeatedly indicated that it will oppose any effort to give the HRB the power to monitor or investigate rights violations in the region.²⁰ However, a majority of ASEAN foreign ministers have indicated that the HRB should be empowered to monitor violations of human rights and to offer advice on the prevention of such abuses.

General comments on the development of regional and sub-regional human rights mechanisms in the Asia Pacific

26. The ACTU regrets that the Asia Pacific is the only region without a regional human rights mechanism. We believe there is a pressing need for regional mechanisms to promote and protect human rights in the Asia Pacific, to complement existing United Nations mechanisms. We support the development of credible, independent and effective human rights structures in the region.

¹⁸ 'ASEAN Starts Powerless Human Rights Body', *SBS World News*, 22 July 2008.

¹⁹ See, eg, 'Editorial: Give Human Rights Body Teeth', *Bangkok Post*, 27 July 2008, 10; 'ASEAN Starts Powerless Human Rights Body', *SBS World News*, 22 July 2008.

²⁰ Jim Gomez, 'Myanmar Opposes Investigative Powers', *Associated Press Newswires*, 22 July 2008.

27. We believe that regional or sub-regional human rights mechanisms should promote and protect those human rights embodied in the conventions of the United Nations (including ILO conventions). Any mechanism should protect, as a *minimum*, those rights recognised in the United Nations system as constituting universal human rights.
28. The process of developing a human rights mechanism must be consultative, transparent and participatory. It must extensively involve civil society organisations, which play a critical role in promoting and protecting human rights in the region.
29. Any human rights mechanism must be credible and independent. It must be constituted by independent experts who are appointed or elected according to a transparent process and who can work free from interference and intimidation.
30. The establishment of any human rights body must be accompanied by a commitment by the member states to ensure the body has the resources with which to perform its role effectively.
31. We recognise that the concept of an international human rights court capable of producing binding determinations does not yet have wide support among governments in the Asia Pacific. However, as a minimum, any regional or sub-regional human rights mechanism should:
 - Provide education and advice to member-states and to individuals and organisations that seek to defend human rights;
 - Promote the ratification and implementation of UN human rights treaties by member states;
 - Encourage and support member state to comply with their reporting obligations with respect to UN human rights treaty monitoring bodies (including the ILO); and
 - Investigate specific instances of human rights abuse, in response to submissions by individuals, civil society organisations or member-states or at its own motion.

Other mechanisms for the promotion of human rights in the Asia Pacific Region

32. The ACTU notes that there are a number of other intergovernmental initiatives and structures through which human rights may be promoted in the Asia Pacific. We believe that the Australian Government can and should make greater use of these initiatives, alongside providing support for the establishment of independent and effective regional and sub-regional human rights mechanisms.
33. Australia has bilateral free trade agreements with a number of Asian nations. It has recently concluded substantive negotiations for a regional FTA with ASEAN and New Zealand. The Government is further engaged in free trade agreement negotiations with several other Asian countries. The ACTU believes that Australia should ensure that core labour standards are upheld in all bilateral and regional free trade agreements to which it is a party. We note that our concern over the capacity for free trade agreements in the Asia Pacific to undermine worker's rights is shared by many trade unions in the region.
34. Australia engages in bilateral human rights dialogues with China and Vietnam. The ACTU believes that the Government should ensure that these dialogue processes are structured and undertaken in such a way as to ensure that they engender real value, with measurable indicators of success.
35. In the context of APEC, the ACTU has welcomed the recent commitment by the Peruvian President Alan García to support the trade union call for APEC to focus on workers' rights. The Peruvian Government has proposed broadening participation in APEC to other actors, including representatives of civil society. The International Confederation of Trade Unions' Asia Pacific Labour Network has called upon the APEC leaders to endorse the establishment of an APEC Labour Forum, in the form of an APEC formal consultative mechanism with trade unions comparable with the arrangements for access that already exist for the APEC Business Advisory Council.²¹

²¹ See International Trade Union Confederation Asia Pacific Labour Network (ITUC/APLN), *A New Commitment for Asia-Pacific Economic and Commercial Development through the Promotion of Decent Work*, Statement of the International Trade Union Confederation/ Asia Pacific Labour Network to the 2008 APEC Economic Leaders' Meeting, Lima, Peru, 22-23 November 2008, available at http://www.ituc-csi.org/IMG/pdf/APLN_statement_2008_-_FINAL.pdf

36. In the Pacific, the Pacific Islands Forum is preceded each year by a civil society forum. This civil society forum plays an important role in promoting and facilitating dialogue and action on human rights issues in the Pacific. We note that the Australian Government is hosting the Pacific Islands Forum in 2009. We urge the Government to encourage and support the civil society forum, as well to ensure that human rights issues are discussed by governments during the forum itself. Dialogue on human rights in the Pacific is particularly important in light of emerging movements for democracy, the impact of climate change and in light of trade and labour mobility developments in the region.
37. Inter-parliamentary visits can play an important role in developing and promoting sustained relations between Australia and countries in the Asia Pacific. These delegations can help build political confidence between Australia and its neighbours and facilitate discussion and promotion of human rights in the region. The ASEAN Inter-Parliamentary Myanmar Caucus (AIPMC) is one such structure, where government and opposition MPs work together to promote human rights and democracy in Burma/Myanmar.²²
38. Finally, the ACTU notes that there is considerable scope for the Australian Government to further integrate the promotion and protection of fundamental workers' rights in its overseas aid program through AusAID, its commitments to multilateral aid programmes as well as in support of technical cooperation with the International Labour Organisation.

²² See www.aseanmp.org.