

Human rights in the war on terror

At his election night acceptance speech, Kevin Rudd talked about the fact that the change in government represented a new page in Australia's history.

Given the excesses of the previous government, I think most of us believe that we need more than a new page. Wouldn't it be nice to take the whole script of the Howard years to a book exchange and pick up a new volume written for the 21st Century?

One chapter in the new story would be about how we might come to terms with climate change in a positive way. The environment is an area in which academics, activists and people generally have been way in front of government thinking. With the change in government we are willing the government to catch up.

Kevin Rudd has signed Kyoto and, for that he should be applauded. We are the second last developed nation to sign the protocol so there is a lot of catching up to do. However, Mr. Rudd doesn't seem to want to set short term goals for reining in greenhouse gas emissions for fear of upsetting entrenched interests.

In his introduction to the Bali Conference, UN Secretary General Ban Ki Moon said that addressing climate change positively will cost less than people think, and it will certainly cost less than the alternative – which is to allow things to get disastrously worse.

The principle at stake seems to be a no-brainer as our American allies would say. Let's hope we get this chapter of our new story right.

Another chapter that badly needs to be re-written in our new story is the one on global security and human rights and it is an area where too Australia has been lagging behind because of our infantile attachment to the discredited "War on Terror".

As an example of how poorly we are doing in this area, I would like to focus for a moment on Australia's record on torture. In putting together this information, I would like to acknowledge an article by Philip Lynch, Director of the Human Rights Law Resource Centre.

In early November, during the last days of the Howard government, Australia was scheduled to appear before the United Nations Committee against Torture to discuss compliance with the Convention against Torture. Nations are required to do this every five years. Less than a week before the review, the government withdrew, saying it had entered "caretaker mode". This was a blatant attempt to avoid human rights scrutiny in the context of an election.

The government had good reason to be nervous as to what these observations may have included. The right to protection from torture and other forms of cruel, inhuman or degrading treatment or punishment is a fundamental human right, which, in the absence of a national charter of rights, is not enshrined in Australian law.

Unlike comparative jurisdictions such as Britain, New Zealand and Canada, Australia has no national human rights instrument against which laws, policies and practices that impair freedom or human dignity are measured or counterbalanced.

- The prohibition against torture creates an obligation to investigate and remedy allegations of torture. International scrutiny of Australia's acquiescence in the detention and treatment of Australian citizens David Hicks, Mamdouh Habib and Jack Thomas, together with the

Howard government's failure to properly investigate their allegations of torture, would probably not have been a welcome election issue.

- In November 2000, at Australia's previous review, the Committee against Torture recommended that Australia address the disadvantage and disproportionate incarceration of Aborigines. Seven years on, our indigenous people are among the most highly incarcerated people in the world. While indigenous Australians account for about 2.4% of the population, at least 24% of the prison population is indigenous. Over the past six years, the rate of Aboriginal imprisonment has risen by 23%, reaching its highest rate in 10 years.
- The treatment of prisoners would also have been of concern to both the committee. Evidence suggests that around 5000 inmates (of a total Australian prison population of around 25,000) suffer serious mental illness. Access to adequate mental health care in prisons is grossly inadequate and mentally ill prisoners are often "managed" by solitary confinement, which would exacerbate mental illness and cause significant harm.
- A related concern for the committee would have been that unconvicted prisoners, particularly those accused of "terrorist-related" offences. These unfortunates are routinely held in highly oppressive conditions such as the Acacia unit at Barwon Prison. A Victorian Supreme Court judge has said that "close confinement, shackling, strip-searching and other privations to which the inmates at Acacia unit are subject all add to the psychological stress of being on remand, particularly as some of them seem to lack any rational justification. Many of these remand prisoners, are of course, innocent of any wrongdoing."
- Our immigration policy would have been another area of major concern for the committee. Australia's continued policy of mandatory indefinite detention of asylum seekers is an ongoing issue. There is also substantial evidence that asylum seekers who have been returned by Australia to their country of origin have been tortured and even killed. Australia regularly deports asylum seekers to countries such as China in which the use of torture and other cruel or degrading treatment remains widespread.
- In the last week there was a news story about Australian troops in action against the Taliban handing over prisoners to the Afghan government security arm or to US troops. Australian officers have been quoted as saying they had no reason to suspect that the prisoners wouldn't be well treated. Really? I may be a few thousand kilometers away from the action but I have a few concerns about the record of the US military and the Afghani security. We have a responsibility for the wellbeing of people we take prisoner under the Geneva Convention.

So...how did we get into the grubby business of torturing or winking at the torturing of our own and other nation's citizens?

We justify it because of our involvement in the War on Terror.

But torture does not stop terror. Torture is terror. It is cruel, inhuman and it degrades us all.

The War on Terror was initiated in September 2001 and Australia signed up immediately and unconditionally. The war has now lasted longer than either the first or second World Wars so it would be reasonable for us to review how it has gone.

- We took part in the invasion of Afghanistan, which is in more of a mess than it was before the invasion.
- The reason for the invasion – Osama bin Laden – has not been apprehended and is probably living in one of more chaotic parts of Pakistan, a country that is laboring under a brutal dictatorship that we support because the military strongman is an ally in War on Terror

- We took part in the invasion of Iraq, which is in more of a mess than it was before the invasion.
- The reasons expressed for the invasion have been shown to be pure fabrication. Iraq, which was not part of the Al Qaeda network prior to the invasion, is now a recruiting ground for potential terrorists and this dubious achievement has come at the cost of hundreds of thousands of lives.
- Spreading democracy in the Middle East has stalled, with the region's most repressive regimes again being rewarded for being allies in the War on Terror. Persecution of Islamists in Egypt, Algeria and Saudi Arabia encourage desperation and violence.
- Peace in Palestine and its transition from occupation to viable nationhood seem further away than ever.
- To appear 'tough on terror', Australia has given mixed messages on capital punishment which has hampered efforts to convince Indonesia that the Australians referred to as the Bali 9 should not be killed for relatively minor drug offences.

Has anyone been keeping score? By my count, we have achieved no good outcomes in any of the key fronts in the War on Terror. International security experts assess that the risks of global terrorism have actually increased because of all of this misguided activity, all this suffering.

We need to look at how Australia can more fully implement its obligations under international human rights law and not focus merely on short-term electoral gain. There was a time when Australia was a world leader and active participant in the development and operation of international human rights standards and monitoring mechanisms. Let us hope that such a time dawns again soon.

In the new security climate, governments have also violated human rights and undermined the international standards that protect people from abuse. Some use it as an excuse to persecute their political opponents.

Efforts to combat terrorism should not and don't need to come at the cost of human rights. A secure community is one where human rights are respected. Ensuring respect for human rights is the only path to lasting security.

Torture is illegal and immoral. International human rights standards and governments of all persuasions have long condemned torture and ill-treatment. For governments that practiced torture, it was their shameful secret.

However the USA and its allies in the 'war on terror' have attempted to undermine the ban that protects us all from torture. They have also tried to excuse, justify, or benefit from the work of torturers. The USA refuses to properly investigate the many claims that its own security forces have tortured or ill-treated people in Iraq, Afghanistan and Guantanamo Bay.

For more than four years, hundreds of people from about 40 different countries have been held by the US Administration at a military base in Guantnamo Bay, Cuba. Most have not been

charged, tried or given access to lawyers. The few detainees who have been charged with an offence, including Australian David Hicks, will not receive fair trials when they are brought before Military Commissions.

The occupations of Iraq and Afghanistan have brought new waves of human rights violations by US-led forces, national armed forces and armed groups opposing occupation. Detainees have been tortured and ill-treated, civilians targeted for attack and hostages killed. Women endure continuing violence and harassment.

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The Australian Government has responded to the threat of terrorism by changing national security laws in ways that undermine the basic human rights of Australians. The new laws create new offences relating to terrorist activity, but they do not define many of the activities they are supposed to prohibit.

They breach international human rights standards and compromise long-standing protections in the Australian legal system, including the right to silence, the right to a public hearing and the right to choose a lawyer.

Dr Mohamed Haneef, an Indian citizen, was working at a hospital on Australia's Gold Coast when he was arrested on 2 July 2007. Under the provisions of the anti-terrorism act, he was held for 12 days in custody waiting to be questioned by police before being charged with giving "reckless support" to terrorism.

The charges against Dr Haneef were eventually dropped due to flawed evidence which linked him to the suspects involved in failed attacks in London and Glasgow on 30 June 2007. Dr Haneef is the cousin of Sabeel Ahmed - 1 of 3 people charged in the UK over the failed attacks. As the criminal case against Dr Haneef collapsed (the chief prosecutor reviewed the case and said a mistake had been made), Kevin Andrews, the Immigration Minister, cancelled his visa and kept him detained under Australian immigration laws.

Andrews revoked Dr Haneef's visa under s501 of the Migration Act 1958, stating that Dr Haneef had failed the 'character test' referred to under the section. It states that a person does not pass the character test if a person has had an association with somebody who has been involved in criminal conduct. The Minister stated that there was an 'association' between Dr Haneef and his cousins (one of which was Sabeel Ahmed). Dr Haneef appealed the decision to the Federal Court, which was overturned in his favor on 21 August 2007.

On appeal, Justice Spender held that the Minister had misconstrued the provisions of the character test and therefore failed to apply it correctly. Relying on precedent, Spender J concluded that an association by way of family ties is insufficient to constitute an 'association' within the meaning of the Act. Such an interpretation would permit a cancellation of any visa regardless of how innocent the association happened to be. Spender J stated that an 'association' must adversely reflect on the character of a visa holder. In other words, the association must go beyond a familial relationship.

The world is becoming an increasingly polarised and dangerous place, says Irene Khan, Amnesty International's Secretary General.

In launching the organisation's 2007 Report assessing human rights worldwide, Irene Khan said powerful governments and armed groups were deliberately fomenting fear to erode human

rights. "Through short sighted, fear-mongering and divisive policies, governments are undermining the rule of law and human rights, feeding racism and xenophobia, dividing communities, intensifying inequalities and sowing the seeds for more violence and conflict, she said.

The 'war on terror' and the war in Iraq, with their catalogue of human rights abuses, have created deep divisions that cast a shadow on international relations, making it more difficult to resolve conflicts and protect civilians.

Scarred by distrust and division, the international community had too often been impotent or weak-willed in the face of major human rights crises.

The UN took weeks to muster the will to call for a ceasefire in the conflict in Lebanon in which approximately 1,200 civilians lost their lives. The international community showed no willingness to tackle the human rights disaster resulting from severe restrictions on freedom of movement of Palestinians in the Occupied Territories, reckless attacks by the Israeli army and inter-factional fighting among Palestinian groups.

"Darfur is a bleeding wound on the world conscience," said Irene Khan. "The UN Security Council is hampered by distrust and double dealing among its members and the Sudanese Government is running rings around the UN. Meanwhile 200,000 people have died, more than ten times that number have been displaced, and militia attacks are spreading to Chad and the Central African Republic."

In Afghanistan, the international community and the Afghan Government squandered the opportunity to build an effective state based on human rights and the rule of law, leaving the people to endure chronic insecurity, corruption and a resurgent Taliban. In Iraq, security forces incited sectarian violence rather than restrained it, the justice system proved woefully inadequate, and the worst practices of Saddam Hussein's regime remain very much alive.

"In many countries, a fear-driven political agenda is fuelling discrimination, widening the gap between the 'haves' and the 'have nots' and leaving the most marginalised people unprotected," said Irene Khan.

In Africa alone, hundreds of thousands of people were evicted forcibly from their homes with no due process, compensation or alternative shelter - often in the name of progress and economic development.

Deepening divide

The divide between Muslims and non-Muslims deepened, fuelled by discriminatory counter-terrorism strategies in western countries. Incidents of Islamophobia, anti-Semitism, intolerance and attacks on religious minorities increased worldwide.

Freedom of expression was suppressed in a variety of ways and the Internet became the new frontier in the struggle for dissent, as activists were arrested and companies colluded with governments to restrict access to information online in countries such as China, Iran, Syria, Vietnam and Belarus.

Five years after the 9/11 terror attacks on the US, new evidence came to light in 2006 of the ways in which the US administration treated the world as one giant battlefield for its 'war on

terror' kidnapping, arresting, arbitrarily detaining, torturing and transferring suspects from one secret prison to another across the world with impunity.

Australian David Hicks was finally returned home after being held for more than five years in conditions that amounted to torture and ill-treatment, without charge or a fair trial. Irene Khan says fundamental questions remain about the Australian Government's support of the deeply flawed military commissions and of the treatment of David Hicks in US custody, as well as its acceptance of assurances from the US that torture was not committed by its personnel, in the face of growing evidence to the contrary.

She called on governments to reject the politics of fear and invest in human rights institutions and the rule of law at the national and international level.

Signs of hope

"There are signs of hope," Irene Khan said. "A momentum was created by European institutions for transparency and accountability on renditions. Thanks to civil society pressure, the UN agreed to develop a treaty to control conventional arms. In a range of countries, new leaders and legislatures coming to power have an opportunity to redress the failed leadership that has plagued the human rights scene in recent years.

"Just as global warming requires global action based on international cooperation, the human rights meltdown can only be tackled through global solidarity and respect for international law."

INDEPENDENCE, Missouri (CNN) -- Kofi Annan had some strong words Monday for the United States in his farewell speech as secretary-general of the United Nations. 11 December 2006

Throughout the address, given at the Truman Presidential Museum and Library, Annan invoked America's 33rd president to tell the United States, and implicitly its 43rd president, George W. Bush, how he thought they ought to behave.

"As [Harry] Truman said, 'We must, once and for all, prove by our acts conclusively that right has might.' That's why this country has historically been in the vanguard of the global human rights movement," Annan said.

"But that lead can only be maintained if America remains true to its principles, including in the struggle against terrorism. When it appears to abandon its own ideas and objectives, its friends abroad are naturally troubled and confused."

Annan on Monday admonished the United States to use its global supremacy judiciously, saying, "The U.S. has given the world an example of a democracy in which everyone, including the most powerful, is subject to legal restraint. Its current moment of world supremacy gives it a priceless opportunity to entrench the same principles at the global level.

"As Harry Truman said, 'We all have to recognize, no matter how great our strength, that we must deny ourselves the license to do always as we please.' States need to play by the rules toward each other as well as toward their own citizens.

"When power, especially military force, is used, the world will consider it legitimate only when convinced that it is being used for the right purpose, for broadly shared aims, in accordance with broadly accepted norms.

"No community anywhere suffers from too much rule of law; many do suffer from too little and the international community is among them," he added. "This we must change."

Much of the strain has been due to the situation in Iraq. Annan strongly opposed the 2003 invasion by the U.S.-led coalition. He has called it an illegal war.