

ADVANCING CANADA'S ENGAGEMENT WITH ASIA ON HUMAN RIGHTS

INTEGRATING BUSINESS AND HUMAN RIGHTS

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PROJECT OF THE NATIONAL CONVERSATION ON ASIA

ABOUT THE NATIONAL CONVERSATION ON ASIA

The **National Conversation on Asia** is a broad and inclusive initiative by the **Asia Pacific Foundation of Canada** to get Canadians thinking and talking about what Asia means to Canada. It is supported by Asia-engaged individuals, companies and organizations across Canada.

NCA Task Forces examine and formulate policy recommendations on strategic issues in the Canada-Asia relationship. Broad consultations with government, community and industry leaders, experts and stakeholders are an integral part of each Task Force's activity.

This report is the third in a series of NCA Task Force reports. The first taskforce report, *Securing Canada's Energy Future*, was released in June 2012. All reports are available at www.asiapacific.ca.

For more information, see www.nationalconversationonasia.ca.



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FOREWORD

Canadians have consistently expressed the importance of human rights in our foreign relations. It is no different in the case of Canada-Asia ties. Indeed, human rights issues arguably cast a bigger shadow over Canada's relations with Asian countries — notably China — than in any other bilateral relationship. With the growing importance of China for the Canadian economy, the potential impact of human rights issues on the broader relationship has grown commensurately. And yet, many conversations about human rights in the Canada-Asia relationship tend to be ill-defined, narrowly-conceived, and fractious. Human rights discussions in Canada are often sparked by international or bilateral incidents rather than by a principled and systematic review of the issues. Political attention to human rights issues is sporadic and often driven by ideology, populism, and the heat of the moment. As a result, Canadian responses to human rights problems internationally can vary wildly — from neglect to over-reaction.

As part of the Foundation's National Conversation on Asia, we convened a task force to reflect on the role of human rights in Canada's relations with Asian countries. The goal of the task force was not to come up with an answer to all kinds of human rights problems, but to provide a framework for thinking about human rights issues that will allow for a more consistent and constructive approach to human rights challenges in the Canada-Asia relationship. I am delighted to see in this report that the task force has provided not only this framework, but has also come up with recommendations for government, business, and civil society organizations to take concrete actions for the improvement of human rights globally.

I am most grateful to the task force members — Pitman Potter (chair), Sharon Hom, Douglas Horswill, Joseph Ingram, and Robert Wright — for their dedication to this initiative. As a group which represents diverse constituencies and backgrounds, task force members were able to have frank and often difficult conversations with stakeholders from government, industry, and civil society. Charles Labrecque from the Asia Pacific Foundation of Canada provided excellent support as Project Manager for the task force.

We are in some ways fortunate that human rights problems are not currently a major impediment to stronger ties between Canada and Asia. But the fact that human rights are not problematic does not mean that there are no human rights problems, or that an incident or series of incidents in the future will not threaten to derail trans-Pacific relations. Which is why we believe this report is so important, and why it should be read and absorbed by political and business leaders in the current environment of relative calm on the human rights front. Because when problems arise — as they inevitably do — the best response is one that has been thought through and which does not lose sight of fundamental objectives.



Yuen Pau Woo
President & CEO
Asia Pacific Foundation of Canada

AVANT PROPOS

Les Canadiens ont constamment exprimé l'importance qu'ils accordent aux droits de la personne dans les relations que nous entretenons avec l'étranger; ce n'est pas différent dans le cas des relations canado-asiatiques. En effet, les questions relatives aux droits de la personne jettent peut-être une ombre encore plus importante sur les relations du Canada avec les pays asiatiques — notamment avec la Chine — que sur toute autre relation bilatérale. Avec l'importance croissante de la Chine pour l'économie canadienne, l'impact potentiel des questions relatives aux droits de la personne a augmenté proportionnellement. Et pourtant, les nombreuses conversations portant sur les droits humains dans les relations Canada-Asie ont tendance à être mal définies, étroitement conçues, et hargneuses. Les discussions sur les droits de la personne au Canada sont souvent déclenchées par des incidents internationaux ou bilatéraux, plutôt que par une critique raisonnée et systématique de ces questions. L'attention politique aux questions relatives aux droits de la personne est sporadique et elle souvent motivée par l'idéologie, le populisme et l'impulsion du moment. En conséquence, les réponses canadiennes aux problèmes des droits de la personne au niveau international peuvent varier énormément, allant de l'indifférence aux réactions excessives.

Dans le cadre du Dialogue canadien sur l'Asie de la Fondation, nous avons réuni un groupe de travail avec le mandat de réfléchir à la question des droits de la personne dans les relations du Canada avec les pays asiatiques. L'objectif du groupe de travail n'était pas de proposer une réponse à toutes sortes de problèmes liés aux droits de la personne, mais plutôt de fournir un cadre de référence visant à encadrer les questions relatives aux droits de la personne et ainsi favoriser une approche plus cohérente et constructive face à ces questions dans les relations Canada-Asie. Je suis ravi de voir dans ce rapport que le groupe de réflexion a non seulement fourni ce cadre, mais il a également émis des recommandations concrètes pour que les gouvernements, les entreprises et les organisations de la société civile puissent prendre des mesures concrètes afin de supporter la protection des droits de la personne dans le monde.

Je suis très reconnaissant envers les membres du groupe de travail - Pitman Potter (président), Sharon Hom, Douglas Horswill, Joseph Ingram, et Robert Wright - pour leur dévouement à cette initiative. En tant que groupe représentant divers milieux, les membres du groupe de travail ont eu des conversations franches et difficiles avec les parties prenantes du gouvernement, de l'industrie et de la société civile. Charles Labrecque de la Fondation Asie Pacifique du Canada a fourni un excellent soutien en tant que directeur de projet pour le groupe de travail.

Nous sommes avantagés, en quelque sorte, que les problèmes de droits de la personne ne représentent pas actuellement un obstacle majeur au renforcement des liens entre le Canada et l'Asie. Toutefois, le fait que les droits de la personne ne représentent pas un ennui majeur ne signifie pas qu'un incident ou qu'une série d'incidents pourraient faire dérailler les relations trans-Pacifiques. C'est pourquoi nous croyons que ce rapport est si important, et pourquoi il doit être lu et absorbé par les dirigeants politiques et économiques, particulièrement dans ce contexte actuel de relative accalmie au niveau des droits de la personne. Parce que lorsque les problèmes font surfaces — comme ils le font inévitablement — la meilleure réponse est celle qui a été réfléchie et qui ne perd pas de vue les objectifs fondamentaux.

Yuen Pau Woo
President & CEO
Asia Pacific Foundation of Canada

EXECUTIVE SUMMARY

CANADA HAS PROMOTED human rights in its foreign policy agenda since 1947-48, when it played a key role in preparing the Universal Declaration of Human Rights. Since then, Canada has ratified many international human rights treaties, including treaties protecting economic, social, cultural, civil and political rights; treaties prohibiting racial discrimination and torture; and others protecting the rights of specific groups, such as women, children and persons with disabilities. Canada continues to have a strong interest in supporting local reception and enforcement of international human rights standards. There is, of course, intrinsic value in enforcing human rights. But robust attention to human rights also serves Canada's interests in terms of international leadership, responsible development and trade liberalization.

The performance of and reception to international human rights standards in Asia have been extremely varied. Certain Asian countries, such as China, India and Indonesia, have signed numerous human rights treaties, enshrined human rights in their constitutions, and participated in international human rights dialogues. Yet criticism of local human rights performance is widespread. While China looms large in Canadian perspectives on human rights in Asia, it is by no means the only economy where human rights practices have been criticized.

Canadians are concerned about human rights abuses in Asia, but are divided over how Canada should best respond. Concerns over human rights affect support for Canada's trade policies on Asia as well as a host of other initiatives that promote closer engagement with Asia. The effectiveness of Canada's policies in Asia will depend in part on how the Canadian public and private institutions engaged in the region address human rights issues, ensuring proper balance with commercial policy goals. The widespread use of social

networking and information technology in Asia is heightening local populations' knowledge and expectations so that both their own public authorities and private investors are being held to increasingly high standards with respect to human rights. As a result, Canadians will need to develop a more complete understanding of international human rights standards and their interpretation and implementation locally; Canadian companies and public authorities will need to demonstrate that they, too, apply similar standards of compliance.

This task force report was prepared as part of the Asia Pacific Foundation of Canada's National Conversation on Asia. In an effort to hear the views of various stakeholders in Canada concerning particular dimensions of human rights policy in Asia, the task force invited commentary and discussion from a variety of stakeholders on questions about commercial dimensions, international standards and policy dimensions of Canada's human rights policy for Asia. Task force members also drew upon their own considerable knowledge and experience to provide insights about and assessments of Canada's human rights engagement in Asia. This task force report contains the results of this work, and offers lessons learned and suggestions for developing Canada's human rights policy in Asia.

Recommendations

While full agreement on human rights policy and practice remains elusive, it is possible to achieve a balanced approach to the role of human rights in Canada's Asia policy that ensures fulsome support for human rights protection in practice and doctrine while attending to other foreign policy goals such as economic prosperity. Accordingly, the task force offers the following recommendations for Canadians:

A. Information and Education

1. Canadians should be made aware that, while different kinds of human rights are protected under different international legal agreements, all human rights are universal, indivisible, interdependent and interrelated.
2. Canadians need to recognize that Asia has made great strides over the last 25 years in the development of human rights. Canada's human rights policies in Asia should be developed bearing in mind the contextual differences between Canada and Asia. Canada has a strong interest in working constructively with Asian countries to strengthen the protection of internationally recognized human rights.
3. A strategic approach to human rights will require high-level political leadership and consistent engagement across the breadth of Canadian government. This should be a non-partisan issue at both the federal and provincial levels.
4. Canadians should be informed about human rights conditions in Asia, including achievements and challenges. The Canadian government, the provinces and the business sector should play a larger role in educating Canadians on the important changes that are taking place in Asia, including in the area of human rights.
5. Canada should establish a public electronic database on human rights conditions in Asia to inform public and private sector actors about the environments in which they operate.

B. Policy Initiatives

1. Canada should incorporate human rights protection within its trade and prosperity agenda for Asia. This commitment should acknowledge

that all human rights are universal, indivisible, interdependent and interrelated.

2. Canadians should pledge to “do no harm” to local recognition and protection of internationally accepted human rights in Asia.
3. Canada should adopt regulations that require Canadian mining and energy investors to report their payments to foreign governments, consistent with the principles underlying the Extractive Industries Transparency Initiative (EITI) and the US Cardin–Lugar amendment.
4. Canada should adopt regulations requiring Canadian investors to ensure that companies in their value chains are compliant with ILO Provision 169 on rights of indigenous peoples, should the host government be party to the ILO Convention.

C. Varying Roles

Canadians should recognize that a diversity of roles played by different stakeholders could effectively further human rights protection, as follows:

Government

1. The Government of Canada should exercise high-level political leadership and consistent engagement with its counterparts in Asia on human rights. This includes acknowledging that all human rights are universal, indivisible, interdependent and interrelated, and noting the importance of social, economic and cultural rights as well as civil and political rights.
 2. The Government of Canada should clarify its rationale for human rights engagement, focusing on the benefits for both Asia and Canada, while building support for Canada's initiatives in Asia.
 3. The Government of Canada should encourage Canadians operating in Asia to consider local
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human rights conditions in planning and carrying out their activities.

4. The Government of Canada should include the further development of human rights as a strategic objective in its Asia strategy, establishing specific, targeted, achievable objectives in consultation with its counterparts in Asia.
5. In concluding trade and investment agreements in Asia, the Government of Canada should assess and publicize the potential impact of these agreements on human rights development in those countries.
6. The Government of Canada should provide assistance to local non-governmental organizations (NGOs) and communities in Asia that can empower them to engage with public authorities and investors in the host country in discussions on revenue-sharing agreements; social, economic and human rights impact assessments; and the application of principles related to “free, prior and informed consent” concerning resource development projects.
7. The Government of Canada should encourage changes in legal doctrines and practice in Asia to support the recognition and protection of internationally recognized human rights. It should also support training for judges and lawyers as well as law reform efforts to strengthen local capacity in Asia for the recognition and protection of internationally recognized human rights.

Business Sector

1. Canadian business actors should ensure that their relationships and activities in Asia are sensitive to local human rights priorities and do not undermine the recognition and protection of internationally recognized human rights.
2. Private sector actors should align their own activities and those of their partners and projects

to internationally recognized human rights standards through the UN’s “Ruggie Framework” on business and human rights.

3. Canadian businesses should support closer cooperation with NGOs in furthering the recognition and protection of internationally recognized human rights in Asia.
4. Canadian businesses should be encouraged to report openly on human rights issues in public disclosure documents and processes.

Civil Society

1. Canadian NGOs should support law reform efforts and the training of judges and lawyers to strengthen local capacity for the recognition and protection of internationally recognized human rights in Asia.
2. Canadian NGOs should encourage changes in local legal doctrines and practice to support the recognition and protection of internationally recognized human rights in Asia.
3. Canadian NGOs should support closer cooperation with private sector actors in furthering the recognition and protection of internationally recognized human rights in Asia.

SOMMAIRE EXÉCUTIF

DEPUIS 1947-1948, période où il a joué un rôle clé dans la rédaction de la *Déclaration universelle des droits de l'homme*, le Canada a toujours défendu la protection des droits de la personne dans sa politique étrangère. Depuis, il a ratifié plusieurs traités internationaux relatifs aux droits de la personne, y compris des accords protégeant les droits économiques, sociaux, culturels, civils et politiques; des traités interdisant la discrimination raciale et la torture; et des conventions protégeant les droits de tel ou tel groupe, comme les femmes, les enfants et les personnes handicapées. Le Canada continue de porter un grand intérêt à l'adoption et l'application des normes internationales des droits de la personne. Bien sûr, s'engager à faire respecter les droits de la personne est louable en soi. Mais le fait de s'investir sérieusement dans cette cause sert également les intérêts du Canada au regard de son influence internationale, du développement responsable et de la libéralisation des échanges commerciaux.

L'accueil réservé aux normes internationales des droits de la personne en Asie, tout comme le succès de leur implantation, a beaucoup varié d'un pays à l'autre. Certains pays de la région, comme la Chine, l'Inde et l'Indonésie, ont signé de nombreux traités sur les droits de la personne, ont entériné ces droits dans leur constitution et ont participé à des dialogues internationaux sur le sujet. Cependant, leur rendement quant au respect des droits de la personne fait l'objet de nombreuses critiques. Alors que la Chine reste au premier plan des pensées des Canadiens lorsqu'il est question du respect des droits de la personne en Asie, elle est loin d'être le seul pays où l'application de ces droits est problématique.

Préoccupés par les violations des droits de la personne en Asie, les Canadiens sont néanmoins divisés quant à la meilleure façon dont leur gouvernement devrait réagir. Les inquiétudes à ce chapitre les empêchent

d'appuyer les politiques commerciales canadiennes dans la région ainsi qu'un cortège d'autres initiatives qui favorisent des relations plus étroites avec l'Asie. L'efficacité des politiques canadiennes en Asie dépendra en partie de la manière dont les organisations publiques et privées œuvrant dans la région aborderont les droits de la personne. L'utilisation répandue des réseaux sociaux et des technologies de l'information sur le continent asiatique permet aux populations locales d'être mieux renseignées et d'avoir des attentes plus élevées à l'égard des autorités publiques et des investisseurs privés qui sont ainsi tenus de respecter des normes de plus en plus strictes quant à la protection des droits de la personne. De ce fait, les Canadiens devront s'appliquer à mieux comprendre les normes internationales des droits de la personne ainsi que leur interprétation et leur mise en œuvre à l'échelle locale. Les entreprises et les autorités publiques canadiennes devront aussi faire la preuve qu'elles adoptent des normes de conformité similaires.

Ce rapport du groupe de réflexion a été préparé dans le cadre du Dialogue canadien sur l'Asie de la Fondation Asie Pacifique du Canada. Afin d'entendre les points de vue des divers intervenants, le groupe de réflexion a sollicité leur avis et leur participation à des débats sur certaines questions précises comme les enjeux commerciaux, les normes internationales et la dimension politique des principes directeurs canadiens quant aux droits de la personne en Asie. Les membres du groupe ont également puisé dans leurs vastes connaissances et leur grande expérience afin d'offrir des recommandations sur l'engagement du Canada à l'égard de la protection des droits de la personne en Asie. Après avoir présenté les résultats de ce travail et les enseignements tirés, ce compte rendu offre des suggestions pour élaborer une politique canadienne des droits de la personne en Asie.

Recommandations

S'il est illusoire de croire que l'on puisse s'entendre parfaitement sur la politique et la pratique des droits de la personne, le Canada peut trouver un juste équilibre en leur accordant une place dans sa politique à l'égard de l'Asie qui lui permette d'appuyer sans réserve la protection des droits de la personne dans la doctrine et la pratique tout en poursuivant d'autres objectifs de politique étrangère tels que la prospérité économique. En conséquence, le groupe de réflexion a formulé à l'intention des Canadiens les recommandations suivantes :

A. Information et sensibilisation

1. Les Canadiens doivent savoir que si les différents accords internationaux garantissent différents droits, les droits de la personne sont universels, indivisibles, interdépendants et intimement liés.
2. Les Canadiens doivent reconnaître que l'Asie a réalisé d'énormes progrès au chapitre des droits de la personne au cours des 25 dernières années. Les politiques canadiennes relatives aux droits de la personne en Asie doivent être élaborées en tenant compte des différences contextuelles entre les deux pays. Il est dans l'intérêt du Canada d'établir des liens constructifs avec les pays asiatiques de façon à consolider l'application des normes internationales des droits de la personne.
3. Une approche stratégique des droits de la personne requiert un leadership politique de haut niveau et un engagement continu de l'ensemble du gouvernement canadien. Cette question doit être abordée dans un esprit non partisan à l'échelle tant fédérale que provinciale.
4. Les Canadiens devraient être informés de la situation des droits de la personne en Asie, y compris des réalisations et des défis à relever. Le

gouvernement fédéral, les provinces et le secteur privé devraient jouer un plus grand rôle dans leur sensibilisation aux changements importants qui se produisent en Asie, notamment dans le domaine des droits de la personne.

5. Le Canada devrait établir une base de données électronique accessible au public sur la situation des droits de la personne en Asie, de façon à ce que les intervenants des secteurs public et privé en apprennent davantage sur le milieu dans lequel ils mènent leurs activités.

B. Initiatives politiques

1. Le Canada devrait intégrer la protection des droits de la personne dans son plan d'action relatif aux échanges commerciaux et à la prospérité économique en Asie. Cet engagement doit tenir compte du fait que tous les droits de la personne sont universels, indivisibles, interdépendants et intimement liés.
2. Les Canadiens doivent s'engager à ne pas nuire à la reconnaissance et la protection en Asie des droits de la personne reconnus par la communauté internationale.
3. Le Canada devrait adopter une réglementation visant à exiger des investisseurs canadiens des secteurs miniers et énergétiques de divulguer les paiements qu'ils versent aux gouvernements étrangers, conformément aux principes fondamentaux de l'Initiative pour la Transparence des Industries Extractives (ITIE) et à l'amendement américain Cardin-Lugar.
4. Le Canada devrait adopter une réglementation stipulant que ses investisseurs sont tenus de veiller à ce que les entreprises composant leur chaîne de valeur respectent tous la Convention no 169 de l'OIT concernant les droits des peuples indigènes

et tribaux dans les cas où le gouvernement hôte en est signataire.

C. Rôles variés

Les Canadiens devraient reconnaître que plusieurs intervenants détiennent divers rôles qui pourraient faire progresser la protection des droits de la personne, comme suit.

Gouvernement

1. Le gouvernement du Canada devrait exercer un leadership politique de haut niveau et entretenir une relation soutenue avec ses homologues asiatiques afin de faire reconnaître que les droits de la personne sont universels, indivisibles, interdépendants et intimement liés, et que les droits sociaux, économiques et culturels sont tout aussi importants que les droits civils et politiques.
2. Le gouvernement du Canada devrait clarifier sa motivation pour défendre les droits de la personne, en mettant l'accent sur les avantages que peuvent en retirer tant l'Asie que le Canada, et en suscitant en même temps l'adhésion aux initiatives canadiennes en Asie.
3. Le gouvernement du Canada devrait encourager les Canadiens qui exercent des activités en Asie de tenir compte de la situation locale des droits de la personne dans la planification et l'exercice de leurs activités.
4. Le gouvernement du Canada devrait inscrire à son plan stratégique pour l'Asie l'amélioration des droits de la personne en établissant, de concert avec ses homologues asiatiques, des objectifs précis, ciblés et réalisables.
5. En concluant des accords de commerce et d'investissement en Asie, le gouvernement canadien devrait évaluer et faire connaître leur incidence possible sur l'évolution de la protection des droits de la personne dans les pays visés.
6. Le gouvernement du Canada devrait fournir de l'aide aux organisations non gouvernementales (ONG) et aux collectivités locales qui peuvent lui donner les moyens d'entamer des discussions avec les autorités publiques et les investisseurs du pays hôte au sujet des ententes de partage des revenus; des études d'impact social, économique et sur les droits de la personne; et de l'application des principes relatifs au « consentement préalable, donné librement et en toute connaissance de cause » à tout projet de mise en valeur des ressources.
7. Le gouvernement du Canada devrait encourager l'évolution des doctrines et pratiques juridiques en Asie de façon à promouvoir la reconnaissance et la protection des droits de la personne reconnus par la communauté internationale. Il devrait également appuyer la formation de juges et d'avocats et soutenir les efforts de réforme du système juridique en Asie de façon à renforcer la capacité locale de reconnaître et de protéger ces droits.

Milieu des affaires

1. Les intervenants du milieu canadien des affaires devraient s'assurer que leurs relations et activités en Asie respectent les priorités locales relatives aux droits de la personne et ne nuisent pas à la reconnaissance et à la protection des droits de la personne reconnus par la communauté internationale.
2. Les acteurs du secteur privé devraient harmoniser leurs activités et projets et les activités de leurs partenaires avec les normes internationales des droits de la personne en se fondant sur les principes directeurs relatifs aux entreprises et aux

droits de la personne de l'ONU proposés par John Ruggie.

3. Les entreprises canadiennes devraient favoriser une coopération plus étroite avec les ONG afin de faire avancer la reconnaissance et la protection en Asie des droits de la personne reconnus par la communauté internationale.
4. Les entreprises canadiennes devraient être encouragées à faire librement état dans leurs communications publiques des problèmes constatés relativement au respect des droits de la personne.

Société civile

1. Les ONG canadiennes devraient soutenir les efforts de réforme du système juridique et favoriser la formation des juges et des avocats en Asie de façon à renforcer la capacité locale de reconnaître et protéger les droits de la personne reconnus par la communauté internationale.
 2. Les ONG canadiennes devraient encourager la modification des doctrines et pratiques juridiques en Asie de façon à appuyer la reconnaissance et la protection des droits de la personne reconnus par la communauté internationale.
 3. Les ONG canadiennes devraient favoriser une coopération plus étroite avec les intervenants du secteur privé afin de faire avancer la reconnaissance et la protection en Asie des droits de la personne reconnus par la communauté internationale.
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INTRODUCTION

THIS TASK FORCE REPORT was prepared as part of the National Conversation on Asia, sponsored by the Asia Pacific Foundation of Canada (APF Canada). Following a Canada–Asia strategy session with senior federal government officials held November 15, 2011, APF Canada commissioned a series of task forces on topics such as Canada’s place in Asia and Canada’s energy future. With the support of APF Canada’s president Yuen Pau Woo, Professor Pitman Potter of the University of British Columbia (UBC) was invited to develop and chair a task force on Canada’s human rights strategy towards Asia. Potter invited a group of leading specialists to join the task force, namely: Sharon Hom (Human Rights in China); Douglas Horswill (Teck Resources); Joseph Ingram (The North South Institute); and Robert Wright (former ambassador of Canada to China and Japan). In March 2012, the task force was convened to assess and reflect upon Canada’s human rights policy towards Asia, and to make recommendations for strengthening Canadian engagement with Asian economies on human rights. A copy of the task force terms of reference is attached as Annex A.

This report was prepared as part of the Asia Pacific Foundation of Canada’s National Conversation on Asia, a multi-year initiative to get Canadians thinking and talking about Asia and its significance for Canada. In an effort to hear the views of various stakeholders in Canada on human rights policy in Asia, the task force convened a series of roundtables across Canada. The roundtables invited discussion from stakeholders on questions about commercial dimensions, international standards, and policy dimensions of Canada’s human rights policy for Asia. Attendance lists and discussion summaries from the three roundtables are attached as Annex B. In addition, the task force completed a survey of NGO perspectives on human rights practices and policies, a summary of

which is included in Annex C. Task force members also provided insights and advice based on their own knowledge and experience. This report contains the results of this work and offers lessons learned and policy suggestions for developing Canada’s human rights policy in Asia.

Research and administrative assistance was provided by APF Canada through the able work of Charles Labreque. A “Backgrounder on Human Rights in Asia” is included as Annex D. A glossary of terms and list of acronyms is attached as Annex E. A list of selected readings relevant to the topic of human rights in Canada’s Asia policy is attached as Annex F.

CANADA'S ENGAGEMENT WITH HUMAN RIGHTS IN ASIA

CANADA HAS PROMOTED human rights in its foreign policy agenda since 1947-48, when it played a key role in preparing the Universal Declaration of Human Rights.¹ Since then, Canada has ratified several important international human rights treaties, including treaties protecting economic, social, cultural, civil and political rights; treaties prohibiting racial discrimination and torture; and treaties protecting the rights of specific groups, such as women, children and persons with disabilities. Prominent among the human rights treaties that Canada has ratified are:

1. **The International Covenant on Economic, Social and Cultural Rights**
2. **The International Covenant on Civil and Political Rights**
 - ❑ Optional Protocol (allowing individual complaints)
 - ❑ Second Optional Protocol (concerning abolishing the death penalty)
3. **UN Convention on the Elimination of All Forms of Discrimination Against Women**
 - ❑ Optional Protocol (permitting individual complaints)
4. **UN Convention Against Torture**
5. **UN Convention for the Elimination of Racial Discrimination**
6. **UN Convention on the Rights of the Child**
 - ❑ Optional Protocol on the Involvement of Children in Armed Conflict
 - ❑ Optional Protocol on the sale of children, child prostitution and child pornography
7. **UN Convention on the Rights of Persons with Disabilities**

Canada also has supported international policy measures and declarations that have implications for particular sectors and affected populations, such as the UN Declaration on the Rights of Indigenous People (UNDRIP), a key indicator of customary international law with important implications for extractive industries operating on indigenous peoples' lands.² Canada has supported the Extractive Industries Transparency Initiative (EITI),³ and recently proposed policies consistent with the US Cardin-Lugar Amendment (Rule 1504) requiring transparency and accountability by extractive industries.⁴

BOX A: CANADA'S INTERNATIONAL HUMAN RIGHTS POLICY

Human rights is a central theme of Canadian foreign policy for a number of reasons:

- Canadians expect their government to be a leader in the field of human rights by reflecting and promoting Canadian values.
- Canadians recognize that their interests are best served by a stable, rules-based international system. Countries which respect the rule of law tend to respect the rights of their citizens, are more likely to benefit from development, and are much less likely to experience crises requiring peacekeeping, emergency assistance or refugee resettlement missions.
- The UN Charter and customary international law impose on all countries the responsibility to promote and protect human rights. This is not merely a question of values, but a mutual obligation of all members of the international community, as well as an obligation of a state towards its citizens.

Source: Canada's International Human Rights Policy.
Accessed at:
<http://www.international.gc.ca/rights-droits/policy-politique.aspx>

¹ Foreign Affairs, Trade and Development Canada. "Canada's International Human Rights Policy." Accessed March 19, 2013 at: <http://www.international.gc.ca/rights-droits/policy-politique.aspx?view=d>.

² Aboriginal Affairs and Northern Development Canada. "Canada's Statement of Support on the United Nations Declaration on the Rights of Indigenous Peoples." Accessed May 3, 2013 at: <http://www.aadnc-aandc.gc.ca/eng/1309374239861/1309374546142>.

³ Canada does provide funding for EITI. See "Extractive Industries Transparency Initiative," Prime Minister of Canada website, Oct. 14, 2012. Accessed May 3, 2013 at: <http://www.pm.gc.ca/eng/media.asp?id=5100>.

⁴ Maryland Senator Ben Cardin. "Cardin, Lugar, Levin Support SEC In Legal Fight To Implement New Transparency Rules for Oil, Gas and Mining Industries." Press release, January 17, 2012. Accessed May 6, 2013 at: <http://www.cardin.senate.gov/newsroom/press/release/cardin-lugar-levin-support-sec-in-legal-fight-to-implement-new-transparency-rules-for-oil-gas-and-mining-industries>.

A. IMPORTANCE OF HUMAN RIGHTS FOR CANADA

CANADA CONTINUES TO have a strong interest in supporting the acceptance and enforcement of international human rights standards by governments in Asia. Many internationally recognized human rights standards reflect Canadian values such as freedom, democracy, cultural and religious diversity, and the role of market forces in supporting economic growth and responsible development. There is, of course, intrinsic value in enforcing human rights. But robust attention to human rights also serves Canada's interests in terms of international leadership, responsible development and trade liberalization, as the following points explain:

Leadership: Canada gains significant international prestige and influence from a consistent and reasoned approach to protecting all forms of internationally recognized human rights through local laws and institutions. Whether focused on individual or collective rights or particular rights categories — such as civil, political, economic, social or cultural — consistent public support for human rights will strengthen Canada's reputation, stature and legitimacy as a world leader in the area.

Responsible Development: Canada's policy goals regarding responsible development are enhanced by consistent public support for internationally recognized human rights. A reasoned and effective human rights strategy would direct attention and resources towards social development as a necessary complement to economic development.

Trade and Investment: Support for internationally recognized human rights standards will enhance Canada's trade and investment potential. Promoting standards of good governance, transparency and accountability while contributing to regulatory

clarity and facilitating market access will enhance the competitiveness of Canadian businesses involved in international trade and investment.

As well, Canadians are concerned about human rights conditions in Asia. In APF Canada's "2013 National Opinion Poll: Canadian Views on Asia" (NOP) — brief summary attached as Annex H — 60 % of respondents indicated that promoting human rights in Asia should be one of Canada's major foreign policy priorities, even though 64 % agreed that "Canada should get its own human rights house in order before preaching to Asian countries to take action on human rights." NOP respondents were fairly evenly split as to whether or not Canada should stop doing business with or in Asian countries because of human rights concerns: 48 % believe human rights should trump business priorities, while 39 % believe Canada should prioritize business over human rights. These views should be taken into account when Canada develops policies that promote closer engagement with Asia.

The effectiveness of Canada's presence in Asia also depends on how Canadian public and private institutions engaged in the region address human rights issues., ensuring proper balance with commercial policy goals. This means Canadians need to develop a more complete understanding of international human rights standards and their interpretation and implementation locally. It also requires Canadian companies and public authorities to set an example of compliance with internationally recognized human rights standards.

B. HUMAN RIGHTS CONDITIONS IN ASIA: NORMS AND OPERATIONS

THE ENFORCEMENT OF international human rights standards in Asia has been inconsistent. Many countries in Asia have made significant progress in advancing

human rights over the last 25 years. Economies such as China, India, Indonesia and Japan have signed numerous human rights treaties, enshrined human rights into their constitutions, and participated in international human rights dialogues. A list of human rights treaties signed and/or ratified by selected economies in Asia is attached as Annex I. Yet criticism of local human rights performance is also widespread, as indicated by the content of human rights reporting on Asia. A list of human rights reports on selected economies in Asia is attached as Annex G.

BOX B: HUMAN RIGHTS IN THE ASIA-PACIFIC REGION

The Asia-Pacific region is confronted with a diverse range of human rights challenges.

“Long-standing conflicts continue in several parts of the region. Post-conflict transitions in other States remain constrained by insecurity and political uncertainty. Several countries are undergoing important processes of democratic, legal and institutional reform, but democracy has been set back in others through the reassertion of military authority. Many countries continue to enjoy rapid economic development, but this in turn creates pressures on marginalized and disadvantaged groups. At the same time poverty, gender inequality and patterns of discrimination remain deeply entrenched. High levels of internal and external migration within and outside the region pose particular protection challenges, as well as attendant problems such as human trafficking. While many countries have well established legal frameworks and the elements of a national human rights protection system, serious gaps in capacity and political will undermine implementation and enforcement.”

*Source: United Nations Office of the High Commissioner for Human Rights, OHCHR Human Rights Programme for Asia-Pacific (2008-2009).
See: <http://www.ohchr.org/EN/Countries/AsiaRegion/Pages/AsiaPacificProgramme0809.aspx>.*

While much of the criticism is grounded in concerns about the willingness of local governments to comply with international human rights treaty standards, local human rights practices may also be understood by reference to normative and operational factors. Normative perspectives involve the role of cultural values and expectations, particularly around the role of the state and the priority given to individual (as opposed to community) rights.⁵ For example, human rights policies that emphasize civil and political rights such as freedom of expression, access to information, religion and due process tend to reflect normative perspectives that prioritize individuals' protection from state intrusion. Conversely, policies that prioritize economic, social and cultural rights — such as health care, housing and food security — tend to reflect normative views that the state's protection of collective rights is paramount.

Normative perspectives on human rights include *perceptions* about the content, origins and purposes of international standards. For example, in societies whose norms allow the state and community to take priority over individuals, many perceive that rights related to freedom of expression, access to information, religious belief and legal processes should remain subject to the authority of the state. By contrast, in societies whose norms give priority to individuals, many perceive individual rights as undiminished by state or collective interests. As well, perception affects human rights dialogue. Some perceive that human rights standards on civil and political rights are Western-based and used for political purposes to challenge government regimes in Asia, while others perceive such rights as universal.

Local acceptance of international human rights standards also depends on the extent of their *complementarity* with local policies and practice.

⁵ Potter, Pitman B. *Treaty Performance in China: Norms and Operations for Trade and Human Rights* (Vancouver: UBC Press, forthcoming 2014).

International human rights standards on property (including intellectual property), living standards and development, for example, have varying levels of compatibility with local socio-economic and political arrangements, which then affect local enforcement. Local performance of international human rights standards also reflects questions about the *legitimacy* of the standards themselves, the international agencies promoting them, and the local government departments interpreting and enforcing them.

In addition to the influence of normative perspectives, local protection of human rights also depends on the capacity of enforcement agencies.⁶ This involves operational factors of institutional *purpose, location, orientation* and *cohesion*. Consensus — or the lack of it — over the purpose of human rights institutions (for example, whether their primary purpose is public education or rights enforcement) has a significant impact on their effectiveness. Similarly, the organizational and geographical location of human rights agencies affects their capacity within the government bureaucracy and in society at large. Human rights agencies attached to think tanks may be less influential than ones attached to government development ministries, while human rights offices in major cities may be more effective than those located in rural communities — they may have more resources, for example, although they may have potentially less connection with local needs. The procedural orientation of human rights institutions is also important to the extent that it meets the expectations of local communities. Human rights initiatives related to abstract areas of focus, such as transparency and the rule of law, may seem unconnected to the daily needs of ordinary people even if such initiatives are, in fact, relevant — as in anti-corruption efforts, for example. Institutional capacity in human rights protection is also affected by the degree to which the

behavior of officials conforms to organizational purposes and goals. Officials who disagree with (or are induced to ignore) the human rights standards they are responsible for enforcing are not likely to be particularly effective.

As well, the lack of consensus over the relationships between trade and human rights goals has compromised efforts to build coordinated compliance with both trade and human rights standards.⁷ Debates over foreign investment and trade in low-wage economies, for example, often involve unresolved conflicts between the economic benefits of job creation and the social costs of inadequate health and safety protections for workers. Better coordination of trade and human rights policies and practice can facilitate cooperation between trade and human rights agencies and build understanding that expanded trade connections can contribute to improved human rights while stronger human rights protection can support better trade relations and prosperity.

Such normative and operational analysis reveals how human rights performance in Asia involves more than issues of government intention and political willingness to improve human rights conditions. Canada's human rights engagement in Asia should take this into account. Canadians should recognize that human rights challenges are complex, and that there has been progress in many areas of human rights policy and practice. Canada's human rights policies in Asia should be developed bearing in mind contextual differences between Canada and Asia. More effective and consistent policy engagement concerning human rights in Asia will help Canada achieve its foreign policy goals and further its economic goals.

⁶ Potter, Pitman B. *Treaty Performance in China: Norms and Operations for Trade and Human Rights* (Vancouver: UBC Press, forthcoming 2014).

⁷ Steiner, Henry J. and Alston, Philip. *International Human Rights Law in Context: Law, Politics, Morals* (Oxford: Oxford University Press, 2000), Section E16.

CONVERSATIONS WITH CANADIAN STAKEHOLDERS

FURTHER TO ITS MANDATE to engage with stakeholders on issues of human rights in Canada's Asia policy, the task force convened roundtables in Vancouver, Montreal and Ottawa to examine issues of (a) commercial dimensions of human rights; (b) international standards on human rights; and (c) policy dimensions of human rights. Detailed information on these sessions is attached as Annex B. Below, we have set forth summaries of the discussions and recommendations from these roundtable sessions.

A. VANCOUVER ROUNDTABLE: COMMERCIAL DIMENSIONS OF HUMAN RIGHTS

THE INTERPLAY BETWEEN business and human rights provides opportunities to achieve goals of economic prosperity and human rights protection. The roundtable held in Vancouver on June 26, 2012 examined contexts for managing commercial dimensions of human rights in Asia, and provided a range of recommendations.

1. Issues in Business and Human Rights

Business activities unavoidably affect human rights, whether in labour relations, environmental protection, or job growth and economic prosperity. Over the past decades, the processes of globalization have seen non-state actors, such as transnational corporations, play an increasingly important role in local development. This trend has significant implications for the protection of human rights. Voluntary codes of corporate conduct have been established at both the global and local levels to promote human rights. Businesses now have broadly defined legal duties to respect human rights within their "sphere of activity and influence."⁸ Businesses are essential components in Canada's international human rights engagement.⁹ Canada's business community has steadily become

more aware of the interplay between economic development activities and human rights protection.

Participants at the Vancouver roundtable noted that expanded trade and investment activities can support human rights protection, but acknowledged that the positive role of business activities for human rights protection should be strengthened. International trade and investment supporting economic growth, job creation and local value-added production in Asian economies can support the delivery of economic and social rights in such areas as poverty reduction and improved living standards. Higher standards of living generated by increased trade and investment also offer significant potential for expanded political and civil rights, particularly in the areas of transparency and government accountability.

While economic development that is widely and equitably distributed can support the achievement of numerous human rights goals, many economies in Asia still face human rights challenges. Treatment of workers, consumers and local residents remains problematic when economic development priorities diminish attention to human rights in labour relations, health and safety, and environmental protection. Moreover, as economies develop, economic inequality buttressed by imbalances of political power can lead to human rights abuses. Ethnic conflicts, corruption and institutional capacity problems also limit the human rights benefits of economic development.

In managing their economic relationships with Asia, Canadian businesses must carefully balance the pursuit of their economic goals with its potential impact on human rights. The guidelines on business and human rights presented to the UN Human Rights Council by the Secretary-General's Special Representative for Business and Human Rights (the "Ruggie

⁸ See Ruggie, John Gerard. "Business and Human Rights: The Evolving International Agenda," *American Journal of International Law* vol. 101 no. 4 (2007).

⁹ See The Canadian Chamber of Commerce, "Responsible Business Conduct in a Complex World" (2012).

BOX C: THE RUGGIE REPORT

In 2005, Harvard professor John Ruggie was appointed UN Special Representative for Business and Human Rights. His mandate: to propose measures that would strengthen the human rights performance of the business sector around the world. His report, *Protect, Respect and Remedy: a Framework for Business and Human Rights*, asserts:

“The international community is still in the early stages of adapting the human rights regime to provide more effective protection to individuals and communities against corporate-related human rights harm...

Business is the major source of investment and job creation, and markets can be highly efficient means for allocating scarce resources. They constitute powerful forces capable of generating economic growth, reducing poverty, and increasing demand for the rule of law, thereby contributing to the realization of a broad spectrum of human rights. But markets work optimally only if they are embedded within rules, customs and institutions...

Indeed, history teaches us that markets pose the greatest risks — to society and business itself — when their scope and power far exceed the reach of the institutional underpinnings that allow them to function smoothly and ensure their political sustainability...

The root cause of the business and human rights predicament today lies in the governance gaps created by globalization — between the scope and impact of economic forces and actors, and the capacity of societies to manage their adverse consequences. These governance gaps provide the permissive environment for wrongful acts by companies of all kinds without adequate sanctioning or reparation. How to narrow and ultimately bridge the gaps in relation to human rights is our fundamental challenge.”

Source: Protect, Respect and Remedy: a Framework for Business and Human Rights.

See: http://www.unglobalcompact.org/docs/issues_doc/human_rights/Human_Rights_Working_Group/29Apr08_7_Report_of_SRSR_to_HRC.pdf.

Framework”) highlight the responsibility of businesses to respect human rights. These standards should guide Canadian businesses as they expand their trade and investment activities in Asia. Failure to attend to the human rights consequences of trade and investment relations risks tarnishing the Canadian brand and undermining the competitiveness of Canadian business relationships with emerging economies.

2. Outcomes from the Vancouver Roundtable

Participants at the Vancouver roundtable recognized the importance of enabling Canadian businesses to succeed commercially while simultaneously enhancing the protection of internationally recognized human rights. Mindful of the limited sphere of influence within which businesses operate, participants suggested that businesses can have a positive effect on human rights in areas such as resource development, water management, job creation, labour relations and environmental protection. Noting the need to expand the reach of Corporate Social Responsibility (CSR), Vancouver roundtable participants suggested that professional exchange programs with counterparts in Asia can strengthen human resources and institutional capacity in support of human rights. Participants noted the importance of the Ruggie Framework in providing standards for businesses to support human rights protection in markets where they operate. Businesses can support human rights by establishing grievance mechanisms, transparency requirements, and operational best practices in both host and home countries. Participants highlighted the need to work within the legal systems of trade partners in Asia to support human rights protection. They noted the positive role of information technology in supporting transparency and access to information. Participants also suggested that increased investment in Canada by Asian businesses creates opportunities for Canadians to influence their Asian business partners’

understanding of human rights, and corresponding behavior.

There are challenges to these strategies, however, including the rising power and influence of Asian economies and their focus on economic development over protection of political and civil rights. Canada's economic partners in Asia are not simply passive recipients of international human rights standards, but are increasingly active in revising those standards. Participants at the Vancouver roundtable suggested that Canadian companies are not always able to influence human rights policies and practices in Asia positively. Noting that the use of political human rights language and labeling can often be counterproductive, roundtable participants agreed that Canadian businesses should be more attentive to the effects of their activities on social and economic rights. Many companies (especially junior firms) often do not appreciate sufficiently the human rights consequences of their activities. Human rights concerns such as consumer and workplace safety, environmental degradation, illegal land seizures, and denial of legal remedies remain widespread. Building greater knowledge and awareness for Canadian companies and their counterparts in Asia concerning the human rights implications of local economic development activities will be important in responding to these challenges. Detailed recommendations from the Vancouver roundtable are included in Annex B-1.

B. DISCUSSION OF INTERNATIONAL STANDARDS ON HUMAN RIGHTS

INTERNATIONAL HUMAN RIGHTS standards are grounded in a series of international treaties and instruments adopted mostly since 1945 and in a range of related declarations, guidelines and principles. These, in turn, are informed by a conflicting array of cultural norms, political and policy imperatives, and

institutional practices. The roundtable discussion with the NGO community in Montreal on October 22, 2012, along with a follow-up survey, reflected a range of familiarity with specific international human rights standards, and generated useful insights on Canada's Asia policies.

1. Issues in International Human Rights

As discussed in Annex D, the international human rights regime depends largely on standards associated with the Universal Declaration of Human Rights (UDHR) and two international covenants: the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the International Covenant on Civil and Political Rights (ICCPR). Implementing these international standards involves operational challenges including (a) management of non-state actors, such as transnational corporations (TNCs); (b) responses to technological change, especially in the information and communications technology (ICT) sector; and (c) developing mechanisms for monitoring, assessment and implementation. Participation by TNCs is addressed largely through the Ruggie Framework on business and human rights. Technology issues are addressed in part through the Global Network Initiative (GNI) — a multi-stakeholder initiative of companies, investors, NGOs, and academics that focuses on freedom of expression and privacy in the ICT sector. Policy tools such as Human Rights Impact Assessments (HRIAs) have been developed to support monitoring, assessment and implementation of human rights standards.

Human rights protection in Asia is limited by domestic legal and administrative processes in the region. With few exceptions, such as child prostitution, Canadian law does not apply to human rights violations committed outside Canada. The lack of adequate information about local legal and political contexts for human rights enforcement is a challenge for

Canada. Additional issues where more information is needed on local enforcement processes include preventing violence against women (including aboriginal women); protecting access to water; addressing issues of poverty, homelessness, food insecurity, health care services and education; and attending to the rights of asylum seekers and refugees.

2. Outcomes from the Montreal Roundtable

Participants at the Montreal roundtable pointed out that many international human rights standards remain inadequate due to lack of measurable outcomes, enforcement mechanisms and accountability. Participants noted that Canada's human rights protection system is limited because it generally does not address violations committed outside Canada.

BOX D: VIENNA DECLARATION

On June 25, 1993, representatives of 171 states adopted by consensus the *Vienna Declaration and Programme of Action*, thus successfully closing the World Conference on Human Rights. The *Vienna Declaration and Programme of Action* stated that:

"All human rights are universal, indivisible and interdependent and interrelated. The international community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis. While the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind, it is the duty of States, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms."

Source: Vienna Declaration and Programme of Action (adopted by the World Conference on Human Rights in Vienna, 25 June 1993).
See: <http://www.ohchr.org/Documents/ProfessionalInterest/vienna.pdf>.

To remedy this, some participants urged Canada to acknowledge formally that it is just as important to promote human rights as it is to promote trade. Participants also suggested mandatory penalties for human rights violations.

As well, even though the Ruggie Framework extends the responsibility to respect human rights to corporations, many Canadian companies are not sufficiently aware of the context of human rights abuses in the regions where they operate. In non-democratic or administratively weak states, local institutions are often inadequate to support meaningful improvements in human rights policies or to ensure better enforcement. Participants at the Montreal roundtable suggested there should be more effective mechanisms to allow NGOs and other organizations to inform TNCs about local human rights conditions. Detailed recommendations from the Montreal roundtable are included in Annex B-2.

C. OTTAWA ROUNDTABLE ON POLICY INTERVENTION

THE CHALLENGE OF policy intervention on human rights in Asia involves matters of political priorities and decision-making in Canada as well as conditions of Canada's relations with economies in the region. The roundtable held with members of the policy community in Ottawa on February 7, 2013 provided a range of insights on the policy dimensions of Canada's human rights engagement in Asia.

1. Issues Related to Policy Intervention on Human Rights

The Canadian government has increasingly come to identify economic relations with Asia as a key foreign policy priority. According to Prime Minister Stephen Harper, "[i]ncreased exports to the Asia Pacific region are vital to Canada's future prosperity."¹⁰ Foreign

¹⁰ "PM to take part in APEC Leaders' Meeting in Russia." Prime Minister of Canada Press Release, Sept. 5, 2012. Accessed May 20, 2013 at <http://pm.gc.ca/eng/media.asp?id=5005>.

Affairs Minister John Baird has said that accessing markets in Asia is now a “top foreign policy priority” and that Canada has no room for complacency in its pursuit of increased Asian trade. The minister continued, “We know that Canada must play a very active role in this part of the world. It’s simply not a choice; it’s not an option. It has to be a national imperative.”¹¹

In promoting expanded economic ties with Asia, Canada needs to enhance its global brand and local competitiveness. Consistent public support by the federal government for the protection of internationally recognized human rights is an essential dimension of this effort. While Canada’s influence on human rights protection in Asia is limited, Canada can still be an important force for improvement.

2. Outcomes from the Ottawa Roundtable

Participants at the Ottawa roundtable addressed the need for a strategic approach linking Canada’s human

BOX E: CANADIAN GOVERNMENT AGENCIES WITH HUMAN RIGHTS RESPONSIBILITIES

- Aboriginal Affairs and Northern Development Canada
- Environment Canada
- Foreign Affairs, Trade and Development Canada
- Immigration and Refugee Board of Canada
- International Development Research Centre
- Department of Justice
- Royal Canadian Mounted Police
- Canadian Heritage
- Canadian Human Rights Commission

rights policy with prosperity goals. A strategic approach would involve a long-term commitment that links human rights with Canada’s prosperity goals and other dimensions of government policy. This would require a “whole-of-government” approach involving closer cooperation among relevant agencies and departments. Many participants suggested that a strategic approach requires a clear rationale to explain why a strong human rights policy is important. This would include recognition of the commercial and strategic benefits for Canada that accrue from supporting internationally recognized human rights and pursuing multi-dimensional human rights engagement. Thus, Canada’s human rights engagement in Asia should extend beyond civil and political rights to include economic, social and cultural rights.

Participants also discussed policy instruments as a basis for Canada’s human rights activities. Existing activities — such as aid programs aimed at building institutional capacity, cultural ties through expanded immigration, university and civil society linkages, and bilateral dialogues — all offer the potential to improve human rights recognition and protection. These and similar activities should be continued and expanded. As well, participants suggested that Canada’s representatives should have a clear mandate to support improvement of local human rights conditions. Dialogue on human rights should be high-level, consistent and ongoing, but also mindful of the potential for criticism of Canada’s own human rights record. Canada should also focus on long-term institutional linkages to support stronger human rights protection, provide moral support for local human rights reformers, and demonstrate that we are serious about supporting change. Participants noted the importance of institutional capacity building, with specific attention to legal system reform, information technology development, and social

¹¹ Wingrove, Josh. “Canada Must Expand Trade with Asia, Baird Says,” *Globe and Mail*, May 8, 2013. Accessed July 4, 2013 at: <http://www.theglobeandmail.com/news/politics/accessing-asian-markets-is-a-top-foreign-policy-priority-baird/article9547692/>.

networking and media. Participants suggested that more should be done to ensure that Canadian companies respect Canadian human rights values when operating abroad, supporting the role of the Ruggie Framework.

Roundtable participants suggested the need to better inform Canadians about human rights conditions in Asia, where many economies have made significant progress in protecting social and economic rights. Responding to Canadian expectations on political and civil rights, Canada can be more active in encouraging the protection of human rights in areas such as transparency, government accountability, environmental protection, and women's rights. Participants noted the need for better communication with Canadians on the need to develop specific, achievable goals related to human rights protection in Asia. The Canadian private sector can play a positive role in this regard. Detailed recommendations from the Ottawa roundtable are included in Annex B-3.

SUMMARY AND OPPORTUNITIES FOR ENGAGEMENT

CANADIAN ENGAGEMENT WITH Asia on human rights issues should take into account the normative and operational dimensions of human rights policies and practice. Rather than seeking to impose Canadian norms, Canada should work to support the performance of internationally recognized human rights standards that have already been recognized in local laws and treaty commitments. As well, coordinating human rights performance with international trade standards would support trade and human rights performance both individually and jointly.

Normative Consensus: Canada should work to build consensus on basic values and goals regarding human rights in Asia. It should support collaborative policy engagement, cooperation on the improvement of legal and regulatory processes, and expanded exchanges to promote clear and consistent perception of international human rights standards and their benefits for global and local well-being. Canada should help identify opportunities for building complementarity between international human rights standards and local standards and processes. Canada should also encourage efforts that build legitimacy for human rights and the rule of law, both domestically and internationally.

Operational Effectiveness: Canada's policies on human rights in Asia should support capacity building to improve local enforcement of international human rights standards and help build a culture of respect for human rights. Specific efforts should include steps to build consensus on the purposes of human rights enforcement. Support for institutional capacity building on human rights enforcement that conforms to the needs of different locations will also be needed. Canada should work to harmonize institutional human rights enforcement practices with the

orientation of local communities while supporting efforts to combat corruption and overcome other obstacles to institutional cohesion and effectiveness.

Policy Coordination: Canada should support better coordination of trade and human rights performance in its policies and programs. There is an emerging recognition of the need to explore coordinated compliance between international trade and human rights standards.¹² Examples include expanding the transparency standards generally associated with trade regimes to include labour relations; managing trade subsidy standards so as to support the expansion of health protection and housing for workers; and adopting intellectual property protection measures that do not undermine public access to health care and medicine.

¹² Abbot, Frederick M., Breining-Kaufmann, Christian and Cottier, Thomas, Ed., *International Trade and Human Rights: Foundations and Conceptual Issues* (Ann Arbor: University of Michigan Press, 2006); Cottier, Thomas, Pauwelyn, Joost and Burgi, Elisabeth, Ed., *Human Rights and International Trade* (Oxford: Oxford University Press, 2005).

SPECIFIC RECOMMENDATIONS: UNITY OF PURPOSE AND DIVERSITY OF ROLES

AS INDICATED IN THE foregoing discussion of standards and practices on human rights, and as expressed at the three stakeholder roundtables, full agreement on human rights policy and practice remains elusive. Nonetheless, a strategic approach to the role of human rights in Canada's Asia policy can be achieved that combines trade policy and the pursuit of prosperity with fulsome support for human rights protection. Accordingly, with due recognition that further discussion will be needed to allocate specific responsibilities for implementation, the task force offers the following recommendations to Canadians:

A. INFORMATION AND EDUCATION

1. Canadians should be made aware that, while different kinds of human rights are protected under different international legal agreements, all human rights are universal, indivisible, interdependent and interrelated.
2. Canadians need to recognize that Asia has made great strides over the last 25 years in the development of human rights. Canada's human rights policies in Asia should be developed bearing in mind contextual differences between Canada and Asia. Canada has a strong interest in working constructively with Asian countries to strengthen the protection of internationally recognized human rights.
3. A strategic approach to human rights will require high-level political leadership and consistent engagement across the breadth of Canadian government. This should be a non-partisan issue at both the federal and provincial levels.
4. Canadians should be informed about human rights conditions in Asia, including achievements and challenges. The Canadian government, the provinces and the business sector should play a larger role in educating Canadians on the important

changes taking place in Asia, including in the area of human rights.

5. Canada should establish a public electronic database on human rights conditions in Asia to inform public and private sector actors about the environments in which they operate.

B. POLICY INITIATIVES

1. Canada should incorporate human rights protection within its trade and prosperity agenda for Asia to acknowledge that all human rights are universal, indivisible, interdependent and interrelated.
2. Canadians should pledge to "do no harm" to the local recognition and protection of internationally accepted human rights in Asia.
3. Canada should adopt regulations that require Canadian mining and energy investors to report their payments to foreign governments, consistent with the principles underlying the Extractive Industries Transparency Initiative (EITI) and the US Cardin-Lugar amendment.
4. Canada should adopt regulations requiring Canadian investors to ensure that companies in their value chains are compliant with ILO Provision 169 on rights of indigenous peoples, should the host government be party to the ILO Convention.

C. VARYING ROLES

Canadians should recognize that a diversity of roles among different stakeholders could effectively further human rights protection, as follows:

Government

1. The Government of Canada should exercise high-level political leadership and consistent engagement with its counterparts in Asia on human rights.

This includes acknowledging that all human rights are universal, indivisible, interdependent and interrelated, and noting the importance of social, economic and cultural rights as well as civil and political rights.

2. The Government of Canada should clarify its rationale for human rights engagement, focusing on the benefits for both Asia and Canada, while building support for Canada's initiatives in Asia.
3. The Government of Canada should encourage Canadians operating in Asia to consider local human rights conditions in planning and carrying out their activities.
4. The Government of Canada should include the further development of human rights as a strategic objective in its Asia strategy, establishing specific, targeted, achievable objectives in consultation with counterparts in Asia.
5. In concluding trade and investment agreements in Asia, the Government of Canada should assess and make public the potential impact of these agreements on human rights development in those countries.
6. The Government of Canada should provide assistance to local non-governmental organizations (NGOs) and communities in Asia that can empower them to engage with public authorities and investors in the host country in discussions on revenue-sharing agreements; social, economic, and human rights impact assessments; and the application of principles related to "free, prior and informed consent" concerning resource development projects.
7. The Government of Canada should encourage changes in legal doctrines and practice in Asia to support the recognition and protection of internationally recognized human rights. The Government of Canada should support training for judges and lawyers as well as law reform efforts to strengthen local capacity in Asia for the

recognition and protection of internationally recognized human rights.

Business Sector

1. Canadian business actors should ensure that their relationships and activities in Asia are sensitive to local human rights priorities and do not undermine the recognition and protection of internationally recognized human rights.
2. Private sector actors should align their own activities and those of their partners and projects to internationally recognized human rights standards through the UN's "Ruggie Framework" on business and human rights.
3. Canadian business should support closer cooperation with NGOs in furthering the recognition and protection of internationally recognized human rights in Asia.
4. Canadian businesses should be encouraged to report openly on human rights issues in the course of their public disclosure documents and processes.

Civil Society

1. Canadian NGOs should support law reform efforts as well as the training of judges and lawyers to strengthen local capacity for recognizing and protecting internationally recognized human rights in Asia.
2. Canadian NGOs should encourage changes in local legal doctrines and practice to support the recognition and protection of internationally recognized human rights in Asia.
3. Canadian NGOs should support closer cooperation with private sector actors in furthering the recognition and protection of internationally recognized human rights in Asia.



ANNEXES

- Annex A – Terms of Reference and Task Force Members’ Biographies
- Annex B – Roundtable Attendance Lists and Discussion Summaries
 - Annex B-1 – Vancouver: Commercial Dimensions
 - Annex B-2 – Montreal: International Standards
 - Annex B-3 – Ottawa: Policy Intervention
- Annex C – NGO Survey on Human Rights Practice and Policy
- Annex D – Backgrounder on Human Rights in Asia
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- Annex F – Selected Readings on Human Rights in Canada’s Asia Policy
- Annex G – Human Rights Analysis Papers on Selected Economies in Asia
- Annex H – APF Canada’s 2013 National Opinion Poll: Canadian Views on Asia
- Annex I – Human Rights Treaties Signed and Ratified by Economies in Asia

ANNEX A – TERMS OF REFERENCE AND TASK FORCE MEMBERS' BIOGRAPHIES

BACKGROUND

The Asia Pacific Foundation of Canada (APFC), through the National Conversation on Asia (NCA), is convening a group of experts from various background and expertise to address Canada's human rights policy towards Asia. Canada has a joint interest in promoting a positive environment for trade and investment in Asia and furthering the implementation of international human rights standards. International human rights standards are articulated in many international agreements, including the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social, and Cultural Rights. The central issue of this initiative is to determine how best to pursue these two goals simultaneously.

The Canada-Asia relationship is characterized by opportunities and challenges and it is essential for Canada to pursue an informed policy that supports both a strong human rights component and a strong economic relationship. The Canadian government has mainly promoted civil and political rights in Asia for decades now but the results of this engagement have been mixed.

The work of the Task force is informed by several contemporary factors, including the following:

- Recent surveys performed by the APFC show a strong support from the Canadian population for Canada to promote human rights in Asia. For example, the 2011 National Opinion Poll indicated that 66% of Canadians believe the promotion of human rights in Asia should be a priority for their government. Furthermore, the 2012 Points of View Opinion panel indicated that 77% of Asian practitioners would like to see continued Canadian

engagement on human rights in Asia. However, if Canadians value human rights many are still uncertain about how to effectively engage foreign states on this matter.

- Asia now accounts for over 30% of global GDP and could go up to more than 50% of all global economic output by 2050. Many Canadians trust that Asia is increasingly important for Canada's well-being and the Government of Canada is currently intensifying its effort to strengthen economic relations with Asian countries. Due to the complementarity between Canada's economy and those of many Asian countries, trade and investment relations are likely to develop further. As Canada expands its economic relationships with its Asian partners, it also requires careful policy planning about its role on human rights engagement.
- Economic development has become inseparable from human rights, especially as growing income inequalities and the quality and sustainability of economic growth emerge as defining challenges for national and international development. In many ways, ensuring human rights is an essential dimension of sustainable and equitable economic performance and healthy trade relations.

Terms of Reference

Scope of work

The task force will hold consultations to hear from Canadians with a wide range of professional expertise on their views relating to Canada's human rights engagement in Asia. The perspectives will be summarized and combined with analysis by the Task force to provide recommendations aimed at assisting stakeholders (government and non-government) to engage more effectively in human rights activities in Asia. As set forth in the discussion outline,

consultations will be pursued through a series of Roundtables, soliciting views on dimensions of human rights engagement in Asia. Additional consultations may be pursued by Task force members as appropriate. While the Task force will not commission or pursue original research, compilations of existing human rights analysis will be provided to Task force members and to participating stakeholders.

Deliverables

The task force will produce a report based on results of stakeholder consultations, providing policy recommendations to support more effective Canadian engagement with Asian economies on human rights.

TASK FORCE MEMBERS

Pitman B. Potter – Chair

Professor of Law and HSBC Chair in Asian Research, University of British Columbia

Dr. Potter's teaching and research are focused on PRC and Taiwan law and policy in the areas of foreign trade and investment, dispute resolution, intellectual property, contracts, business regulation, and human rights. Dr. Potter serves as a consultant to the Canadian national law firm of Borden Ladner Gervais LLP. Dr. Potter is also active in international trade arbitration work involving China. In addition to his academic and professional training (Ph.D., JD from University of Washington), Dr. Potter holds an M.Div. from Vancouver School of Theology and is a Deacon in the Anglican Church of Canada (Diocese of New Westminster).

Joseph K. Ingram – Member

Former President and CEO, The North-South Institute and former World Bank Special Representative to the UN and the WTO.

After retiring from the World Bank in 2006, Mr. Ingram served as a Senior Advisor to the World Trade

Organization and as a consultant to the UN High Commission on Human Rights, the World Bank and the Canadian International Development Agency. During his 30-year career with the World Bank, Mr. Ingram held senior positions including Special Representative to the UN and to the WTO in Geneva, Director of the World Bank's office in Bosnia and Herzegovina, Deputy Director of The World Bank Institute, Director of the bank's office in Cameroon, and Deputy Resident Representative in the bank's Nigeria office. Before joining the World Bank, Mr. Ingram represented the International Development Research Center in Beirut. Mr. Ingram holds a master's degree in political economy and studied at McMaster University in Canada and at the Harvard Business School.

Robert G. Wright – Member

Former Canadian Ambassador to China (2005-2009) and to Japan (2001-2005)

Over his 38 years in public service in the Department of Foreign Affairs and International Trade, Mr. Wright held various appointments, including Deputy Minister for International Trade (1995-2001), Deputy Head of the Canadian Embassy in Washington, Director General responsible for Canada-U.S. relations, Deputy Head of the Canadian Delegation to the WTO Uruguay Round of Trade Negotiations, and the Canadian Delegation to the GATT Tokyo Round of Trade Negotiations.

Douglas Horswill – Member

Senior Vice President, Teck Resources Limited

Formerly responsible for sustainability and external affairs; currently responsible for Teck's zinc and health program as well as external initiatives related to Asia. Prior to joining Teck, Mr. Horswill spent almost 20 years in public service, ultimately serving as Deputy Minister of Finance and Corporate Relations

and Deputy Minister of Energy, Mines and Petroleum Resources for British Columbia.

Sharon K. Hom – Member

Executive Director of Human Rights in China (HRIC)

Professor of Law Emerita, City University of New York School of Law

Ms. Hom taught law for 18 years, including training judges, lawyers and law professors at eight law schools in China. She was Fulbright Professor of Law (1986-1988) at China University of Politics and Law in Beijing; a faculty member and director of the China Center for American Law Study in China (1990-2000); and served on the US-China Committee on Legal Education Exchange with China (1990-2000). Hom has published extensively on Chinese legal reforms, trade, technology and international human rights, and was named by the Wall Street Journal as one of 2007's "50 Women to Watch." HRIC is also one of the founding NGO members of the Global Network Initiative.

ANNEX B – ROUNDTABLE ATTENDANCE LISTS AND DISCUSSION SUMMARIES¹³

ANNEX B-1 – VANCOUVER: COMMERCIAL DIMENSIONS

Attendance List

Courtland Brewster, Highland Geoscience, Project Management and Engineering

Violet Chan, Canada Singapore Club, President

Jim Cooney, Canadian Business for Social Responsibility, Senior Associate

Martin Donner, Borden Ladner Gervais LLP, Partner

Earl Drake, Former Ambassador to China and Indonesia/Silvercorp Metals, Director

Gordon Esau, Fraser Milner Casgrain LLP, Partner

Robert Hanlon, Simon Fraser University, Lecturer

Christian Hansen, DFAIT, Vancouver Regional Office, Deputy Director

Mike Hogan, Forestry Innovation Investment Ltd., (Vancouver), Vice President China Operations/FII China (Shanghai), General Manager

Bryan Hughes, Export Development Canada, District Manager

Daniel L. Kiselbach, Miller-Thomson LLP, Partner

Laarni Liwanag de Paula, Philippines Canada Trade Council, President Elect

Jimmy Mitchell, Advantage BC, VP Business Development

William Roberts, Whistler Forum, President

Wei Shao, Fraser Milner Casgrain LLP, Partner

Valerie Shapiro, Canada International Council/ Vancouver Branch, President

Carmelita Tapia, Southeast Asia Canada Business Council, President

Discussion Topics

Which human rights are most connected with commerce and business?

- ❑ Generally:
- ❑ In Asia:

What do we mean when we say furthering human rights?

- ❑ Education
- ❑ Public Awareness
- ❑ Enforcement
- ❑ More

How do commercial relationships further human rights?

- ❑ Generally:
- ❑ In Asia:

What can be done to strengthen the capacity for commerce to further human rights?

- ❑ Generally:
- ❑ With regard to Asia:

Do business relationships hamper human rights protection?

- ❑ Generally:
- ❑ In Asia:

What can be done to reduce or limit the capacity of business relationships to hamper human rights protection?

- ❑ Generally:
- ❑ With regard to Asia:

What is not being discussed, but should be, regarding human rights and business in Asia?

Summary of Discussion

Opportunities

Asian companies operating in Canada represent an entry point for us to influence them

¹³ The roundtable discussion summaries may not reflect the views and opinions of all participants.

- Asian firms investing in Canada have their own set of values. They also face various problems such as managerial issues and language barriers. This could provide a valid entry point for Canada to influence Asia on best practices, the rule of law, and good governance.

Which human rights are most connected with commerce and business?

- Business can impact a variety of rights, but mostly labour and environmental issues.
- Economic and social rights are important and businesses should not attempt to influence political rights, which is more of a governmental responsibility. It is even open to question whether or not one country has the right to interfere in the domestic affairs of another. Moreover, Canada is in no position to lecture others given its treatment of First Nations. It is a different matter, however, if two countries agree to include human rights protection within an economic cooperation agreement.

How can commercial relationships further human rights?

- Benefit to being listed on NYSE (and presumably other exchanges).
- Exchange programs would be a good way to further human rights.
 - For example: defence and prosecution lawyers in some Asian countries may be influenced by the areas in which they live. Through exchange programs, companies could educate them about human rights.
- Go beyond CSR.
 - In Canada, CSR and corporate responsibility in general is still very much connected to public relations. Do we need to think beyond CSR? How else can companies promote social responsibility and socially responsible practices?

- Examples of areas of commercial activity where human rights could be impacted include :
 - **Conflict minerals:** mitigating forces on conflict minerals include managing the retail value chain; legislative actions like the Frank Dobbs Bill requiring reporting; and certification schemes such as Kimberly Diamonds, audits and sanctions.
 - **Access to clean water:** conflicts can occur among industrial, agricultural and personal use for water in countries such as Chile and in much of the Sahara in Africa. Mitigating factors include government allocation of water rights and the monitoring thereof, opportunities for creating unique sources of water through processes such as desalination and by recycling, as well as research into reduced water use.
 - **Child labour:** an interesting and celebrated example of this is the Sialkot Footballs, which are hand-stitched in Sialkot, Pakistan. When suppliers to Nike stopped using child labour, there were substantial increases in poverty among the children and their families. Moreover, some of the children were then forced to work in local brickworks, where the work was even more difficult. It was only after opportunities were developed through education that child labour really diminished in this Pakistani region. The difficulty of monitoring and addressing these issues is unsurprising given the fact that one company, Wal-Mart, has over 75,000 different suppliers.
 - **Indigenous Peoples Rights:** These are often impacted by companies in the extractive industry and by governments which support those companies. Mitigating factors include community engagement, understanding best practices, following the precepts of free and informed consultation (and in certain cases

consent), and understanding local politics and decision making.

- ❑ Land displacement, pollution and forced labour all become potential areas impacted by commercial activity or a host government's support of commercial processes.

What can be done to strengthen the capacity of businesses to further human rights?

- Companies themselves can address human rights implications of their activity by adopting the "Ruggie Framework":
 - ❑ adopt a human rights policy;
 - ❑ conduct human rights impact assessments of planned activity;
 - ❑ integrate human right implications into all decision making relative to a project;
 - ❑ track and report on impacts, making modifications to practices as required.
- The establishment of grievance mechanisms to enable communities within a company's sphere of influence to register concerns and have those concerns addressed is another key element in a strategy. Companies should establish a clear chain of accountability in respect to their activities.
- Transparency is a key for companies. External, independent and verified reporting of companies' activities is important.
- Also important for companies is the notion of "do no harm". Beyond that companies should commit to treat people with respect and to work to enhance their individual human dignity. A company's activities, if profitable and successful, can lead to advancement and betterment of human rights through the creation and distribution of wealth. However, on the way to that improved state of affairs the precept of "do no harm" will help to ensure respect for the human rights of individuals.
- The publication and promotion of best practices can provide an efficient tool for companies to understand their human rights impacts.
- ❑ Government could require companies to report on their human rights policy and impacts and publish annual human rights tracking documents.
- In the Canadian context, the courts have decreed that governments must consult and accommodate First Nations in respect to any policy decisions that impact their land or rights.
 - ❑ This requirement for consultation and accommodation in respect to the development of extractive industry projects could be incorporated into the reporting requirements; alternatively they could be incorporated into annual reporting requirements from listing entities such as stock exchanges.
- Canada has embarked on comprehensive economic policy agreements with South Korea, Japan, China and others and is also engaged in the Trans-Pacific partnership. All these agreements could be designed to incorporate human rights commitments. They could also incorporate a bilateral duty to report on human rights issues and include independent verification.
- For a company doing business in any jurisdiction, human rights related issues are part of their social license. As well, human rights issues are becoming more prevalent in legal license and regulatory requirements through such things as environmental impact assessments. Such approaches are prevalent in Canada and throughout Latin America, and are relatively well accepted. Canada/Asia investment agreements and economic cooperation agreements could embody this concept as a requirement for projects.
- Federal government's obligations:
 - ❑ Imperative that "gold standard" companies are promoted within specific industries as upholders of best practices/standards.
- Canada should use Asian countries' own legal

systems and aspirations to further human rights.

- Encourage whistle blowing, which has shown results in the mining industry.
- Compliance incentives are preferable to punitive measures.
- Engage trade associations.
- Need for global regulations that deal with child labour and the environment.

Technology

- Modern technology can be harnessed in support of Canada's pursuit of trade and human rights advancement in respect to Asia. Technology provides the modern key to transparency. Commitments sought and made within the architecture of international relations should include free access to information technology.

Challenges

Asian countries are becoming more influential over human rights norms and the international discussion about those norms

- It is important to acknowledge the tremendous progress some Asian countries have made over the past decades in terms of human rights.
- The international standards of human rights are increasingly being challenged by emerging countries.
- There is an urgent need to acknowledge that we are facing a different situation from that of a few years ago. Asian economies are now leading world growth, China is now the second economy in the world, and in term of investment, "China is coming to Canada even more than Canada is going to China."

Companies face many difficulties to further human rights

- It is hard for Canadians companies or individuals parachuted into foreign countries to deal with the

local human rights situation. Abuses are endemic in some of these countries which makes it hard to institute change, which will take a long time.

- However, the longer we are involved in a country, the more we are able to induce change or to have an influence over its practices.
- In many cases, companies (especially junior ones) do not fully understand the impact their activities can have on human rights. NGOs and civil society can offer significant value-added by: helping a company understands potential human rights impacts: assisting companies in their engagement with communities to address mitigation measures to offset human right impacts; and participating in external reporting and verification.
 - Provide country information on human rights through transparent mechanisms within Canada, so that Canadian companies and individuals engaging in activity with countries in Asia understand Canada's perspective.
 - Canadian government could provide a system which "raised red flags" where companies could encounter human rights problems.
 - Provide independent review and auditing.
 - Governments can facilitate partnerships between compatible NGOs and companies with the objective of advancing human rights and ensuring a company's activities do no harm.
- The important mitigating remedy to complicity is the knowledge of human rights and the company's potential impacts as well as knowledge of a government's action in support of a company.

Does the use of "rights language" hinder the achievement of objectives?

- For purposes of strategic engagement, wording used can be problematic. Do we use "human rights" when dealing with certain countries? Or do we use other words that mean the same thing? If so, which ones?

ANNEX B-2 – MONTREAL: INTERNATIONAL STANDARDS

Attendance List

- Jose Aylwin**, Observatorio Ciudadano,
Co-Director/Invited scholar at McGill University
- Denis Côté**, Canadian Council for International
Co-operation, Asia-Pacific Working Group, Coordinator
- Maria Derks Normandin**, Pearson Center, Officer
- Sushil Handa**, Amnesty International, Coordinator
China
- David Israelson**, Canadian Lawyers for International
Human Rights
- Cheuk Kwan**, Toronto Association for Democracy
in China and Canadian Coalition on Human Rights
in China
- Linh Le Kim**, Canadian Friends of Burma
- Kayum Masimov**, Canadian Uyghur Society,
President
- Yves Ngorbo**, World Observatory of Human Rights/
Partenariat International
- Hélène Piquet**, Université du Québec a Montréal,
Professor of Law, Canada Research Chair in Chinese
Law and Globalization
- Carole Samdup**, Canada Tibet Committee
- Pearl Wierenga**, Department of Foreign Affairs and
International Trade, Greater China Division,
Political Officer

Discussion Topics

In what aspects of furthering human rights protection in the context of business relations and trade policy are the international regimes Global Network Initiative; UNGP; and the Ruggie Framework particularly effective?

- Generally:
- In Asia:

What can be done to strengthen the capacity of the international regimes Global Network Initiative; UNGP; and the Ruggie Framework to further human rights protection in the context of business relations and trade policy?

- Generally:
- In Asia:

What is not being discussed, but should be, regarding the potential for international standards regimes to support or inhibit human rights protection in the context of business relations and trade policy?

- Generally:
- In Asia:

Summary of Discussion

A series of international treaties and instruments adopted since 1945 have provided the legal basis for international human rights. The Ruggie Framework, for example, offers useful support for promoting respect for workers' rights, but it also poses challenges:

- No measurable outcomes
- Not sufficient reservations
- No enforcement mechanisms
 - There is no accountability; there is no tangible penalty for companies who violate human rights
 - Voluntary standards for human rights protection don't work; the standards need to be mandatory
- While the emphasis is on business, the fulfillment of human rights is the obligation of states
- Furthermore, the pillar around which the Ruggie Framework is organized relates to the corporate responsibility to respect. This means that companies must exercise their due diligence, but there are difficulties:
 - Canadian companies are not sufficiently aware of the local context in which they operate
 - An electronic database on human rights violations might help Canadian companies and government
 - We should have clear legislation for Canadian

companies acting on foreign soil. Canadian registered companies operating overseas should be bound by Canadian law

For example, Canada has included provisions in its Criminal Code that allow for the arrest and prosecution in Canada of Canadians for offences committed in foreign countries related to child sex tourism

- Canadian companies don't have enough presence on the ground
- There are not enough mechanisms that allow NGOs or other organizations to provide companies with local knowledge
 - More information should be available for companies about the human rights challenges in the countries in which they operate
 - Better coordination between NGOs and companies would help to fill this gap
- The human rights protection system doesn't deal with violations committed outside Canada except in limited cases (such as child sex tourism). However, in non-democratic states or otherwise weak states, domestic processes are insufficient. Two possible solutions:
 - Remove investor-state and stabilization clauses from commercial agreements
 - Create an International Human Rights Court
 - Regional courts are an option, but there is none in Asia and Canada is not party to the Inter-American Convention

We need a paradigm shift: The promotion of human rights is as important as promoting trade. Promotion of human rights should not follow the promotion of trade; it should occur at the same time. However, using untested trade and investment agreement provisions to protect human rights or remedy violations is not realistic.

- Mandatory assessments should be conducted before concluding FTAs

- The state must ensure that the FTA or Bilateral Investment Treaty (BIT) does not impose obligations that are inconsistent with its human rights commitments. The *Guiding Principles on HRIA of Trade and Investment Agreements* can be found here: http://www.srfood.org/images/stories/pdf/officialreports/20120306_hria_en.pdf
- Governments should include explicit human rights language in FTAs or BITs so that arbitrators would accept their relevance.

ANNEX B-3 – OTTAWA: POLICY INTERVENTION

Attendance List

Gregory Chin, CIGI, China Research Chair and Senior Fellow

John de Boer, IDRC, Program Leader, Governance, Security, and Justice

Joya Donnelly, Privy Council Office, Foreign and Defence Secretariat, Asia officer

Len Edwards, Gowlings, Strategic Adviser

Louis Guay, Saint Paul University, Senior Fellow

Cheryl Gopaul, Canadian International Development Agency, Senior Governance Advisor

Deborah Friedman, Department of Justice, International Legal Programs Section, Director General and General Counsel

Ron Hoffmann, Department of Foreign Affairs and International Trade, Senior Coordinator for Asia Policy and Strategy

James Junk, Department of Foreign Affairs and International Trade, Human Rights Policy, Director General

Errol Mendes, University of Ottawa, Faculty of Law, Professor

David Mulroney, University of Toronto's Munk School of Global Affairs, Distinguished Senior Fellow

Jeff Nankivell, Canadian International Development Agency, Director General, Asia, CIDA

Bernard Nguyen, Department of Foreign Affairs and International Trade, Policy Planning Division, Senior Policy Advisor

Julia Sanchez, Canadian Council for International Cooperation, President and CEO

Cindy Termorshuizen, Department of Foreign Affairs and International Trade, Greater China Division, Director

Ann Weston, IDRC, Special Initiatives Division, Director

Discussion Topics

What kinds of Canadian government policy initiatives and responses are most effective in furthering human rights in Asia?

- ❑ Statements of principle.
- ❑ Education and public awareness efforts.
- ❑ Quiet diplomacy (with and without benchmarks for action).
- ❑ Conditions build into bilateral and multilateral agreements.
- ❑ Sanctions.
- ❑ Other

Which particular areas of human rights in Asia are most amenable to Canadian government policy initiatives and responses?

- ❑ Statements of principle.
- ❑ Education and public awareness efforts.
- ❑ Quiet diplomacy (with and without benchmarks for action).
- ❑ Conditions build into bilateral and multilateral agreements.
- ❑ Sanctions.
- ❑ Other

What can be done to strengthen the capacity for Canadian government policy initiatives to further human rights?

In what areas might Canadian government policy initiatives hamper human rights protection?

What can be done to reduce or limit the capacity of Canadian government policy initiatives to hamper human rights protection?

What issues are not being discussed, but should be, regarding Canadian government policy initiatives on human rights in Asia?

Summary of Discussion

Strategic approach

- A Canadian strategy should first identify realistic, achievable goals, including those which the Canadian government has identified as high priority, such as maternal and children's rights. They should also include those issues which Asian countries have identified as priorities.
- Focus should also be on inclusive growth, especially through support of services that are explicitly defined as economic, social and cultural rights. Examples include clean water, sanitation and health care (Asians, especially the Chinese, are increasingly concerned with air pollution and its health risks and water safety, seeing them increasingly as "rights").
- ❑ A focus on economic, social and cultural rights is also consistent with Asia's, especially China's history. There is a growing restiveness on the part of its population, and the Chinese government has an existential need to retain the people's trust and sustained support for the party.
- ❑ We need to focus on what will help people in need on the ground.
- ❑ We need to identify issues of mutual interest.
- Canada's human rights policy needs to be translated into on-the-ground programs supporting

a multifaceted approach and needs to demonstrate that Canada's rhetoric on human rights is consistent with its programs

- Canada needs a whole-of-government approach. It should receive the input and support of all concerned department and agencies. This should start with better CIDA/DFAIT coordination, linking Canadian values with strategic objectives and development support (CIDA is developing "Human Rights Protection Frameworks").
- Although Canada should continue to work with multilateral institutions (UN, World Bank, others), the Canadian strategy should aim to maximize Canada's bilateral influence.
- In the case of China and others, Canadian programs should support the "rule of law" rather than the "rule by law".
- The strategy should seek to marry legal reforms in Asia with the objectives of economic prosperity, consumer and occupational safety and security.
- The strategy should also include more explicit measures to ensure that Canadian companies (especially extractive companies where the record of CSR has been mediocre and government support has been largely rhetorical) investing globally behaves in accordance with Canadian values. That means they should be compliance with the EITI (Extractive Industries Transparency Initiative) Initiative, regulations similar to the U.S Cardin-Lugar's Rules 1504, recent European legislation seeking to mirror Cardin Lugar, the eighth amendment of China's criminal law, the Africa Mining Vision etc.
- The report needs to be nuanced in how it treats CSR and voluntary principles as a means of protecting and promoting human rights since government has an almost obsessive belief in principles of voluntary/self regulation.

- Encourage Canadian business to bring forward Canadian values including human rights.
- Canada can help build Asian regulatory regimes with a view to creating a more level global playing field and in doing so should be guided by John Ruggie's Framework and by the Global Framework and the Global Network Initiative.
- If we continue to be perceived as the odd-man-out in terms of regulation governing natural resource exploitation, Canadian branding will continue to suffer. That will be reflected in the continued loss of market share of world exports (between 2000-2011 Canada was the second biggest loser in the G20, with a 37% loss).

Policy instruments

- Dialogue on human rights should be high-level, consistent and ongoing. Individual, high profile cases and issues will continue to arise, but these should be dealt with through constructive political engagement. However, we cannot think that countries will reform based on bilateral discussions.
- Furthermore, Canada should recognize that any dialogue on human rights will include criticisms of the Canadian human rights record.
- Partnerships with Asian regional institutions and IFIs, as well as bilaterally — though Canada will make no progress if it is seen to be preaching.
- We need to help create the conditions on the ground that lead to change.
- Leadership on the discussion of a national strategy should come from the prime minister. He should draw on expertise from provincial leaders and from the private sector.

Many participants pointed out the need for a stronger human rights policy

- Canada should develop strategies to maximize Canadian influence, in support of Canadian values

and interests, in the political, economic and social evolution of Asian countries, including the evolution human rights.

- This should start with the development of a national strategy, led by the Canadian government but including other levels of government, to establish and maintain a regular, consistent and constructive high-level political engagement with key Asian countries, particularly China and India.
 - Engagement with Asia should cover all aspects of the relationship: political, economic and social and include discussions of human rights issues.
 - There should be recognition that Asian countries have made considerable strides in improving human rights, particularly through economic growth, but that this progress has been uneven and has not kept pace with economic developments.
 - There should also be recognition that western standards of human rights may not be those that should be applied to developments in Asian countries. There should also be recognition of historic, cultural and social differences.
 - Canada needs to recognize that human rights are universal rights, not values to be exported.
 - There is considerable misunderstanding, and in many cases an outdated view, among Canadians on the issues of human rights in Asia. As part of a national strategy there is a need to discuss with Canadians how these countries have evolved and how the conditions affecting human rights have changed.
 - The Canadian private sector has played an increasing role in the discussion of human rights issues in Asia. In many cases it has set practical standards that are positively affecting the evolution of human rights. Any national strategy should include ongoing input from the private sector.
-

ANNEX C – SUMMARY OF NGO SURVEY ON HUMAN RIGHTS PRACTICE AND POLICY

FOLLOWING THE MONTREAL roundtable, the task force circulated a survey to all invitees that sought additional information regarding participants' organizational focus and overall awareness of and engagement with international business and human rights standards. Twelve people — representing organizations working on a variety of sectors and geographies — responded to the six-question survey. The responses indicated that the group was most familiar with the UN's Protect, Respect, Remedy Framework and least familiar with the Global Network Initiative. Fewer than half of the respondents indicated that they were "very familiar" with the Ruggie Framework, demonstrating a low overall awareness of these international standards. The most common mode of engagement with the international frameworks was through research and/or policy advocacy; the least common was through impact litigation and arbitration.

The results indicate a limited awareness of and engagement with international business and human rights frameworks, which is consistent with the Montreal roundtable conversation more generally. This suggests that the Canadian NGO community would benefit from more awareness building and technical training on how to best utilize these frameworks in their advocacy.

ANNEX D – BACKGROUNDER ON HUMAN RIGHTS IN ASIA

HUMAN RIGHTS HAVE become an essential component of international relations and law. Human rights are said to “[c]onstitute defined legal standards of the international constitutional order. Seven core international human rights treaties have been ratified by a majority of the world’s countries.”¹⁴ The international human rights regime depends largely on standards associated with the Universal Declaration of Human Rights (UDHR) and two international covenants: the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the International Covenant on Civil and Political Rights (ICCPR).

1. BASIC HUMAN RIGHTS INSTRUMENTS

The Universal Declaration of Human Rights (UDHR) binds members of the United Nations to a set of common principles “as a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction.”¹⁵

The ICCPR and the ICESCR build on these principles. The preamble to the ICCPR emphasizes that the “...recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world.” It also recognizes:

“...that these rights derive from the inherent dignity of the human person,

“...that, in accordance with the Universal Declaration of Human Rights, the ideal of free human beings enjoying civil and political freedom and freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his civil and political rights, as well as his economic, social and cultural rights, ...the obligation of States under the Charter of the United Nations to promote universal respect for, and observance of, human rights and freedoms,

and that:

“...the individual, having duties to other individuals and to the community to which he belongs, is under a responsibility to strive for the promotion and observance of the rights recognized in the present Covenant.”

The preamble to the ICESCR contains similar principles around economic, social and cultural rights, emphasizing that:

“...in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

“...these rights derive from the inherent dignity of the human person,

“...in accordance with the Universal Declaration of Human Rights, the ideal of free human beings enjoying freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his economic, social and cultural rights, as well as his civil and political rights,

¹⁴ Palacio, Anna. “Human Rights and the World Bank.” (World Bank Institute, 2006).

¹⁵ United Nations. Universal Declaration of Human Rights. Accessed July 21, 2011 at: <http://www.un.org/en/documents/udhr/index.shtml>.

“...the obligation of States under the Charter of the United Nations to promote universal respect for, and observance of, human rights and freedoms,

and

“...that the individual, having duties to other individuals and to the community to which he belongs, is under a responsibility to strive for the promotion and observance of the rights recognized in the present Covenant.”

Building on these foundations, other human rights treaties have been concluded on such matters as preventing slavery, torture, and organized crime, as well as protecting the rights of women, children, and minorities.¹⁶

International human rights standards operate as a restraint on national sovereignty, albeit one subject to a myriad of operational limits. Human rights are often characterized as either “positive rights” to certain conditions such as health, housing, working conditions and a clean environment, or “negative rights” that protect freedom of expression, religion and association against state intrusion.¹⁷ Historically, the ICESCR and the ICCPR reflected contradictions between positive and negative rights in the UDHR that, in turn, were the product of Cold War politics involving the US and USSR. While civil and political rights are sometimes referred to as “first-generation rights” and economic, social and cultural rights as “second-generation rights,” this sequential nomenclature primarily reflects the influence of European and North American

standards of liberal governance and an emphasis on individual rights.

Participants in the international policy discourse on human rights, such as private and public sector actors as well as governments, frequently articulate conflicting approaches to human rights in practice. Whereas political and civil rights have long been a priority for liberal democracies, protection of social, economic and cultural rights has been a priority for developing economies in Asia. Human rights policies and practices in Asia often rely heavily on the discourse of the “right to development” articulated by the UN General Assembly in 1986.¹⁸ Although many international law scholars challenge the notion that a right to development can take precedence over other human rights,¹⁹ many states in Asia and elsewhere have accepted this approach.²⁰ Supported by notions about the right to development, an “Asian Values” discourse has emerged by which protection of civil and political rights in such matters as expression, assembly, labour relations and religion is seen as secondary to the needs and conditions of economic development. The 1993 Bangkok Declaration on Human Rights²¹ placed strong emphasis on the right to development over requirements for civil and political rights. By depicting international human rights law as involving “a dynamic and evolving process of international norm-setting,” the Bangkok Declaration suggested that the emphasis on civil and political rights could legitimately give way to the imperatives of economic development.

¹⁶ A full list of ratified human rights treaties by country is available at: <http://www1.umn.edu/humanrts/research/ratification-index.html> (accessed Feb. 12, 2013).

¹⁷ De Schutter, Olivier. *International Human Rights Law* (Cambridge: Cambridge University Press, 2010); Steiner, Henry J., Alston, Philip and Goodman, Ryan. *International Human Rights in Context: Law, Politics, Morals* (2nd ed.) (Oxford: Oxford University Press, 2008).

¹⁸ United Nations. “UN General Assembly Resolution on the Right to Development, A/Res/41/128.” Dec. 4, 1986. Accessed May 31, 2011 at: <http://www.un.org/documents/ga/res/41/a41r128.htm>.

¹⁹ Donnelly, Jack. “In Search of the Unicorn: The Jurisprudence and Politics of the Right to Development,” *California Western International Law Journal*, vol. 15 (1985), p. 473; Bai, G. “Are There Any Hierarchies of Human Rights in International Law?” in Baehr, P. R. et al., Ed., *Human Rights: Chinese and Dutch Perspectives* (The Hague: Kluwer, 1996).

²⁰ See India Human Rights Commission, “Human rights Issues.” Accessed Feb. 7, 2013 at: <http://nhrc.nic.in/hrissues.htm>. Also see e.g., “Introduction” in State Council Information Office, *National Human Rights Action Plan of China (2012-2015)*, accessed Feb. 12, 2013 at: http://www.china.org.cn/government/whitepaper/2012-06/11/content_25619560.htm. Also see “Statement of Ambassador Liu Zhenmin at the High Level Segment of the General Debate of the 22d Session of the Human Rights Council.” (Feb. 28, 2013). Accessed April 22, 2013 at: <http://www.fmprc.gov.cn/ce/cegv/eng/tpxw/t1017518.htm>.

²¹ Asia Pacific Human Rights Information Center. “Final Declaration of the Regional Meeting for Asia of the World Conference on Human Rights.” Accessed May 3, 2013 at: http://www.hurights.or.jp/archives/other_documents/section1/1993/04/final-declaration-of-the-regional-meeting-for-asia-of-the-world-conference-on-human-rights.html.

Yet we also see the expansion of civil society voices in Asia asserting the universality of human rights and pressing local governments to ratify and implement international human rights treaty standards — including those on civil and political rights. For despite the historical circumstances around the conclusion of the ICCPR and the ICESCR as separate expressions of human rights standards, and despite official rhetoric by states in Asia and the West prioritizing either economic/social/cultural or civil/political rights, the currently recognized doctrine is that “[a]ll human rights are universal, indivisible and interdependent and interrelated.”²²

2. EMERGING ISSUES IN INTERNATIONAL HUMAN RIGHTS STANDARDS

While the recognized human rights standards set forth in the UDHR, ICCPR and ICESCR provide a basic framework, the challenges for human rights protection under current conditions of globalization include (a) management of non-state actors, such as transnational corporations (TNCs); (b) responses to technological change; and (c) developing mechanisms for implementation.

a) Managing Transnational Corporations

Responding to the challenge of managing TNCs, the Ruggie Framework provides guidance on issues of business and human rights.²³ The Ruggie Framework is organized around three pillars:

- (1) The state’s duty to **protect** against human rights abuses through appropriate policies, regulation and adjudication;
- (2) The corporate responsibility to **respect**, requiring due diligence and avoidance of infringement of human rights; and
- (3) The need to provide victims with greater access

to effective **remedy** when abuses do occur, both judicial and non-judicial.

Building on this foundation, the Ruggie Framework further defines the scope of responsibilities for both states and businesses. States, for example, are charged both with stopping human rights abuses related to business activity within their territories and with encouraging businesses domiciled within their jurisdictions but acting abroad to respect human rights throughout their global operations. To this end, states are encouraged to call businesses’ attention to human rights and to ensure that the political space and legal remedies are adequate to address the related issues. Corporations are called upon to respect human rights, regardless of size, industry or activity. To accomplish this, the framework suggests that all businesses establish policies and processes to identify and prevent human rights abuses. Such policies should be developed in consultation with relevant stakeholders, communicated publicly, and followed up with proper due diligence and remediation as necessary. Most importantly, the Framework in its final form remains voluntary.

Since its adoption, the Ruggie Framework has been widely cited and/or relied upon by both states and businesses. The Framework has served as a foundation for subsequent developments and consensus building at both the national and international levels. On the other hand, some critics argue that several factors may have further limited the possibilities to push for binding instruments at the international level, including: the constant search for consensus; the ambiguity (and even drawback) of the UN Working Groups and UN Guiding Principles (UNGPs) regarding host states’ extraterritorial obligations under international law; and the need to take regulatory measures to ensure companies operating abroad respect human rights. While some academics have asserted that international

²² UN General Assembly. “Vienna Declaration and Programme of Action,” adopted at the World Conference on Human Rights (June 25, 1993). Accessed March 20, 2013 at: [http://www.unhcr.ch/huridocda/huridoca.nsf/\(symbol\)/a.conf.157.23.en](http://www.unhcr.ch/huridocda/huridoca.nsf/(symbol)/a.conf.157.23.en).

²³ UN Human Rights Offices of the High Commissioner. “Guiding Principles on Business and Human Rights.” 2011. Accessed April 5, 2013 at: http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf.

law is an evolving field and, as such, corporations can and should now be recognized as subjects with corresponding obligations, Ruggie has consistently opposed this view and rejects the notion of an international convention governing corporate behavior.

In 2011, a UNGP on the issue of human rights and transnational corporations and other business enterprises, comprised of five members holding three-year mandates, was established to implement the Ruggie Framework. Section 4 of the Working Group's mandate expressly permits further progress and continued enhancement of the standards, but to date, the activities have been limited to dissemination of the Guiding Principles and making recommendations to the various stakeholders. The group has held two sessions and produced two reports in which it elaborated its views on its mandate, procedures and preliminary strategy; on existing successful dissemination efforts of the UNGP; and on the main proposals and recommendations the group had received to date from key stakeholders.²⁴ The Group scheduled its first annual forum in December 2012 and its first country visit (to Mongolia) in October 2012.

b) Responses to Technological Change

Responding to challenges of technological development, the Global Network Initiative (GNI) supports improvement of human rights protection through broader access to information technology.²⁵ GNI is a multi-stakeholder initiative of information and communications technology (ICT) companies, civil society organizations (including human rights and press freedom groups), investors and academics. Although GNI's framework is structurally specific, it grounds its goals in the international system, seeking to provide companies with guidance on how to protect and promote the human rights of freedom of

expression and privacy as set out in the UDHR, the ICCPR and the ICESCR.

Unlike the Ruggie Framework, GNI membership creates binding obligations via three core documents created by a multi-stakeholder board. The core documents address principles, implementation and governance, accountability and learning. The principles state that the overarching commitment of the GNI's members is to collaborate in the advancement of user rights to freedom of expression and privacy. They additionally provide high-level guidance to the ICT industry on how to respect, protect and advance user rights to freedom of expression and privacy, including when faced with government demands for censorship and disclosure of users' personal information.

The GNI's implementation guidelines provide more detailed guidance to ICT companies on how to put the principles into practice, and also provide the framework for collaboration among companies, NGOs, investors and academics. The guidelines will be reviewed regularly and revised to take into account actual experience, evolving circumstances and stakeholder feedback. The Governance, Accountability & Learning Framework sets out a multi-stakeholder governance structure; goals for collaboration; and a system of company accountability to support the principles, maximize opportunities for learning and ensure the integrity and efficacy of the Initiative.

c) Mechanisms for Implementation

Responding to the challenges of strengthening human rights enforcement, Olivier De Schutter, UN special rapporteur on the right to food, has proposed an expanded role for Human Rights Impact Assessments (HRIAs).²⁶ De Schutter's report on the role of HRIAs sets out guiding principles on human rights impact

²⁴ The Working Group's full report is available at: http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session21/A-HRC-21-21_en.pdf (accessed April 22, 2013). The Group also recently made a statement to the Human Rights Council providing an overview of its work and mandate, available at: <http://www.ohchr.org/Documents/Issues/Business/StatementMargaretJungkHRC20.pdf> (accessed April 22, 2013).

²⁵ See <http://www.globalnetworkinitiative.org/> (accessed April 5, 2013).

²⁶ UN General Assembly. "Guiding Principles on HRIA of Trade and Investment Agreements." Dec. 2011. Accessed April 5, 2013 at: http://www.srfood.org/images/stories/pdf/officialreports/20120306_hria_en.pdf.

assessments of trade and investment agreements, as follows:

1. The duty to prepare human rights impact assessments of trade and investment agreements: All States should prepare human rights impact assessments prior to the conclusion of trade and investment agreements.
2. The purpose of preparing human rights impact assessments of trade and investment agreements: States must ensure that the conclusion of any trade or investment agreement does not impose obligations inconsistent with their pre-existing international treaty obligations including those to respect, protect and fulfill human rights.
3. The link between human rights impact assessments of trade and investment agreements and the conclusion of such agreements: Human rights impact assessments of trade and investment agreements should be prepared prior to the conclusion of the agreements and in time to influence the outcomes of the negotiations and, if necessary, should be complemented by ex-post facto impact assessments. Based on the result of the human rights impact assessment a range of responses exist where an incompatibility is found, including but not limited to the following:
 - a. Termination of the agreement;
 - b. Amendment of the agreement;
 - c. Insertion of safeguards in the agreement;
 - d. Provisions of compensation by third-State parties;
 - e. Adoption of mitigation measures.
4. The methodology of human rights impact assessments of trade and investment agreements: Each State should define how to prepare human rights impact assessments of trade and investment agreements it intends to conclude or has entered into. The procedure, however, should be guided a

human rights-based approach, and its credibility and effectiveness depend on the fulfillment of the following minimum conditions:

- a. Independence
 - b. Transparency
 - c. Inclusive participation
 - d. Expertise and funding; and
 - e. Status.
5. Balancing priorities and human rights impact assessments of trade or investment agreements: States should use human rights impact assessments, which aid in identifying both the positive and negative impacts on human rights of the trade or investment agreement, to ensure that the agreement contributes to the overall protection of human rights.
 6. Key steps in preparing a human rights impact assessment: To ensure that the process of preparing a human rights impact assessment of a trade or investment agreement is manageable, the task should be broken down into a number of key steps that ensure both that the full range of human rights impacts will be considered, and that the assessment will be detailed enough on the impacts that seem to matter the most:
 - a. Screening
 - b. Scoping
 - c. Evidence gathering
 - d. Analysis
 - e. Conclusions and recommendations; and
 - f. Evaluation mechanism.

The guiding principles are aimed at providing States with guidance on how best to ensure that the trade and investment agreements they conclude are consistent with their obligations under international human rights instruments.

ANNEX E – GLOSSARY AND ACRONYMS

GLOSSARY

Asian Values: Concept emerging in the 1990s claiming Asian cultural traditions as the basis for state-guided development and the virtue of promoting economic development over Western-style civil and political rights.

http://www.bbc.co.uk/worldservice/people/features/ihavearightto/four_b/casestudy_art30.shtml

Bangkok Declaration: Final Declaration of the Regional Meeting for Asia of the World Conference on Human Rights (1993) adopted by ministers from Asian states leading up to the Vienna World Conference on Human Rights. Generally seen as expression of Asian Values discourse toward human rights, emphasizing principles of state sovereignty, non-interference in domestic affairs, and economic, social and cultural rights over civil and political rights.

<http://www.unhcr.ch/Huridocda/Huridoca.nsf/TestFrame/9d23b88f115fb827802569030037ed44?Opendocument>

Cardin–Lugar Amendment (Rule 1504) (US): Amendment to the Dodd–Frank Wall Street Reform and Consumer Protection Act submitted in 2010 by senators Ben Cardin and Richard Lugar. This amendment — based on the Energy Security Through Transparency Act (S. 1700) of 2009 — requires all listed extractive companies to publish their payments in all the countries where they operate. The amendment became Provision 1504 of the Dodd–Frank Act, which passed in July 2010.

<http://www.publishwhatyoupay.org/about/stock-listings/cardin-lugar-amendment-dodd-frank-1504>

Corporate Social Responsibility: Responsibility of private companies to ensure their business activities are conducted in a socially and environmentally responsible manner. Often carried out through voluntary commitments and associated with protection of labour rights, environmental conditions and community relations.

<http://www.iisd.org/business/issues/sr.aspx>

Extractive Industries Transparency Initiative (EITI): Announced in 2002 during the World Summit on Sustainable Development in Johannesburg by former Prime Minister Tony Blair, the EITI aims to increase the transparency of payments by companies to governments and government-linked entities, as well as the transparency of revenues by those host-country governments.

<http://eiti.org/>

First-generation Human Rights: Associated with the International Covenant on Civil and Political Rights. Often classified as “negative” rights (see definition below) that protect against intrusion by governments and state agencies. Include, among other things, freedom of expression, freedom of assembly, rights to due process, freedom of religion and voting rights.

<http://www.globalization101.org/three-generations-of-rights/>

Global Network Initiative: Multi-stakeholder initiative of civil society organizations, investors and academics aimed at preventing Internet censorship by authoritarian governments and protecting individuals' Internet privacy rights.

<http://www.globalnetworkinitiative.org/>

Home Country: Country of registration, principle place of business, and common association for businesses investing in host countries.

Host Country: Country receiving foreign business investment.

ICCPR: International Covenant on Civil and Political Rights

<http://www2.ohchr.org/english/law/ccpr.htm>

ICESCR: International Covenant on Economic Social and Cultural Rights

<http://www2.ohchr.org/english/law/cescr.htm>

ILO Convention 169: Legally binding international instrument (ratified by twenty countries as of 2013) dealing specifically with the rights of indigenous and tribal peoples. The Convention does not define who are indigenous and tribal peoples, but guarantees them the full measure of human rights and fundamental freedoms without hindrance or discrimination.

<http://www.ilo.org/indigenous/Conventions/no169/lang--en/index.htm>

Negative and Positive Rights: A negative right is the right not to be subjected to actions by others (generally the state and its agencies), while a positive right is the right to receive particular treatment or benefits.

<http://www.globalization101.org/negative-vs-positive-rights/>

Norms: Expectations about appropriate behavior derived from underlying social and cultural values.

Precautionary Principle: Duty codified in several international treaties compelling states not to take any action if the consequences of that action are uncertain and potentially dangerous.

http://www.wto.org/english/tratop_e/sps_e/sps_agreement_cbt_e/c8s2p1_e.htm

Right to Development: The Declaration on the Right to Development was adopted by the UN General Assembly in 1986 by Resolution 41/128. Article 1 of the Declaration states: "The right to development is an inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized."

<http://www.ohchr.org/EN/Issues/Development/Pages/Introduction.aspx>

Ruggie Framework: Report submitted in March 2011 by John Ruggie, then Special Representative of the UN Secretary General (SRSG), to the UN Human Rights Council. The report set out guiding principles for implementing a “Protect, Respect and Remedy” framework for human rights. The Council officially endorsed the principles in June 2011.

<http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=11164>

Second-generation Human Rights: Generally associated with the International Covenant on Economic, Social, and Cultural Rights. Include the right to be employed and rights to housing and health care as well as social security and unemployment benefits.

<http://www.globalization101.org/three-generations-of-rights/>

Treaty Performance: Legal performance in respect of treaties. Distinct from the technical issue of treaty compliance.

Universality: The principle that human rights apply without limitation by national, geographic or cultural boundaries to all individuals regardless of gender, ethnicity, religion, national or social origin, property, birth or any other factor.

<http://www.ohchr.org/en/issues/Pages/WhatareHumanRights.aspx>

Vienna Declaration: Statement adopted by 171 States at the World Conference on Human Rights held in Vienna in 1993. The Declaration reaffirmed the Charter of Human Rights and confirmed that human rights are universal, indivisible, interrelated and interconnected. Generally seen as refuting suggestions in the Bangkok Declaration that human rights should be adjusted to local conditions.

<http://www.ohchr.org/EN/ABOUTUS/Pages/ViennaWC.aspx>

Washington Consensus: Term used to describe discourse of economic development focused on limiting government spending and debt, expanding the role of market forces and trade liberalization. Often associated with economic policy prescriptions involving austerity packages that require reduced government spending on public welfare benefits in exchange for economic bail-out packages from the World Bank and the International Monetary Fund.

<http://www.imf.org/external/pubs/ft/seminar/1999/reforms/naim.htm>

ACRONYMS

APF Canada:	Asia Pacific Foundation of Canada
APWG:	Asia Pacific Working Group
BIT:	Bilateral investment treaties
CCIC:	Canadian Council on International Cooperation
CSR:	Corporate Social Responsibility
EITI:	Extractive Industries Transparency Initiative
FTA:	Free trade agreement
GDP:	Gross Domestic Product
GNI:	Global Network Initiative
HRIA:	Human Rights Impact Assessments
ICCPR:	International Covenant on Civil and Political Rights
ICESCR:	International Covenant on Economic, Social and Cultural Rights
ICT:	Information and communications technology
MNC:	Multinational corporations
NGO:	Non-governmental organization; often includes so-called “GONGOs” (government-organized NGOs)
TNCs:	Transnational corporations
UDHR:	Universal Declaration of Human Rights
UNDRIP:	United Nations Declaration on the Rights of Indigenous People
UNGP:	United Nations Guiding Principles on Business and Human Rights
WTO:	World Trade Organization

ANNEX F – SELECTED READINGS

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ANNEX G – HUMAN RIGHTS PAPERS ON SELECTED ECONOMIES IN ASIA

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<http://www.freedomhouse.org/report/freedom-world/freedom-world-2013>.

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<http://www.ohchr.org/EN/HRBodies/UPR/Pages/Documentation.aspx>.

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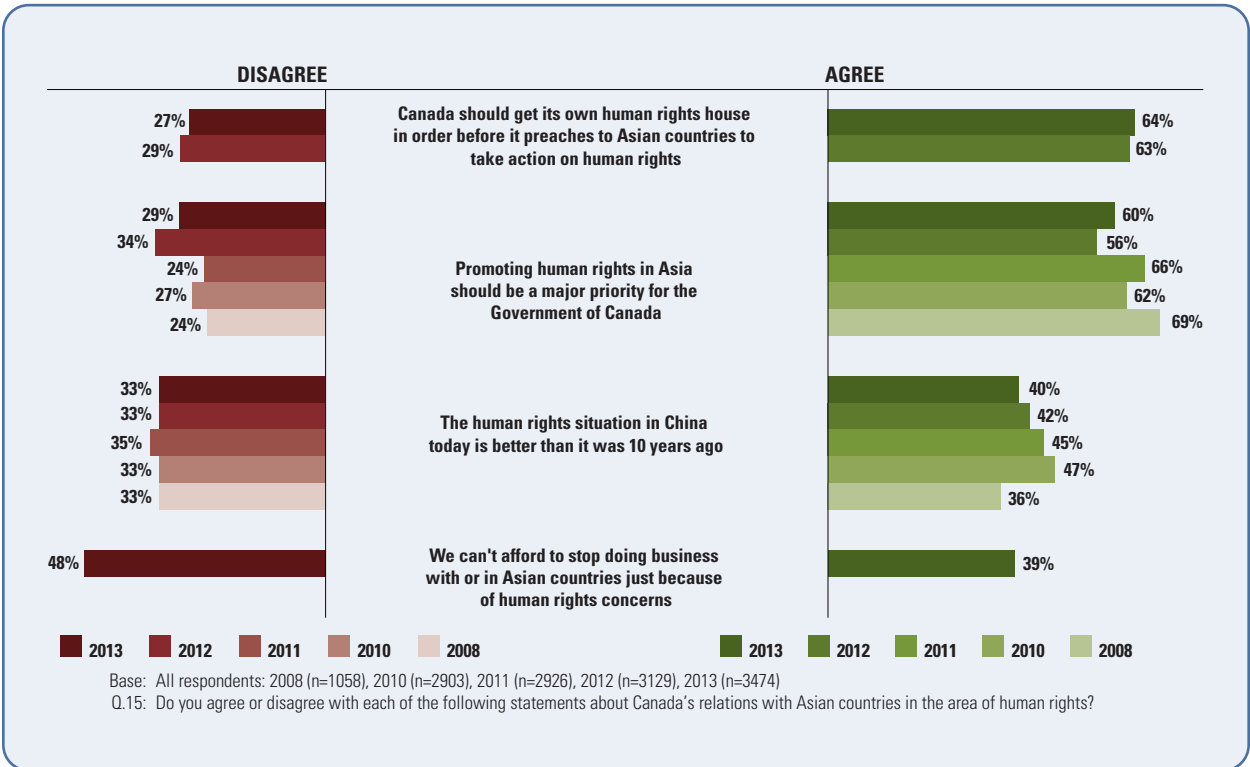
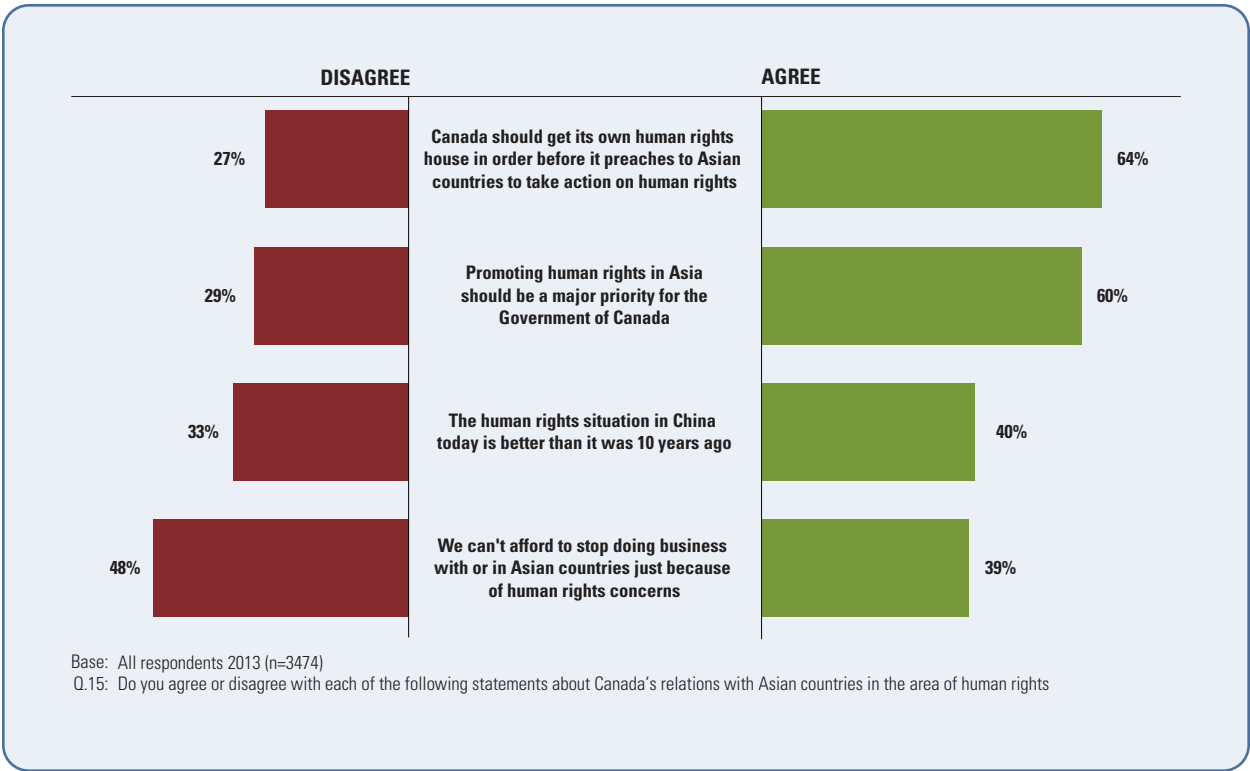
ANNEX H – APF CANADA’S 2013 NATIONAL OPINION POLL: CANADIAN VIEWS ON ASIA

Since 2004, the Asia Pacific Foundation of Canada has conducted regular nationwide surveys to assess Canadians’ attitudes and perceptions of Canada’s policies on Asia and Canada–Asia relations. This annual poll has been instrumental in drawing a portrait of Canadians’ perspectives on Asia.

The *2013 National Opinion Poll: Canadian Views on Asia* was conducted from March 8 to 15, 2013, by Angus Reid Public Opinion among 3,474 Canadian adults who are Angus Reid Forum panelists. The margin of error is +/- 1.7 % for the entire sample. The results have been statistically weighted according to the most current age, gender and region Census data to ensure a sample that is representative of the entire adult population of Canada.

Promoting Human Rights and Democracy in Asia: Canadian Viewpoints


As shown in the two figures below — which represent findings from just one of 17 questions in the poll — Canadians are “principled but pragmatic” about promoting human rights and democracy in Asia. The full report can be found online: http://www.asiapacific.ca/sites/default/files/filefield/national_opinion_poll_2013_-_may_29_-_final.pdf



ANNEX I – HUMAN RIGHTS TREATIES SIGNED AND RATIFIED BY ECONOMIES IN ASIA

	Universal Declaration of Human Rights 1948	Convention on the Prevention and Punishment of the Crime of Genocide 1948	International Covenant on Economic, Social and Cultural Rights 1966	International Covenant on Civil and Political Rights 1966	Convention on the Elimination of All Forms of Discrimination against Women 1979
Australia	X	X	X	X	X
Bangladesh	X	X	X	X	X
Bhutan	X	X		X	X
Brunei Darussalam	X			X	X
Cambodia	X	X	X	X	X
China	X	X	X	Signed, not yet ratified	X
India	X	X	X	X	X
Indonesia	X		X	X	X
Japan	X		X	X	X
Lao	X	X	X	X	X
Malaysia	X	X			X
Mongolia	X	X	X	X	X
Myanmar	X	X			X
Nepal	X	X	X	X	X
North Korea	X	X	X	K	X
Philippines	X	X	X	X	X
Singapore	X	X			X
South Korea	X	X	X	X	X
Sri Lanka	X	X	X	X	X
Thailand	X		X	X	X
Vietnam	X	X	X	X	X

	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 1984	Convention on the Rights of the Child 1989	Convention on the Rights of Persons with Disabilities 2006	ASEAN Human Rights Declaration 2012
Australia	X	X	X	
Bangladesh	X	X	X	
Bhutan		X	X	
Brunei Darussalam		X	Signed, not yet ratified	X
Cambodia	X	X	X	X
China	X	X	X	
India	X	X	X	
Indonesia	X	X	X	X
Japan	X	X	X	
Lao	X	X	X	X
Malaysia		X	X	X
Mongolia	X	X	X	
Myanmar		X	X	X
Nepal	X	X	X	
North Korea		X		
Philippines	X	X	X	X
Singapore		X	Signed, not yet ratified	X
Sri Lanka	X	X	Signed, not yet ratified	X
South Korea	X	X	X	
Thailand	X	X	X	X
Vietnam		X	Signed, not yet ratified	X



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