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DEFENCE AND TRADE

HUMAN RIGHTS SUBCOMMITTEE

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**JOINT STANDING COMMITTEE
ON FOREIGN AFFAIRS, DEFENCE AND TRADE**

Human Rights Subcommittee

Wednesday, 18 February 2009

Members: Senator Forshaw (*Chair*), Mr Hawker (*Deputy Chair*), Senators Arbib, Mark Bishop, Ferguson, Fifield, Hanson-Young, Johnston, Ludlam, Moore, O'Brien, Payne and Trood and Mr Baldwin, Mr Bevis, Mr Danby, Ms Annette Ellis, Mr Gibbons, Ms Grierson, Mr Hale, Mr Ian Macfarlane, Mrs Marcus, Mrs Mirabella, Ms Parke, Ms Rea, Mr Ripoll, Mr Robert, Mr Ruddock, Ms Saffin, Mr Bruce Scott, Mr Kelvin Thomson and Ms Vamvakinou

Human Rights Subcommittee members: Ms Rea (*Chair*), Mr Ruddock (*Deputy Chair*), Senators Fifield, Forshaw (*ex officio*), Hanson-Young, Moore and Trood and Mr Danby, Ms Annette Ellis, Ms Grierson, Mr Hawker (*ex officio*), Mrs Markus, Ms Parke, Mr Kelvin Thomson and Ms Vamvakinou

Members in attendance: Senators Hanson-Young, Moore and Ms Annette Ellis, Mrs Markus, Ms Rea, Mr Ruddock

Terms of reference for the inquiry:

To inquire into and report on:

International and regional mechanisms currently in place to prevent and redress human rights violations, with a view to providing options on possible models that may be suitable for the Asia-Pacific region, with a focus on:

- the United Nations human rights system;
- regional mechanisms; and
- roles for parliaments.

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Subcommittee met at 10.05 am

CHAIR (Ms Rea)—I declare open this public hearing for the inquiry by the Joint Standing Committee on Foreign Affairs, Defence and Trade into human rights mechanisms and the Asia-Pacific. Can I begin by first of all acknowledging the traditional owners of the land upon which we are gathered here today and also by welcoming members of the committee who have made the effort to come along. It is not easy to be travelling in non-sitting weeks when you have an electorate to look after as well, so I really appreciate members coming to the inquiry today. I also thank the staff, who have set up everything so beautifully in this very beautiful room.

I welcome our presenters. It is wonderful to see the level of interest that we have had from this inquiry and in particular the number of groups who want to present to us today. I think it augurs well for a very interesting discussion and debate. We obviously have quite a few people, so I am going to be a little bit tough today in trying to keep us on time, because everybody has other things that they have to do when this hearing is finished. So, if you will bear my rudeness at times, I will wind people up if I think that we are getting close to time and need to move on.

I think this is a very important inquiry. As we all know, the issue of human rights, particularly in the Asia-Pacific region, has probably been discussed and dealt with in a number of different ways and by a number of different people over the last 20 or so years. Nevertheless, it is very important that we continue this discussion. As we move on as a region and different countries go through different stages of their development, there is always an opportunity to look at ways in which we can do things differently and, hopefully, work as a region to improve human rights protection and promotion in different countries throughout the region. I look forward to hearing different views today. I know from reading the submissions that there are quite different sets of views as to what can and cannot work, but it is always a great opportunity to not just read but also hear from the people who are writing those submissions and to have the opportunity to ask questions and have discussion. Without any further ado, we will move on to the first people submitting to us today, who are from the Australian Human Rights Centre.

[10.07 am]

BYRNES, Professor Andrew, Chair, Committee of Management, Australian Human Rights Centre

DURBACH, Associate Professor Andrea, Director, Australian Human Rights Centre

RENSHAW, Ms Catherine Michelle, Research Fellow, Australian Human Rights Centre

CHAIR—Welcome. Thank you all for coming along this morning. We will open it up for you to present to us and then go into questions and discussions afterwards, but before I do that I have to read some specific words. As you know, this hearing is being recorded by Hansard. I should also remind everyone that Australia's Public Affairs Channel is also recording today's proceedings for broadcast at a later date. I will read some fairly formal words first—do not get scared by them; we still want you to give us your full and frank views on things. I will begin by asking whether you have any comments on the capacity in which you appear today.

Prof. Durbach—I am an associate professor of law at the University of New South Wales.

Prof. Byrnes—I am a professor of law at the University of New South Wales.

CHAIR—Thank you very much. Although this committee does not require you to give evidence on oath, you should be aware that these hearings are official proceedings of the parliament and therefore have the same standing as proceedings of the chambers themselves. We will proceed to questions, but, before we do, do you wish to make some opening remarks?

Prof. Durbach—Thank you, Ms Rea, as chair of the committee, and thank you to members of the committee for the invitation to appear. The Australian Human Rights Centre welcomes the opportunity to make a submission to the joint standing committee inquiry. As we point out in our submission, it draws on research carried out as part of a linkage project, funded by the Australian Research Council and the Asia Pacific Forum of National Human Rights Institutions, which explores how international human rights are effectively advanced domestically. It has a particular focus on the work of the Asia Pacific Forum.

Our submission addresses four key aspects which are raised by the inquiry's terms of reference: firstly, developments regarding regional mechanisms in the Asia-Pacific; secondly, the role of the national human rights institutions in promoting and protecting human rights in the region; thirdly, the role of networks of national human rights institutions, in particular the Asia Pacific Forum, in establishing both new and effective national human rights institutions and supporting and strengthening existing ones; and, finally, the potential contribution by Australian parliaments in the promotion and protection of human rights in the region.

In relation to regional mechanisms, we consider the factors that appear to militate against the development of such a mechanism in the Asia-Pacific region, which, as the committee knows, stands out as the only region in the world without regional machinery for the protection of rights. We do, however, highlight recent subregional developments which suggest a shift towards the

creation of such machinery—namely, the ASEAN initiative for a regional mechanism in the South-East Asia region and the Pacific island human rights mechanism proposal, both of which, in our view, have been and continue to be characterised by a lack of member state consensus regarding their actual institutional mandate, their structure, their functions and the reach of these proposed mechanisms.

We acknowledge that the Asia-Pacific region might presently lack the political and cultural cohesion required to secure arrangements for a regional mechanism. We suggest as a possibility that Australia, perhaps in collaboration with New Zealand, develop the framework for a supranational regional monitoring body to enforce state compliance with international human rights law, very similar to the European, African and inter-American human rights mechanisms.

Whatever form of regional or subregional mechanisms may exist, we view these as critical elements of human rights protection. We recommend that the Australian government support these initiatives by encouraging their development in accordance with certain key principles: firstly, that they derive their functions from human rights conventions, treaties or standards which combine universal human rights principles with domestic considerations; secondly, that they comprise independent experts, as opposed to government officials; thirdly, that they exercise investigatory and monitoring roles, with powers to enforce determinations and award redress; and, fourthly and importantly, that they be properly resourced to implement their mandates.

Our central argument is that the establishment and strengthening of effective national human rights institutions in the Asia-Pacific region is perhaps a more, but certainly an equally, constructive strategy for the prevention and redress of human rights violations in the region. We argue that regional human rights bodies and national institutions execute quite different, although complementary, roles and that the promotion and facilitation of independent and properly resourced national human rights commissions and other mechanisms in the Asia-Pacific region which are compliant with the Paris principles and accredited by the International Coordinating Committee of National Human Rights Institutions and the Asia Pacific Forum offer significant and enduring prospects for the promotion and protection of human rights in the event of their violation across the region.

In our view, and based on our research, national human rights institutions in the Asia-Pacific have contributed as follows: they have increased domestic civil society awareness and understanding of human rights via national human rights institution educational and training initiatives; there has been an increase in the investigation and reporting of complaints of human rights abuses, affording them visibility and the potential for regional and/or international condemnation; they contribute to the development of innovative forms or models of redress appropriate to specific societal or state needs; they contribute to the implementation of government policies, laws and programs consistent with international human rights treaties; they contribute, in our view, to the development of regional NHRI, or national human rights institution, networks, which facilitate important transnational collaboration on issues of human rights concern—for example, trafficking and migrant workers—and, finally, they contribute to the incremental dissemination of human rights principles and standards into domestic jurisdictions where state governments might have otherwise resisted their reception if instigated or coaxed by, for example, a United Nations resolution.

While we endorse Australian support for the development of regional human rights mechanisms created in accordance with the key principles that we outline, we believe that support should not be provided in the absence of parallel support for facilitating the establishment and strengthening of national human rights institutions. We recommend that Australia continue to support the work of the Asia Pacific Forum in particular in creating and strengthening effective national human rights institutions in the region. The nature of that support, primarily financial and politically via government statements in a variety of international fora, is referred to on page 15 of the APF submission to this inquiry.

Finally, we look at the role of parliaments. In our submission we offer suggestions as to how the Commonwealth parliament might improve its own scrutiny of human rights, demonstrating leadership in the region on how best to ensure effective implementation of Australia's international human rights obligations. These include enacting legislation which gives effect to human rights guarantees, including international treaty obligations, scrutinising bills and delegated legislation to ensure consistency with human rights standards and scrutinising the policies and actions of the executive and in some cases non-state actors for consistency with human rights norms. Importantly, we recommend the establishment of a parliamentary committee to review the implementation of a UN treaty body, including observations on Australian government reports and UN committee decisions on individual complaints.

In conclusion, we submit that the existence of a bill of rights, whether constitutional or statutory, has the potential to provide significant additional protection of rights in the parliamentary process. The bills of rights enacted in the United Kingdom, New Zealand, the Australian Capital Territory and Victoria all provide specifically for the consideration of human rights norms at various stages of the parliamentary process. We submit that they have brought about an enhanced awareness on the part of policymakers and legislators of relevant human rights issues and ensured a thorough airing of these issues that would otherwise not have taken place. Thank you very much.

CHAIR—Thank you very much, Professor. We will move to questions. One thing stood out to me when I was reading your submission. I appreciate your arguments about the strength of promoting NHRIs rather than a regional mechanism—and I think everybody would agree with that—but I guess when you are focusing in particular on this region there are many very small nations, particularly in the Pacific, and, not just because of their stage of political development but purely because of their population size, it would be a bit unrealistic to expect them to set up some form of institution. I was wondering how you saw those nations fitting in if they are unable to establish their own NHRI.

Ms Renshaw—For the exact reason you talk about—the difficulty with resources in the Pacific—one of the arguments that is being raised now is to support the idea of a regional mechanism, at least, for the Pacific. It would be more cost effective. A regional mechanism would still have to deal with all the problems of accessibility to all of those Pacific Islands. Nonetheless, some of the Pacific Islands, it has been argued, could fund, resource and staff a national human rights institution. Samoa is one example of that. The attorney-general there has recently made an undertaking to explore setting up a national commission in Samoa. People have also suggested Vanuatu, possibly. There are advantages to national commissions in that they can work much more closely with the parliament of the country. All of the educational roles that a national commission fulfils would be much more difficult for a regional overarching

mechanism. There are also questions about how homogeneous the Pacific is. The peoples of Micronesia and Polynesia do not necessarily see themselves as belonging to the same homogeneous grouping that we might attach to the notion of the Pacific. So a regional mechanism would have to be careful to include and incorporate all the different concerns and considerations of all the peoples.

CHAIR—In that same vein in terms of exploring the issue of a regional mechanism—and again I accept the arguments that you are putting forward—are you suggesting that perhaps the current structure of the APF is sufficient for what is occurring at the moment and that we should still be focusing on national institutions, or do you see that there could be some other mechanism other than the APF that might assist at either the regional or what is emerging as the sub-regional basis in Asia and the Pacific? I would be interested to know whether you think that keeping things the way they are now is going to help progress it, or do we actually need to do something at a regional or sub-regional level to support the development of those institutions at a national level?

Prof. Byrnes—It is not an either-or question. There are a range of strategies and they are probably going to evolve and will need to be adapted. That relates to your earlier question and it goes back to the functions, in that national human rights institutions obviously are very closely located within the legal, political and social system of a state in a way that a regional system, even if it has national level offices is not—or not under existing models. We would see, I suppose, the strengthening of national human rights institutions as important in supporting a regional mechanism, but there may be circumstances, as you say, where there are not the resources. But in many Pacific countries there are ombudsman's offices. You do not necessarily have to have a large national human rights commission. A national human rights institution can take a number of forms. But we see the role of APF as different to the role of a regional or sub-regional mechanism. It really is an association of NHRIs horizontally sharing experiences and building capacity. That is not to say that as things evolve the APF might not be able to support the work of a sub-regional commission. But the role of that regional or sub-regional commission will be very different because of its status under international and national law and its location to the political space in which it is operating.

Prof. Durbach—Perhaps I can just refer the committee back to the point we were making in relation to Australia giving support for a regional mechanism. We are saying that we think the strengthening of national human rights institutions and also the encouraging of a regional mechanism are complementary processes. Research in relation particularly to the ASEAN initiative for a sub-regional mechanism suggests that it is not going to be a body with effective investigatory roles. It is not necessarily going to be a body that adheres to universal standards of human rights. So our argument is that if there is support for a regional mechanism that it is support that is directed at an effective regional mechanism that adheres to universal standards of human rights, that offers an investigatory role, that is properly staffed by independent experts and that is properly resourced. Our research in relation to the ASEAN initiative certainly suggests that there is wavering on all of those issues. Rather than having a diluted regional mechanism, we say that Australia's contribution could be encouraging a regional mechanism that is of a particular standard and that is effective.

Mr RUDDOCK—Can I first say that I was very impressed with the quality of your submission and I thank you for it and for the thoughtfulness you have displayed in relation to the

issues. I do appreciate that when you are looking at the region as the Asia-Pacific there are very diverse differences. There are areas where there is a focus on these matters, which is welcome, and there are areas in which there is not. Sometimes that may be because people do not want these issues to be addressed for cultural or other reasons.

I have been turning my mind to how realistic is it in the Pacific, in terms of developing countries, to demand or expect that they are going to have a national human rights institution when they have a population of 20,000 or 30,000 people. It raises some very practical questions, it seems to me. I am not privy to the extent to which people have turned their mind to these issues other than in the context of their international responsibilities within the UN and how they are going to meet these Paris principles and so on. Have you been to Kiribati? When you go to a place like Kiribati, or it might be Niue—I think of these places that are just so small—and you say, ‘What you have got to have is a national human rights institution,’ people will be scratching their heads and wondering why there would be a need for that. But, if you had a body in which there was regional representation in terms of its management, they recruited who they were going to need and they clearly had ownership, I assume that in countries like Australia and others there would be resources that would be available to them—I do not know to what extent; you might comment on this—that would help to garner support, something that they were not necessarily going to have to pay for as long as it was not at the expense of other development projects.

Have you talked to some of these smaller countries and thought about how those questions might be approached? What have been the sorts of responses that you get? I am going to do my own exercise next week. I do not know whether you are meeting with the Samoan parliamentary delegation coming to Canberra, Chair—

CHAIR—They are meeting with this committee actually.

Mr RUDDOCK—So you will have a long chat to them about it. Have you been talking to them, Professor Durbach?

Prof. Durbach—We certainly have, and my colleague Catherine Renshaw in particular should answer this. Can I just say that perhaps we need to clarify—and it is something that the APF constantly reminds us of—that we do tend to focus on national human rights institutions. What we should mean by that term is perhaps more reduced notions of what an institution is. It could be a national human rights mechanism which is more like an ombudsman or some sort of regional office, because—and we would wholeheartedly agree with what you are saying, Mr Ruddock—what is important is that local conditions and local language and local practices are catered for, and sometimes a regional mechanism is not necessarily adept at addressing those.

Ms Renshaw—I agree with what Andrea said and also what you said, Mr Ruddock. It seems senseless and a waste of resources to tell nations that can barely support a parliament that they need to have a Paris principles compliant national institution with funding from the government and its own offices and staff. For those reasons there is much to be said for an overarching Pacific regional mechanism. Professor Byrnes’s point about different functions being fulfilled by a regional mechanism and by a national commission is the key to the answer. Fiji for many years had a fairly successful national commission and its track record was strong until 2006 at least,

which is some evidence that there is work to be done by national commissions as well as by a regional commission when nations cannot support their own.

Mr RUDDOCK—Your emphasis on an ombudsman and an ombudsman's role suggests to me that what you are looking at is a basis upon which individuals can raise complaints, where there will be an investigation and an external view put as to how that issue ought to be dealt with.

We have grappled with that issue here and had the same sorts of questions in our minds in terms of having a robust parliament where we debate. In the end we established the Human Rights Commission, which, if I look at its primary role, is not so much conciliation—although it is useful—but more to look at what is being done and to offer advice, I think, and to be seen to be facilitating compliance in helping those in authority to understand what the issues are. It can be seen as a much more collaborative approach if that is where your emphasis is rather than on inquiring and reporting and appearing to be intrusive, particularly if it is going to be an external body. Do you think that looking at a body that is seen to be much more conciliatory, advisory and collaborative might give you a starting point—rather than something that is more prescriptive?

Prof. Byrnes—It seems to me that there are a variety of models, and even the Paris principles accept that there are a variety. A critical component is independence, and that independence can be exercised in different ways. At times it may be an adversarial approach and at other times it may be a more collaborative approach. The Paris principles recognise that many commissions or national human rights institutions will have a complaint and investigation function but not all. I think our sense is that it is probably a critical component in an effective commission, but the particular mode and the way in which commissions work does vary over time and over issues.

To follow up on your earlier question, I think the suggestion that you might need some sort of hybrid model with small countries is certainly something that is worth exploring. But I think you are always going to need an institution which is securely located within the local legal and political system because, as we all know, we are much more prepared to listen to our own institutions than to the ones that generally come from outside the system. That would, I suppose, pose interesting legal challenges if you had a subregional commission with a national footprint. I am sure it could be done. But you do want to have effective legal remedies built into the system if you are going to have any sort of hybrid mechanism, I would suggest.

Mr RUDDOCK—I have one last point that I want to raise. Some of the other submissions go further into what is happening within the region. We have already referred to Fiji and its experience, so I would like to exempt Fiji from the question I am about to put. In your role, have you reviewed externally in any way or questioned how human rights are being addressed in some of these countries? Do you survey what is happening in the region? Obviously, we were concerned about what happened in the Solomon Islands and there was the RAMSI intervention—a lot of Australian lawyers helped out in that situation—and we had the problems in Fiji. Are there significant problems in the region that suggest that this ought to be an area of priority for activity?

Prof. Durbach—Our research is in its quite early stages, but certainly we have spent time in Malaysia, Nepal and India, and we have read literature which describes what is going on across the region. I would think that, yes, particularly when we talk to members of civil society, to

journalists, to parliamentarians and to people involved in human rights organisations, there is an absolute need for these kinds of institutions: there are considerable abuses of human rights across the region. As a country with a very solid record of human rights we have a lot to assist with, to give, to offer and to lead on. When we talk to human rights organisations and even to commissions in the countries where we have been about the work that they have done on trafficking, internally displaced persons, women, children, torture, economic, social—

Mr RUDDOCK—Your point is well taken in the wider context of ASEAN and even East Asia, but the Pacific is what I was looking at. Do we get it from Kiribati, Tuvalu, Niue or the Cooks? I do not hear of it and I wonder, in terms of our emphasis, whether we ought to have it as a priority of concern.

Prof. Durbach—That is a very important point, but I think one of the most critical challenges that are facing the Pacific is the impact of climate change. This is what we constantly are being told. In relation to people's rights to livelihood, shelter and food, climate change is a new challenge that the Pacific region is going to have to address through these kinds of institutions. Perhaps economic, social and cultural rights more than civil and political rights are going to be the emphasis and where attention needs to be directed.

Prof. Byrnes—I would like to mention an area that I am familiar with—women's human rights. If you look at reports of the UN and UN studies, violence against women is a problem throughout the Pacific as well as other areas. A recent UNIFEM study which one of our colleagues, Dr Christine Forster, was involved in looked at all the Pacific island countries and the legislative discrimination against women that needed to be fixed in order to bring them into conformity with the CEDAW. That is just one example, and I am sure there are others. Whether it is a priority—yes, there are lots of other countries out there as well.

Mr RUDDOCK—Is the UNIFEM paper included in your submission?

Prof. Byrnes—No, but I would be happy to send the reference.

Mr RUDDOCK—Could you provide it to us? I would like to have a look at it.

Mrs MARKUS—I have a couple of comments and then a question. In the discussion so far we have alluded to the lack of homogeneity across the Asia-Pacific region. I want to focus more specifically on the Pacific, as Philip has. A human rights institution may be effective and of value in some nations—and I absolutely agree with you, Professor Byrnes, that it needs to be at the national level for it to be effective. Many of these nations are small in terms of population size but only five or 10 per cent of the public within those nations has engaged with those institutions, so the broader population has little connection in terms of distance, need and so on. Some of that has to do with the complexity of the nations and their geographical challenges. How would you propose to adapt the model to ensure that you are identifying the human rights violations, what needs to be addressed and how communities can be engaged and collaborated with at the grassroots level? Before you answer that question, I think it is important to acknowledge that in some of these nations there are effective traditional cultural and political ways of resolving some human rights issues. Identifying what has worked and what is working in those communities and nations is important. No-one would dispute the challenge with domestic violence and violence against women across the region and no-one would dispute that

women do not have the same opportunities that we have and that obviously you would be aiming for. With that in mind could you comment on my question?

Prof. Byrnes—That is a very complex question. Let me try to answer what I think are the different parts. I think the first thing is that, even if one were establishing a new mechanism, one would not be copying the Australian Human Rights and Equal Opportunity Commission Act, crossing out Australia and putting in Vanuatu or Kiribati. I think that the whole thing about the process is that it has to be locally based, and I think to some extent that responds to your question about the process of setting it up and the role of the commission. One of the Paris principles is that institutions are to be representative of the communities and to work with civil society organisations. I think the establishment of a body such as this would work with existing organisations, and one of its roles would be to do so. That would, I think, allow different modes of resolution of grievances to be incorporated within established practices which work.

We are perhaps leaving out the critical component here—and I hope that some of the later speakers, particularly Ms Jalal from Fiji, who has extensive experience in the region and beyond, discuss this—which is the extensive civil society activity already around human rights issues that would be available as a resource for the institution and also to supplement it. I am particularly familiar with people working in the area of women's rights around CEDAW in some of those countries and around disability issues, and there is already a lot of energy and a lot of knowledge. So it does not all have to be done by a commission, but a commission or institution can help catalyse and build on that in a way which is appropriate to local circumstances.

Mrs MARKUS—There is still the question of what you do if you have a village of 10,000 people and they have their own leadership, their own political structures, their own social structures and so on—they have already worked out ways of resolving issues. How do you connect with them when the institution is in the major city? If the model does not cater for that, then it really will not be effective, because 80 per cent of the population is in the village. They are not in the city.

Prof. Byrnes—It is difficult. Let me give you an example of one case study we have done in Nepal. It is different from that sort of case, but the population of Nepal is tens of millions and they have six offices: a headquarters office in Kathmandu and six regional offices. It does not cover anything near that whole country. What have they done? They have linked up with the Nepal Bar Association, which has much broader representation, and have used it as a civil society collaborator in order to get information and get contact. So there are ways in which you can probably link in to local networks—sort of like the barefoot doctor, the barefoot human rights commissioner option, and perhaps the visits. It is difficult, and people in remote island locations are going to have greater difficulty, but I think it can be done in different ways.

Ms ANNETTE ELLIS—Mine is a brief question. I notice the three-year study you are undertaking into the APF in its role in promoting human rights and I instantly think of a country like Burma where there is a certain level of recalcitrance, if I can put it that way, to even consider human rights. I just wanted to pose what is probably an unanswerable question, I guess, but I do it to get your opinion. When we are talking about the regional development of human rights within Asia and the Pacific—if we can look at the South-East Asia region and use Burma as the example—I would imagine that, within that three-year study, you are going to look at a country like Burma as part of what is probably the 'hard basket'. I was just wondering what your

opinion is on the sorts of influences that can be brought to bear—noting that some approaches have already failed to work, obviously. I think of the cyclone and the accusations of human rights abuses by the very regime in place in Burma at the time in denying aid and assistance to those affected.

I just wonder what your opinions are on what sorts of mechanisms we could begin to imagine might work in breaking some of those walls down, acknowledging that—if I can put it this way—maybe until that regime changes we will not see that happen, but we must be able to try and do something in the meantime. I am just wondering what your views are on that sort of difficult scenario.

Prof. Durbach—Thank you for the question. I think of the work of ASEAN, particularly the ASEAN Four—that is, Indonesia, Malaysia, Thailand and the Philippines—who have been driving the initiative. I think of their working group, their meetings, their consultations—they now have a high-level task team that is seeking to define the nature of this new initiative. There is the work that they do with NGOs across the South-East Asian region. I think their impact in relation to Burma is very important. As you probably know, they work in quite a conciliatory fashion. They work by example. They bring together a whole cross-section of society from all those different states that are members of ASEAN, and I think their influence in trying to persuade Burma and other countries towards that sort of initiative has been important both internationally and regionally.

We think that one of the most effective attributes of the work of the APF is that they have developed networks across the region on thematic and procedural issues. They look at things like the rights of migrant workers, trafficking—where Burma is affected—and internally displaced persons—Burma again. They try to bridge—and that is the significance, I think, of the work of APF—and bring people together from across the different states around these issues and try and educate and facilitate activity around them. It is an enormous task in relation to a country like Burma, but I think of that horizontal level that we talk about through a network like APF. Things are starting to seep through and, hopefully, influence certainly civil society and international condemnation and make these things more visible to the rest of the world. That is an important feature of the work of APF.

Prof. Byrnes—I have one quick contribution. It is something of a hobbyhorse of mine. There are many routes into a human rights problem; not all of them are human rights routes. I put in a separate submission on Australia's power to influence things through its participation in multilateral development banks, in particular the Asian Development Bank—the same applies to the World Bank, but I am more familiar with the Asian Development Bank—and the way in which substantive human rights outcomes can be built into planning economic development and substantive results achieved in a way which is not a direct human rights route, which at certain times and on certain occasions may not be as effective and may have to wait. I think that is another possibility of dealing with those very, very hard cases. I think we have a standard human rights approach that runs into—

CHAIR—Thank you, Andrew. I think that is a very valid point, and it is probably a very appropriate note, unfortunately, on which to end this very interesting discussion—but, as I said at the outset, we do have other people wishing to present. I will just conclude by thanking you very much for coming. It was a very interesting presentation. I appreciate the time that you took

and the effort that you put into it. Thank you for giving the committee the opportunity to question some of your ideas. We will send you a copy of the transcript of the evidence, and if there are errors of course you can make some corrections. Also, if there are any issues that the secretariat would like to follow up with you, would you be quite happy for us to get in contact and get further information?

Ms Renshaw—Yes.

CHAIR—Thank you very much.

[10.50 am]

JALAL, Ms Imrana, Gender and Human Rights Adviser, Pacific Regional Rights Resource Team, Secretariat of the Pacific Community

CHAIR—Welcome. Imrana, it is lovely to see you again. We certainly appreciate your coming along to give evidence to the committee today because, as you would have heard from our previous discussion, there is a lot of interest amongst the committee in the Pacific and how we as a nation can help in the development of human rights mechanisms there.

Although this committee does not require you to give evidence on oath, you should be aware that these hearings are official proceedings of the parliament and therefore have the same standing as proceedings of the chambers themselves. Before we move on to question and discussion, I invite you to make some opening remarks.

Ms Jalal—Thank you. Bula, namaste, as salaam aleikum, talofalava, kia ora, kia orana, mauri, malo e leilei. I thank you for inviting me to this hearing. RRRT continues to be grateful to the Australian people for its core support of RRRT and our partner NGOs in the region. Without your support we could not do our work.

My additional comments will last about five minutes and will focus on responding to some of the issues I have read in the few other submissions. It was not until I read them that I realised how little knowledge there is here in Australia about what is happening to human rights in the Pacific and who some of the stakeholders are. It is disappointing to me to see that no Pacific Islands NGOs have made submissions. Even though we spread the word about this committee to all our partners in the region, none of them have made submissions, which is very disappointing. Also, apart from me, there is no other Pacific Islands organisation or NGO here to make a submission before this committee. I would respectfully suggest to you, even though I know that there are problems, that we would like to see you in the Pacific Islands—maybe not in Fiji at the moment, but in Vanuatu or Samoa—hearing submissions from Pacific Islanders themselves.

Before I start, I want to say briefly who RRRT is, because in the Pacific—and I am sure you know this already—who the messenger is of the human rights is as important as the message. The message, when it is a controversial one, is very, very difficult. Controversial ideas which challenge the nature of gender relationships, the chiefly structures and the accountability of the state, if perceived to be propagated by outsiders, are often rejected outright despite their merit. That is why the first Pacific charter failed. Who we are is critically relevant to this main inquiry and to the ultimate goal of all of us here today, which is: how do we build a viable sustainable Pacific Islands human rights culture in the region?

In terms of who I am, I am a cofounder of a women's NGO called the Fiji Women's Rights Movement, which is also funded by AusAID; I am a former Fiji human rights commissioner and with the other human rights commissioner, I set up the first Fiji Human Rights Commission—when it was an okay commission, I might add; I am a commissioner of the Geneva based International Commission of Jurists; and I work for RRRT. I am married to an indigenous Fijian

chief and I consider myself one of the small number of people in Fiji who are lucky enough to have firm ties in both the Fijian and the Indian communities.

What is RRRT? It is a group of about 15 Pacific islanders, advisers, lawyers, trainers and advocates who have for 14 years been breaking down resistance to human rights and providing support to both governments and NGOs. We prepare detailed country human rights reports, we help them write their own reports, we train delegations and we help them to appear in Geneva and New York before the various human rights bodies. In the work that we do, because of the vastness of the region and its geographical isolation, we work with 300 trained human rights advocates who we have trained over 14 years to do the frontline human rights defence work in the region. They are spread all over the Pacific. This network consists of not just NGO people but judges, magistrates and members of parliament. Only last year we set up the first Pacific island regional network of human rights lawyers.

Our biggest strength lies in the fact that we are Pacific islanders dealing with our own issues. We are not Westerners perceived to be shoving human rights down Pacific throats. We are educating other Pacific islanders about human rights incrementally, using methods that do not threaten them but gently persuade them in ways that they can live with. There is no hostility to us, because we are one of their own.

Our joining of the South Pacific community last year was a big milestone for us, because it showed to us that Pacific island governments for the first time accept human rights as part of their culture. Even though there is a Pacific plan which in theory acknowledges human rights, the fact that the regional body, which is owned by Pacific island governments, welcomed us and we are now part of that body was a big milestone in terms of Pacific island governments accepting the notion of human rights.

We are the only Pacific-dedicated regional organisation focusing on a broad range of human rights. Despite this, and the fact that we are funded by AusAID, only two Australian submissions acknowledged our existence. RRRT is grateful to the Department of Foreign Affairs and Trade and the Melbourne Human Rights Law Resource Centre for acknowledging us and our work. Submissions by a few other Australian organisations, although worthy and of extremely high quality, were written as if there is no thriving and committed civil society human rights community which is indigenous to the Pacific.

The coups in Fiji and the political crises in Tonga, Vanuatu, Papua New Guinea and in particular the Solomon Islands have given birth to a whole range of human rights NGOs that are really very clever and very strategic. They know how to advance the causes in their countries. We have to acknowledge that. In that vein, I respectfully submit that the Australian government perhaps sponsor some kind of research which attempts to do a stock take in the region of who is doing what so that you do not put your resources and money where work is already being done but instead add value in a way that is strategic. It might be a good thing to start off by doing a stock take to see who is doing what. It is important to know that these organisations are in the Pacific. They are at the coalface. They are not passive recipients of human rights granted to us by outsiders. We are actors determining our own human rights destiny.

That leads me to my next point: the Pacific is not Asia. Judging from your questions to the previous group that made a submission, you clearly see this, and I am very grateful that this is

so. For example, if there was a pan-Pacific regional mechanism based, say, in Bangkok, what would this do for the Pacific? Due to the distances involved and the costs, locating an Asia-Pacific pan-regional mechanism there would make the realisation of human rights for Pacific islanders an illusion. It would not be owned by Pacific islanders, who increasingly see their destiny as separate from Asia, no matter that the UN puts them in the same group.

RRRT is not opposed to the establishment of national human rights institutions. As I said to you before, I was the first Fijian human rights commissioner. My colleague and I set up the Fiji Human Rights Commission. We are dedicated to the idea that, if a country can afford it, the Australian government should support national human rights institutions. I am a Pacific islander and I have travelled to and worked in every Pacific island country in the region except Tokelau and Pitcairn Island, and the idea of having an NHRI in each of the 18 Pacific island countries is an illusion. I think the four to five biggest Pacific island countries—Papua New Guinea, Vanuatu, the Solomon Islands and perhaps Samoa—will be able to have national institutions, but for the rest it will be virtually impossible.

I attended the Universal Periodic Review as a member of Tuvalu's delegation, in December in Geneva. Tonga and Tuvalu both made it very clear to the Human Rights Council that it was highly unlikely that they would ever set up a national institution. In 90 per cent of the Pacific, the media is owned by the state. In Tuvalu and Samoa the opposition parties had to go to court and get an injunction from court to allow the media to give them the airtime. Even in Samoa, which prides itself on being a fully functioning democracy, the leader of the opposition went to court twice. The court ordered the radio station to give the leader of the opposition and the opposition party radio time. If the media is not independent, how can a national human rights institution possibly be independent, especially one that will be totally reliant on government resources and technical support?

From a cost perspective, do the Australian people really want to support 18 national human rights institutions in the Pacific? Imagine the accountability nightmare of that. Is it more strategic and of added value to support a regional human rights commission which has offices in the three subregions of the Pacific—Melanesia, Polynesia and Micronesia?

Let us look at the independence of national human rights institutions. Look what happened in Fiji. When we set up in 1998 we were totally reliant on Australian, European and New Zealand funding to function. It was not until five years down the line that we got core funding from the Fijian government to function. Even now, the Human Rights Commission, despite all its problems, is hardly functioning on government support, and it is not getting any international support now. If we do not get core support from governments and core funding for these institutions, they will not function. They will be totally reliant on donor money. So I asked you to think about that also. That is a very, very important point. As you know, recent events in Fiji, with its thriving human rights community, demonstrate the vulnerability of national institutions, especially ones where the government appoints the commissioners. I was appointed by the government, so I know that. I know how vulnerable we are to government pressure.

What is the way forward? We welcome the soon to be appointed human rights adviser at the forum secretariat and look forward to working with him or her. However, a single person is unlikely to change the human rights landscape in the Pacific, especially with the traditional top-down approach of the forum. It works with governments and ministers mainly but will hopefully

work with RRRT and other regional organisations—such as the Pacific Concerns Resource Centre and the Pacific Centre for Public Integrity—and the very, very good national human rights NGOs that exist throughout the region.

In October 2008 the plenary body of the Secretariat of the Pacific Community, for the first time, at its CRGA meeting, acknowledged the importance of human rights and asked RRRT to prepare a paper to be tabled before it in its 2009 plenary meeting coming up. It has asked us to document in that paper what is the implementation and compliance rate of Pacific Island governments to the human rights treaties that we have ratified. Again, that is a big milestone. It shows that Pacific Island governments are embracing the issue—tentatively and cautiously, no doubt, but they are embracing it.

What does this mean in terms of where support should be given? We believe that the bulk of your support for the Pacific ought to go to organisations like RRRT and NGOs that are doing sterling work there because they have a better chance of selling the concept of human rights to Pacific islanders than organisations based in Auckland, Wellington, Sydney or Canberra. I am not saying that you should not support human rights organisations based here to work in the region. Absolutely you should. We need their support. We need their expertise. But they should work in partnership with us—organisations that are governmental regional organisations. With respect, I submit that RRRT is well positioned, if not better positioned, than any Sydney or Auckland based organisation to respond to the human rights needs of Pacific Island countries.

So what is the bottom line for us? The bottom line is that we need Australian support to make any of this happen. It will not happen without your support and your vision to support it financially, technically and so on and so forth. But we need to lead the way—Pacific islanders need to lead the way with you providing support and strategic technical resources.

Finally, how do I see things happening? In 10 years time our vision at RRRT is to see a Pacific regional mechanism of some sort existing in the region—probably based in Vanuatu, where the regional Pacific island law school is; and, let's face it, because it is more stable. We would like to see a regional mechanism. The commissioners should be people from Micronesia, Polynesia and Melanesian and the staff should be a regional one consisting of people from those three regions.

I would suggest to you that the Pacific region is more cohesive than the Asian region. I personally think that if I had to bet—and I know Australians love betting on things—I think there will be a Pacific regional human rights mechanism of some sort long before there is an Asian one. I see this mechanism as being one which initially starts off by promoting education on human rights and then slowly, as Pacific island governments and peoples except the value and benefit of human rights, taking on an adjudicating role and solving disputes. Until then it would provide legal advice to governments: draft human rights compliant laws; and help implement treaty body obligations to CEDAW, the child's rights convention and so on. And it would be one with small offices in the region. The advantage of having small offices in the region and national human rights institutions is you can have a Tuvaluan working in Micronesia and a Fijian working in Polynesia and so on and so forth and you will not have that 'wontokism', which is a real problem.

I will make one final comment. In my respectful view there has only been one successful ombuds in the Pacific, and that is in Vanuatu. The function of an ombuds is to investigate

administrative malfeasance. To me that has very limited value. Those ombuds are unable to really function independently no matter how well-intentioned they are. Samoa is an example an ombuds office that is doing really well at the moment. But, again, they have limited powers and, more importantly, limited resources to implement their decisions, and they only have advisory status. So I would suggest that support should be given to regional ombuds offices and to national human rights institutions, but please do not discard the possibility of a regional mechanism. Thank you.

CHAIR—Imrana, thank you very much. That was a very interesting and comprehensive submission, and I know that everybody here listened to you with great interest. I am sure as a result of that there are a number of questions that people will want to ask. I will begin with a couple. First of all, your idea of the audit in terms of the activities of civil society and NGOs within the islands is a very good suggestion. I think that is something that we as a committee should take up, perhaps even as a recommendation, to get a real picture and inform ourselves a bit more about what is happening on the ground, particularly in light of your comments—and I agree with you—about the importance of Pacific island people leading the charge in advancing human rights rather than Australia or New Zealand.

In that vein, though, the question I would like to ask is this. This whole inquiry is about the idea of a regional mechanism. For the purpose of this question, let us say ‘regional mechanism’ means just the Pacific, because I appreciate what you are saying about the difference between Asia and the Pacific. One of the criticisms that has emerged in a number of the submissions is that a regional mechanism with no teeth in fact can do more harm than good in that it, I guess, lowers the common denominator in terms of acceptable attitudes towards the human rights and leads to greater violation. So my question, given that clearly you are supporting the idea of a regional mechanism, is: do you believe that it should be one that comes in with some level of teeth and enforcement or do you believe that something with, I guess, lesser legal authority would work first or could it actually do more harm than good and is it better to leave things the way they are?

Ms Jalal—Thank you for that question, Chair. In the way that a regional mechanism could lack teeth, the same thing could happen to a national mechanism, especially one that is hamstrung by a lack of resources and independent commissioners. So I see that as being neither here nor there; the same criticisms apply to both.

CHAIR—Okay.

Ms Jalal—And I certainly am not opposed, as I said before, to national human rights institutions. I want to see both exist in the region but both well resourced and with teeth. At the end of the day, the teeth that they have to enforce their decisions and so on and so forth will depend on the charter that sets them up and what Pacific island governments agree to. Even a national human rights mechanism could be empowered to only give advisory opinions. The Fiji Human Rights Commission had the power to issue an advisory opinion but no power to enforce it themselves. If they wanted to enforce the opinions or their recommendations, they had to go to court. The Proceedings Commissioner had to go to court to get a court order. So I think that that criticism applies to both; it entirely depends on what powers they are granted.

CHAIR—Thank you. I certainly accept your answer, but what I was trying to ask was: could it do more harm? Could it actually reduce the impetus for nations to do something about human rights if they have this blanket, toothless tiger, if you like, which they can refer to, or do you still think that, regardless of its level of teeth as such, it is a step in the right direction and it can actually progress this issue further?

Ms Jalal—I think it would be a step in the right direction. I do not think it will be something that is irrelevant when I think about the Inter-American Commission of Human Rights. When the Inter-American Commission of Human Rights began, there were virtually no national human rights institutions in the region because the majority of them are military dictatorships, as you would know. The Inter-American Commission of Human Rights helped establish national bodies in each country. They were instrumental in setting up those national human rights institutions. So I think that a regional mechanism in the Pacific island region could be similarly instrumental in doing that.

CHAIR—Thank you.

Senator HANSON-YOUNG—Thanks for your presentation, Ms Jalal; I found it very interesting. One of the things I have been thinking about specifically, reading through these submissions and looking at the terms of reference—and it was touched on by the previous witnesses—was the question of what role a human rights mechanism would play in helping nations with adapting to climate change and what role Australia has to play in that, what role New Zealand plays in that; and how we work with particularly those smaller nations in the Pacific who are already asking for support and yet there are differences within their own communities. Do we move people out; do we adapt locally? What type of arrangements can be worked out between smaller Pacific nations and countries like Australia? I guess my question is: what type of role do you see a human rights mechanism playing in helping us move forward on that and, while dealing with the urgency of, for example, the displacement of communities, ensuring that people's rights are still respected throughout that transition?

Ms Jalal—That is a very challenging question. When Ambassador Sopoaga of Tuvalu was asked that question by the Human Rights Council in Geneva in December, I remember that one important thing he said was: 'Look, Tuvaluans do not want to leave their country. We want you to help us live in our country and we want you the international community to help us with our economic, social and cultural rights—the right to food, shelter, water, health and so on—to be able to stay there.' He himself sees the role of a regional mechanism as very important in that process. One of the things that we have talked about it is a regional charter, which will probably come after a mechanism, recognising the right to a safe and quality environment. So a regional mechanism will respond to the most pressing needs of Pacific islanders, and one of those is about climate change. So I would see them as having a very instrumental role and being a very useful conduit between the larger nations and the Pacific island countries.

Senator HANSON-YOUNG—Thank you.

Mr RUDDOCK—Can I thank you very much for coming. I do not know whether all my colleagues know that you came from Fiji to be with us and how demanding that was. I think we very much appreciate the fact that you are here. Secondly, can I commend you on your leadership role and the difficult circumstances which in one of our attachments were

particularised for us. You are a very courageous lady and we give you encouragement and support. That brings me to one interesting question before I start the line of questioning. What do you think are the particular rights of significance to Pacific island people that in terms of developing a regional mechanism we should take into account?

Ms Jalal—Since I come from a women's rights background, I would have to say that for me one of the most pressing issues in the region is gender discrimination, both in law and reality. That is exemplified by violence against women. Second, I would say rule of law is absolutely critical. Human rights cannot flourish within countries where the rule of law is not respected. This has been illustrated very clearly in the recent debacle in Fiji. Climate change is an issue and increasingly economic, social and cultural rights. It would be very difficult to pick on a right that was not critical. I think they are all interrelated and interconnected and it is almost impossible to deal with one without the others. There are many rights that are critical in the region and the judiciary is one of them.

Mr RUDDOCK—What I was looking for was whether you see that there are some issues that are different in the Pacific that in terms accommodating human rights issues would pose challenges, such as chiefly powers, for instance.

Senator HANSON-YOUNG—In terms of where there is a conflict with rights.

Mr RUDDOCK—Potentially, yes.

Ms Jalal—There is little doubt that there is a conflict between human rights and traditional systems. Customary systems are based on not speaking out and not asserting individual rights for the common good. For Pacific islanders social cohesion and getting on is much more important than asserting your rights. That is why domestic violence is such a big issue. For a woman to stand up in the maneapa, nakamal, fono or whatever and say, 'I am being beaten and I want you, the village council, to punish my husband or to reprimand him,' or whatever, is the real challenge because that woman is seen as disturbing the status quo. 'Why can't she shut up so that we can all move on. We will just reprimand him quietly, we won't go to the court, we won't look at a legal remedy for this, we will just move on.' So all these structures are very important. Arguably the chiefly structure is one of the most challenging things for human rights but because we Pacific islanders we are not saying to dismantle the chiefly structure, because it is all about identity, isn't it. We are saying, 'Let's keep our traditional structures because they are important to us as Pacific people, but let's make them more accountable.' So that is the challenge: not to dismantle them but to make them more accountable. I would say that the chiefly issue is a very important one.

Mr RUDDOCK—I have two other questions. You mentioned a number of groups which you thought we should have heard from. We wrote to organisations inviting submissions and I do not know whether all those you think we should have heard from were in fact approached by us. I wonder whether we could ask you to put together a list of those organisations that you think we should have heard from and we can then test whether or not we endeavoured to have some communication. Finally, I come back to the point that I was putting to the previous submitters, which you heard, about the form that a body like this might take. The chair and I might have some differences of view, but I was looking at the original Fraser model human rights commission here in Australia, which is conciliatory and advisory.

I have recommended for appointment a number of our human rights commissioners. I think the fact that there have been linkages has never daunted their willingness to give frank and fearless advice, even to me. So I wonder whether you see something like that—where if it were a regional body it would be going to be advisory and collegiate and conciliatory in terms of addressing issues as they may arise, rather than inquisitorial and trying to put in enforcement powers whereby people would think that it was going to be in conflict with their sovereignty and the like—as perhaps a more appropriate way to go.

Ms Jalal—I think that is a very valid point. I think that ought to be the starting point for regional and national human rights institutions in the Pacific, but I do not think it should stop there. It has been proven that it is possible to set up a regional mechanism that gives advisory opinions and has a very high compliance rate. It is possible and it has happened in Latin America but not so much in Africa. So I would say with respect that should be the starting point but not the end point.

Mrs MARKUS—Imrana, may I thank you so much for your presentation. It has been a wonderful opportunity for us to hear from you. You mentioned at the beginning something that I think the committee may be able to take on as something that we would recommend. It was about the research that is required to understand what is already happening and about how many stakeholders are already involved. You talked about that briefly. If you were to advise us about the frames of reference of that research, what would they involve? What ought they be?

Ms Jalal—Thank you for that. I would say that a stocktake needs to be done on who the actors are, both in government and in the NGOs. Of course we know who the actors are in government and that is fairly easy to compile. It would be about who they are and where they get resources from. Do they get support from their governments or from donors or from outside agencies? It would be about the kind of work that they do. What are their sectoral interests? We know, for example, that most human rights NGOs in the Pacific focus on specific sectors. The most effective NGOs in the Pacific are women's NGOs. In fact, women's NGOs are the only effective NGOs in the Pacific. So it would be about this: what is their mandate? We know there are gaps. RRRT is constantly trying to fill the gaps as to what NGOs are unable to do. For example, we know that there are no NGOs in the region dealing with free speech, yet in Fiji, in Vanuatu, in the Solomons and in Tonga free speech is such an important issue. But NGOs deal with it on an ad hoc basis. So it would be very critical to assess their exact mandate and also how inclusive they are. Who is their constituency? Do they reach out only to the national people in the city? Do they have a constituency in the outer islands—and so on and so forth? One of the reasons why RRRT use community paralegals who are spread throughout is that we know there are no mechanisms for getting information apart from using people who are at the human rights coal face. So all this information needs to be canvassed and documented. Also, that would be useful for us as well, not just for you. We need to know. We sort of know but we do not know 100 per cent what is happening.

Mrs MARKUS—Moving further on from that, you talked about the gaps. Would it be important to canvass what is happening in other regions to help identify the gaps? How would you ensure that you did actually ascertain that something was not being done?

Ms Jalal—I think what is not being done would become pretty clear very quickly, because if you look at the whole gamut of human rights you know where there is a match and where there

is not. I myself think I know what the gaps are, but I am hoping that there are some small NGOs working on a grassroots basis in Micronesia and so on who are actually working in some of these areas. The gaps would become obvious very quickly, I think.

Senator MOORE—What is the funding base for RRRT?

Ms Jalal—Our core funder is NZAID. We get support funding from AusAID.

Senator MOORE—Do any of the local governments give you any money?

Ms Jalal—No Pacific island governments give any human rights NGOs any money at all in the Pacific. That is in the northern Pacific as well as in Melanesia and Polynesia. We also get funding from the UN Democracy Fund and from some HIV organisations as well. RRRT is focusing on doing HIV legislation. I think you know that many Pacific Island governments are rushing to pass HIV laws which are completely draconian and anti human rights.

Senator MOORE—I do. They are absolute shockers.

Ms Jalal—So we are very concerned that this does not happen. We recently helped Senator Magdalena Walter of Pohnpei draft a new law which was accepted by the Pohnpei parliament. And we will be working with Palau in the northern Pacific on drafting a human rights compliant law on HIV in the next three months.

Senator MOORE—From the front of your submission I see that you actually looked at the role of education as being one of the core aspects of your job.

Ms Jalal—It is absolutely core. My own personal work increasingly has been less to do with education, although there are five or six people in our organisation who are dedicated to that. I work mainly with Pacific Island governments. Human rights education is about training the members of parliament and judges and magistrates—everybody. It is not just about grassroots communities. For us it is absolutely core and it is about continuously updating them on things. One of the big things for Pacific Island MPs at the moment is the issue of climate change. Last year we had our training in Brisbane. Ms Rea attended and she spoke to our dinner. For them, the whole issue of climate change and the human rights that they will be deprived of because of climate change is just so critical. So we are having to upskill our own knowledge about human rights to do with climate change and then hopefully we will teach them a bit about how they can use the human rights framework more effectively.

Senator MOORE—My other question is a bit different from that. Having read the submissions, I am interested that Fiji has been mentioned consistently as one of the leaders when these issues are being discussed in the region. I am interested to see whether there has been any impact across the region regarding what has happened in Fiji. It was one of the first to sign on to a whole range of UN processes. It set up a commission early—very early, in fact—and it funded it. It did all those things. What has happened in Fiji seems to me, from outside totally, to be a horrific kind of process. I know it is very difficult, because it is your home. It interests me whether other governments' NGOs actually consider that Fiji had everything in terms of structure but that it did not have such a major impact on what happened and what is happening to human rights on all levels there. Are you prepared to put something on record about that?

Ms Jalal—Yes, of course. If you want a private session with me about what is happening in Fiji, if any of you want to be briefed on Fiji separately, without the camera, I will be happy to do that after the day's hearing has finished.

Senator MOORE—Sure, I understand that.

Ms Jalal—Can I just say that what happened in Fiji was absolutely detrimental to human rights in the region, and the position taken by the Fiji Human Rights Commission, or by a few people in the commission, was the biggest blow to the establishment of national human rights institutions in other Pacific Island countries. I could count on two hands the numbers of ministers of foreign affairs and government leaders who have said to us at RRRT, 'You want us to establish a national human rights institution after what happened in Fiji?' So it has been really hard work. In a sense, the concept of regional mechanism came up because Pacific Island MPs in Auckland in November 2007 said to us, 'Look, we are not prepared to go the way of national human rights institutions not only because we cannot afford it but because of the lack of arms-length decision making, and that has been exemplified in Fiji. If we have a regional mechanism consisting of regional people there is more likely to be arms-length decision making.' And I have to say I agree with that. I might not have agreed with it if the Fiji incident had not happened, but I would have to say that small Pacific Island countries—and Fiji is the second largest—are particularly vulnerable to manipulation and being misused in their small communities. The damage to the rule of law, let alone to human rights, has been very considerable. Fiji is a leader in a positive way and in a negative way. That negative impact has been felt throughout the region because even the NGOs in the region—even in Papua New Guinea, which is bigger than Fiji—look to the NGOs in Fiji to provide leadership. It has been extremely difficult.

Senator MOORE—That is an incredibly important area and it is one we could spend a whole inquiry looking at. When I look at some of the countries who are signed up to the early human rights links in the Asia part of the Asia-Pacific, similar questions could be raised about some of them and their histories and what they are doing currently. Within the industry—and I use 'the industry' in the widest sense—how do you actually handle that in terms of the education? Signing up to treaties, actually taking that line, is a really important public step but it can also have a negative impact if they are not being effectively promoted and the rights are not improved. What can you do to balance that?

Ms Jalal—That is an incredibly important question. In terms of our own work, we work with governments to try to get them to ratify the treaties. Then we work with them to try to implement them. We recently helped Tonga and Tuvalu write their UPR reports so that they could go and appear at the Human Rights Council, and it was such a challenge to say to them, 'We're not going to write the report for you; we're going to come in and help you write your own report so that you have a sense of ownership.' Then of course we help the NGOs write their parallel reports so that the committees get a balanced view about what is happening in the country in terms of human rights.

Senator MOORE—And they are both happy with that?

Ms Jalal—They are both happy with that, although we tread a very delicate line.

CHAIR—I can imagine.

Ms Jalal—But we have managed to because we have really good trust relationships with governments and NGOs. I do not think it is possible for a lot of organisations to do that, but we have been working with them both. Our approach is to work with the macro players, the micro players and the meso-level institutional players, and we have those relationships with them. Frankly—although I use the word ‘frankly’ very advisedly in Fiji now—we have to work with all those players, otherwise you do not get the whole picture. And then you have to get the civil society organisations to embrace them and demand accountability, unless it is a vibrant civil society saying to government, ‘You made this promise to CEDAW, and you have not done it.’ In Fiji we used the concluding comments of CEDAW to get the Family Law Act passed. We said: ‘You went to New York and you said that you would change that archaic family law, and you have not done it.’ So we publicised that—when I say ‘we’, I mean in my NGO role—and we used that to get them to pass the Family Law Act. So it has to be multipronged and multisectoral, otherwise it will not work. It is a long process and it is challenging, but it can be done.

Senator MOORE—I think sometimes it happens here too. But, nonetheless, it is about how you work in concert to get that through.

Ms Jalal—Absolutely.

CHAIR—Are there any further questions? There being none—we are sticking very well to time—Imrana, once again, we thank you very much. Your presentation was not only fascinating but also very insightful, and we appreciate not just that you have come here to present to us but also, even more, the work that you do on the other 364 days of the year back in the Pacific islands. I know that all of us could probably sit and talk to you off-camera all day but, unfortunately, we do have to end it there. So, once again, thank you very much for coming over and for your presentation. We would certainly appreciate you giving us a list of some of those organisations that we may be able to approach to provide us with further submissions. We will now break for morning tea.

Proceedings suspended from 11.33 am to 11.49 am

FITZPATRICK, Mr Kieren John, Director, Asia Pacific Forum of National Human Rights Institutions

CHAIR—Welcome. It is nice to see you again, Mr Fitzpatrick. Although the committee does not require you to give evidence on oath, you should be aware that these hearings are official proceedings of the parliament and therefore have the same standing as proceedings of the chambers themselves. Obviously we are here to have a discussion to ask questions but, before we go to that section of your evidence, we invite you to make a few opening comments.

Mr Fitzpatrick—Thank you for the invitation to appear before you today. As you know, the Asia Pacific Forum, or the APF, has submitted a written submission, which I hope the committee members have found useful. I would like the opportunity to make some brief opening comments. They relate to: firstly, the work of the APF in the absence of an Asia-Pacific regional human rights mechanism; secondly, current initiatives and future prospects for a regional human rights mechanism; and, thirdly, the potential role of parliaments in that process.

I do not know whether committee members have our submission before you, but on pages 11 and 12 of our written submission I have set out the structure and role of the Asia Pacific Forum. I want to underline the fact that we were created in 1996, initially with only four member institutions. We have now grown to 17 member institutions, which I have listed on pages 11 and 12. The membership of the Asia Pacific Forum is set to increase again with a number of states within the region having made political commitments towards the establishment of a national human rights institution, and I have listed those states on page 12. Indeed, only this month the Asia Pacific Forum has been working with the states in Bangladesh, Pakistan and Samoa on their initiatives to establish a national human rights institution.

Over the page, I have listed what are the roles and functions of the Asia Pacific Forum. I will reduce them to the principal three: first, to assist states towards the establishment of national human rights institutions in conformity with international minimum standards; second, to strengthen the mandate of our member institutions to perform their own domestic mandates as effectively as they possibly can; and, third—and perhaps this is where it gets interesting in the absence of a regional human rights arrangement—to coordinate and promote cooperation between our member institutions on issues across national boundaries.

I will now move to the second major point of current initiatives and future prospects for a regional human rights arrangement. As the committee would know, the Asia-Pacific region is currently the only region in the world without a governmental human rights mechanism. If I could pause here and say that perhaps amongst the committee there has been some debate about the parameters of the region that we are talking about. The best way I can define it at this stage is: what is left over once you take away Europe, the Americas and Africa. It stretches from the micro-Pacific states all the way to west Asia. Our membership, as you can see, reflects that in terms of our institutions. I am often asked, ‘What is this organisation when it has that kind of breadth?’ If I define it in the negative, that is the best way to approach it.

In our view, the prospect of establishing a region-wide human rights mechanism at the moment is highly remote. There have been a number of initiatives from the United Nations

towards that aim. Annual conferences have been held over a number of years, bringing together all the member states of the United Nations within this region. I think very little progress has occurred under those particular fora. The major outcomes have been—using UN speak—a building block approach: small initiatives to try to encourage some discussion around the prospect of a regional human rights arrangement. Those building blocks have been defined to be national human rights education, development of national action plans for human rights, the promotion of national human rights institutions and involvement in economic, social and cultural rights.

A review of the United Nations' work in that area by an independent academic from Thailand, Professor Muntarbhorn, came to the conclusion that the only real success in that building block approach has been the development of national human rights institutions within the region. Certainly, from my participation in those related meetings, that has been my perspective as well. It has moved from outright hostility to the presence of representatives of national human rights institutions being involved in those negotiations to more than a grudging acceptance now, a kind of ownership of the issue. Almost 50 per cent of the states within the region either have created a national human rights institution or are in the process of doing so. There is some acceptance that, at the national level, it is important to have a mechanism to protect and promote human rights.

Having said, though, that the prospects of a region-wide mechanism are remote, there is, of course, work being done at the subregional level. I think our submission details the ASEAN steps to some degree and, to a lesser extent, the steps of the Pacific and Arab states. I will now take the opportunity to supplement our written submission and indicate that, since we submitted the submission, the Arab states have taken the next step. There is now the required number of ratifications to the Arab regional convention for the operation of the Arab mechanism. That is now in the process of being operationalised. In December, the Human Rights Commission of Qatar hosted a meeting of Arab states on exactly that topic and brought together all the members of the Arab League discussing the operation of the mechanism under the charter.

The Pacific steps are certainly considerably less advanced than those steps that have been taken by both ASEAN and the Arab League. Within the Pacific Plan, there are a number of commitments towards regionalisation and the importance of human rights. Unfortunately, I was not here for the last presenter but I presume you received a fair amount of information on those initiatives from her. Our approach here is to focus on, where possible, the development of national mechanisms. I have indicated the states in the Pacific that are in the process of doing so. Only last week, I was approached by the government of Palau on the possible establishment of a national institution there. There is also the possibility of pre-existing Ombudsman institutions having their mandates strengthened and broadened to include a more proactive human rights component and being more than a maladministration reactive type of institution. Though, of course, there are a number of states which lack the institutional capacity to create a national mechanism whatsoever.

The APF's response to these types of demands is to work bilaterally with those states that are in the process of establishing an institution. I indicated that we have already done work in Samoa. We sent another team at the invitation of the Prime Minister of Samoa in the last week of March under defined terms of reference approved for the government about the creation of a national human rights institution. So I think the prospects for an institution in Samoa, or at least draft legislation being presented to the parliament in Samoa, are quite high.

As to a regional approach, in the last week of April we are cohosting a meeting with the Pacific Islands Forum and the United Nations that will bring together all the member states of the Pacific Islands Forum to discuss the prospects of the creation of national mechanisms—not necessarily, I should stress at this stage, independent human rights commissions, because some states may not have the capacity to create such an institution. We envisage that the discussion needs to be open for whatever national mechanisms a state in the Pacific might be capable of creating.

Finally, recognising that some states simply will not have the capacity to create a national mechanism, we have been working with the Pacific Islands Forum, which is the intergovernmental mechanism in the Pacific, about developing its own skills institutionally on human rights related issues. We have negotiated with the Pacific Islands Forum for the creation of a senior human rights adviser, which is a senior management position within the forum and sits with the secretary-general. Applications have been called for that position. They close within a two-week time frame. The Asia Pacific Forum is a member of the selection panel for that position. We would hope that the integration institutionally of that position within the Pacific Islands Forum will allow the Pacific Islands Forum, internally, to upskill its own service delivery with respect to human rights and then to provide those services to its member states.

I will move to the role of parliaments. I did not think our written submission expanded greatly on that, and that was due to time pressures. I think, Madam Chair, that your participation and indeed that of your predecessors in the annual meetings of the APF is a valuable role for parliamentarians to take. As you know, you made the official governmental statement on behalf of Australia at our annual meeting. You were joined by other parliamentarians from the region in doing so. I feel, though, that our involvement with the executive and civil society components of the state is much more institutionalised at our annual meetings—and that was probably your experience as well—in terms of the number of representatives of executives or civil societies in attendance at our annual meetings. Parliamentarians are a smaller number.

I feel that one of the things that the APF certainly should be exploring is a greater investment of parliamentarian bodies from the Asia-Pacific in our annual meetings, to promote a greater engagement and dialogue. Of course, they are the aspects of governance responsible for the consideration of legislative proposals for the protection and promotion of human rights. So that is a part of one of the issues we might wish to explore in our conversation today.

Finally, I have had the opportunity to review the written submissions that have been made, and I was very gratified to see that almost all of the submissions have made a positive reference to the work of the Asia Pacific Forum. In response, I want to say that acknowledgement must be made to successive Australian governments, politically, in promoting the work of national human rights institutions in a variety of international fora, and particularly to the Australian government through its foreign aid agency, AusAID, in providing financial support to the Asia Pacific Forum. We have worked hard to make sure that we have diversified our funding base. We are a completely not-for-profit organisation. We have now contributions from a variety of governments, from both within the region and external to the region. Australia currently contributes just a bit less than 30 per cent of our overall funding. I think that is appropriate in terms of it being a regional body representative of regional interests.

I note that a number—in fact, almost all—of the submissions make a recommendation that your committee should request the Australian government to continue that financial support and perhaps increase it. Previous committee inquiries relevant to human rights have made recommendations along those lines, and they have been exceptionally helpful to the Asia Pacific Forum in our discussions with AusAID. Currently, I have to say, we are at capacity constraint in terms of service delivery to our member institutions. Whether Australia contributes additional funds is a matter for AusAID and strategic priorities about its other demands, but certainly, for the Asia Pacific Forum in meeting those increasing demands, I think we are at a juncture now where we either transform our organisation into something significantly larger than we currently are—and for the members of the committee I will just point out that we currently have fewer than six people in the secretariat. The type of activities that we do and the scale of our activities give you the impression that we are a much larger organisation. Perhaps the reason for that largely is that we call upon the expertise of our membership—human rights commissioners from a variety of different institutions and their staff—who all freely provide their services without cost. So the scale of our operations is largely, in fact, because there are no fees being paid to people to perform service delivery and the APF is simply covering the costs of involvement of those institutions.

If we are to conform to these expectations, I see the next logical step as the creation of subregional offices of the APF in a variety of subregions. I am currently in discussions—I would hesitate to say that these are going to be successful because I think it is far too early in the discussions—with the government of Qatar for it to fully fund a subregional office of the APF for west Asia, which would be located in Qatar. Essentially, it would undertake all service delivery and training support for our west Asian members. The west Asia area is one of the growth areas of the Asia-Pacific at the moment. We have a number of states in west Asia looking towards the creation of national human rights institutions. But if we see this subregional service delivery being replicated we would see another office in ASEAN as being the next obvious step, given the type of activity that is currently occurring in ASEAN.

With that I will stop my introductory comments and open myself up to any questions that you may have.

CHAIR—Thank you very much, and I congratulate you: it has taken until midday for somebody to quite obviously ask us for more money and you have been the first person to do that!

Mr Fitzpatrick—I did not! The other submissions did; I was only commenting on those.

CHAIR—In reference to my experience at the annual meeting, I understand—and correct me if I am wrong—that one of the interesting things about the APF—and particularly those gatherings—is that you have the NHRIs, NGOs, politicians and executives all in the same room having a discussion around the issue of human rights which does not very often occur. I would concur with you that it probably would be very useful to get more politicians there just to appreciate the significance of the dialogue that is going on. Even though it is very formal, I am pleased that people advise me that the best conversations happen in the corridors and over the coffee. That certainly was true over that couple of days.

My first question is probably a series of subquestions. Obviously, we are looking at the issue of regional mechanisms. What has emerged through the submissions and even as a result of discussions this morning is that we are already looking at Asia and the Pacific being quite separate areas, and you have just come in by way of your opening remarks to talk about the Arab states and where they are moving to. Firstly, I would be interested if you could expand just a little bit on operationalising the mechanism and explain about where they are actually up to and what work they are proposing to do. Secondly, you talk about subregions: are we talking about two regions—Asia and the Pacific; are we talking about three regions—the Arab states, Asia and the Pacific; or are we actually talking about three subregions, with a regional mechanism over the top? I would be interested to know what you think about those models. Thirdly, given that we have talked a lot about the Pacific this morning, I would be interested to know your thoughts on the challenges that would exist around Asia in particular because of the diversity of the nations within that group and their diversity of approach or attitudes to human rights. I suspect that there are different challenges there to those in the Pacific. Maybe you could share your thoughts on that as well?

Mr Fitzpatrick—I turn committee members' attention to section 4.5 on page 8 of my submission, which indicates the background on the League of Arab States and the Arab Charter on Human Rights. The charter had an unfortunate beginning—the first work from the Arab league with regard to the development of a regional charter of human rights demonstrates many of the concerns of human rights advocates in this region, and that is states coming together to actually agree on a regional charter that undercuts international human rights norms. That was certainly the case with the first charter—deliberately or otherwise it was significantly below the norms that had already been agreed by the international community at the UN and it was certainly far lower than those pre-existing regional charters in Europe, the Americas and Africa.

There have been revisions and it has been improved. I do not think it is still entirely consistent with international human rights norms, and I make that point within the submission and draw some particular instances of that. However, now that we have reached the number of ratifications of the charter, we are at the point of operationalisation. Most international treaties require a significant number of ratifications before they become operationalised. That is now the case within the Arab league. What is required is that the committee of experts of the Arab league now consider states' reports under the charter in a similar way that states report to the United Nations or to the other related things. The charter also provides a way forward to the creation of a fully fledged independent regional human rights mechanism. The terms of reference and its role and functions are yet to be fully determined. The meeting in December that our member institution in Qatar hosted was to start those initial discussions. It brought together the representatives of states, civil society and the pre-existing national human rights institutions.

From our perspective in the Asia Pacific Forum, if I do not go now into the details of the terms of reference of the operation of the mechanism it is because I do not think I have a huge amount of expertise. I say that in relation to the ASEAN and the Pacific related initiatives, as well. There are others who hold much greater expertise than I about what a successful mechanism would be, and therefore what its roles and functions may entail.

My expertise is in the role of national human rights institutions in any mechanism that is established. You may be aware that the Asia Pacific Forum was successful, on behalf of the international gathering of human rights institutions, in ensuring full participation rights for

national institutions in the United Nations mechanisms. That has only recently occurred with the creation of the Human Rights Council. Prior to that the institutional involvement of national human rights institutions was rather at the discretion of each succeeding chairperson of each succeeding session of the Commission of Human Rights. We had established a custom and practice which allowed for national human rights institutions—independently of their states, representing their independent status—to make presentations to the United Nations when a specific topic on national institutions as an agenda item was being discussed, but that was a very restricted participation right. Now we have fully fledged participation rights on any related mechanism on any related agenda item. Those are the types of participation rights that I would like to see transferred to any regional mechanism. And that is, I think, the major area of discussion we are currently having with our four ASEAN members, who are really the driving force for the creation of that ASEAN human rights mechanism. The institutions in Indonesia, the Philippines, Thailand and Malaysia, collectively under the APF, have been the driving force for the creation of the mechanism.

The initial stages of the debates in ASEAN—as you can see I have now shifted to the ASEAN related discussions—went along the lines that the foreign ministers of ASEAN would not consider the original human rights mechanism until every state in ASEAN had a national human rights institution. That was their starting point of discussions. As you would appreciate there are states in ASEAN that perhaps will never have, at least in the likely future, national human rights institutions. It has been through a long advocacy process that that has changed, and we are seeing a momentum towards the creation—and indeed its incorporation in the treaty—of a regional human rights mechanism. Again, our expertise is best utilised in looking at the participation of national human rights institutions in that mechanism.

A number of legal questions come up. I do not wish to take the committee's time but there are questions in relation to national complaint mechanisms. If there is a regional complaint mechanism do those complaints need to go through national human rights institutions first to gain entry into the regional mechanism or can they go around national human rights institutions and be immediately submitted to the regional mechanism? If so, what role do national human rights institutions play, regardless of the track of those complaints? If there are committees of experts or consideration of state party reports by those regional mechanisms, what roles do the national human rights institutions, as the national vehicles for the implementation of international law and constitutional human rights provisions, play in that process? These are the types of issues that we are now in discussion with ASEAN about.

You asked in your second question, Chair, about the definition of the region. You indicated the Arab league, ASEAN and the Pacific Forum. And, of course we are talking about SAARC, as well—South Asian nations. In my submission I made reference to the fact that the SAARC regional body has made a number of specific declarations and created international regional conventions on thematic issues: trafficking of women and children, education of children. There are, as I understand it, no current plans for any discussion of a subregional arrangement for the SAARC region, although I think you will see the development of thematic conventions or subregional declarations binding the SAARC member institutions to specific action. So I would add that into the definition of what the region may be. The final area would be North Asia—Japan, Korea and China—and how that works.

I have mentioned in our submission that there are very hesitant discussions on the resolution of the North Korea nuclear proliferation issue and the prospect of the creation of some form of human rights focus in those discussions. I put it no higher than that, because the whole purpose of those discussions is somewhat in abeyance at the moment. But at least it has been signalled as a potential issue.

Finally, Madam Chair, you asked me about the prospects in Asia. Perhaps I will reiterate what I have just said, which is that clearly ASEAN is moving ahead. What transpires, in terms of its effectiveness, is a major concern. Whether it will undercut international human rights norms once again is a major concern. How it would relate to the national bodies is a major concern as well. But clearly there is a movement there. We clearly see now a commitment by all the leaders of ASEAN to the necessity of that regional mechanism. Our involvement in that process is in making sure that it is the most effective and practical mechanism that it can possibly be.

I am normally an exceptionally optimistic man. But, if I may inject a moment of cynicism here, I often wonder about the utility of the investment of time, energy, expertise and funds in the creation of a mechanism vis-a-vis an effective national mechanism. I think, as I am sure you would all concur, that justice is more easily achievable at the national level in terms of access to these types of bodies. That is why Australia and many other states have created a national human rights mechanism. That is why the Australian government has now embarked upon a discussion around whether there should be a statutory or constitutional bill of rights. Many other states have taken that view. So I think access to national mechanisms is more likely to achieve a result for individuals who feel aggrieved because of human rights violations. Frankly, access to international and regional mechanisms is much harder. Again, a moment of cynicism: in the absence of any regional mechanism at the moment, the United Nations complaint-handling mechanisms are not sufficiently resourced to provide any form of quick recourse or response to individual grievances, and many individuals would not in any event have the wherewithal to even access those pre-existing mechanisms. So our focus as an institution is always to try to find the most accessible and easy recourse for individuals who have those grievances, hence our expertise on national mechanisms.

CHAIR—Thank you very much, Kieren.

Mr RUDDOCK—When you said you had six employees, you got to a point that gave me some insight as to the size and the nature of your operation. But I was interested, and you can put it in writing, in the nature of the organisation—your management and who you account to, because I do not understand that particularly, and I did not get it from the submission. Presumably, when you approach AusAID, you put together submissions which give some idea of the nature of your spending, where the money that you have comes from and your priorities. I think it would just give a better idea in terms of handling the budgetary issues.

I was not sure that I understood, in relation to West Asia and the Arab initiative, which Arab countries had signed up, which had not and so on. Obviously, there is overlap. I mean, if it includes North Africa, then it is not Asia-Pacific. So I was just looking for a bit more detail on that, if I could actually receive it.

Mr Fitzpatrick—That is right.

Mr RUDDOCK—I am obviously interested in places like Egypt, Libya and Algeria. Are they all signing up? If they going to give up some of their sovereignty in relation to these issues, that would be of interest to me. That brings me to this question: in terms of regional human rights bodies, what sorts of strategies should be used when issues of sovereignty arise? In my former life, I had to deal with some of the UN bodies. I was singularly unimpressed—and I do not think the problems are just budgetary; I think that there is enormous overlap and that they have no real mechanisms for looking at and addressing abuses of process. Some people like to use delay as a way of influencing other procedures that might be being undertaken.

On the sovereignty issues, if I looked at sovereignty issues vis-a-vis Australia, the one area of ostensible human rights that gets raised is the question of freedom of movement and to what extent there are other institutions outside of Australia telling us how we should conduct our immigration programs and complaints mechanisms that enable people to put pressure on Australia as to who it should take or not take. It does raise difficult issues of sovereignty when you get into areas like that which people do not often think about. It is addressed in terms of the high-profile human rights issues without recognising the broader range of questions that often arise. I would be interested in how you would address that sort of national sovereignty issue when you are setting up regional bodies.

Mr Fitzpatrick—The first question was the question of APF governance. I am happy to provide supplementary material, but, very briefly, putting it into an Australian context, it is an international or regional body with a corporate governance structure similar to other corporate governance structures that you would be familiar with in Australia. There is a board of directors. The board of directors is comprised of institutions that fully comply with international minimum standards. They are accredited through a membership process of the APF by their peers. If they meet those minimum international standards, they get an opportunity to nominate a member to sit on the board.

Mr RUDDOCK—So somebody from HREOC would be on your board?

Mr Fitzpatrick—That is right. It is the institutional choice to nominate an individual. The current representative from the Australian Human Rights and Equal Opportunity Commission is its president, President Catherine Branson. Other institutions would nominate people in similar types of positions: the chairs or the presidents of those respective institutions.

We have established this body to not be a closed shop but welcome and encourage institutions that currently do not comply with minimum international standards in the expectation that we can involve them, have dialogue with them, discuss things with them and assist them to meet minimum international standards. Institutions that currently do not meet the minimum standards, though, are accorded a lesser membership, and therefore do not have the opportunity to participate in the decision-making structure of the APF.

We have two categories of lesser membership. The first is candidate members. They are institutions that our board of directors determine could comply with the minimum standard within a two-year period. To accept a membership as a candidate member, the institution has to set out the steps that it will take towards compliance. As an example of that, the institution in Timor Leste was adopted and admitted as a candidate member. It is a single officeholder institution, similar in a lot of ways to the Latin American institutions. It makes it hard, therefore,

for that institution to be representative of the society that it serves. One of the minimum requirements of the international standards is that the plurality of membership should be reflective of the society that it serves. We therefore asked that the institution establish a formal consultative body comprising elements of East Timor society that would discuss with the chairperson of that institution the development of a strategic plan on operations. That was duly done and the institution moved from being a candidate member to being a full-member institution.

We then have our final category, which is associate member institutions. They are institutions that our board of directors do not believe will be able to comply within a two-year period. Often there are quite significant legislative flaws with such institutions. There are instances of institutions with executive and parliamentary members sitting on boards of directors with the power to vote. It is fine for either the executive or the parliament to be part of the corporate governance of an individual national human rights institution under the international standards, but it is stipulated that those members, when the decision of an institution is to vote on a particular issue, do not participate in that voting process. With instances of those types of institutions, they will require a legislative change to ensure that the institution fully complies with the international standards.

Currently, we have 14 full members, no candidate members and three associate members. I have listed those in the submission and where they fit in those categories.

In terms of corporate governance, what the secretariat does is prepare annual plans. Deputy Chair, you made a reference to how those plans are then submitted to AusAID and how those decisions are made. We prepare draft plans. We have a three-year planning cycle and individual annual plans under each of those three years detailing the range of activities that we will undertake. We submit that to our board for approval at each annual meeting. Like all corporations we are required to be financially audited and all our finances are required to be on the public record and submitted to the board of directors for discussion. So it is very much a governance kind of model that you would be familiar with in the Australian context.

Moving then to the second issue, the question of the number of ratifications and the question you asked in relation to which states in the Arab League: if I could take that question on notice and submit written information. I do not have the information available, but I can confirm, as you suspected, that it would expand into the African region in terms of the membership of the Arab League.

On your third question with regard to the issue of sovereignty—whether a nation-state would surrender a component of its sovereignty to any regional mechanism and what the implications of that may be—I think the obvious answer for me to give at this stage is that I cannot talk about that much in detail, only in theoretical terms. In this instance, each nation-state would consider the requirements of what a regional charter would entail and the responsibilities and obligations placed upon the nation-state and make a political decision about whether it wished to invest its own sovereignty in joining those organisations and being bound by those obligations. As Attorney, you obviously had responsibility for that with regard to international law and Australia's involvement and ratification of various treaties and the obligations that were placed on Australia, which clearly is an investment of state sovereignty into those types of

organisations, and the utility or otherwise of Australia's actions in doing so. I am not sure that that answers your question, Deputy Chair.

Mr RUDDOCK—It helps to flesh out that there are sensitive issues that we need to be cognisant of as well in looking not only at how we address our own involvement but at how we deal with other countries that are going to have like issues, particularly in the context of looking at the discussions we have had about how in the Pacific, where national institutions are totally unrealistic in terms of the size of the country. We now know the populations of Tokelau and Niue, and we are talking about 1,500 people. Setting up those sorts of institutions, in priority, is highly questionable. But if you are part of a broader body that had some cognisance of some of the delicate issues of sovereignty and culture, you might well be able to have a body that is seen to be—and I have used these terms before—local, regional, collegiate, consultative and advisory. That may well be something that would be more acceptable as a starting point.

CHAIR—We only have a few minutes left, so could you please make your answer brief in case others have questions.

Mr Fitzpatrick—We would absolutely accept the point that you have just made, Deputy Chair, about the institutional capacity of some states to create a viable national mechanism. The states that you have just indicated are the ones that would be unviable. However, I would not subscribe to the statement that that writes off national human rights institutions in the Pacific. I have mentioned those states that I think do have the institutional capacity, and there are quite a number of those.

To recall my earlier statements, access to justice is best served by a national mechanism rather than a regional mechanism. Where, though, there is a lack of institutional capacity, I think you quite right—there needs to be some form of regional response. If there is a possibility of a regional mechanism that embodies the issues that you have just talked about and can deal with the intersection of culture and human rights in a way that is respectful, I think that should be supported. I do not think it is an either/or scenario in this instance.

I think part of the Asia Pacific Forum's support of regional mechanisms should be to provide regional responses within the intergovernmental body of the Pacific Islands Forum Secretariat. That is strategic choice on our part, but I think the question that you raise—will states surrender sovereignty to a regional mechanism?—is an open question at this stage in the Pacific. We feel in the short term that we can offer the best available service through the intergovernmental mechanism that already has an approved Pacific plan that indicates that human rights are part of that component and target.

Finally, I think that the questions that you raise, Deputy Chair, about sovereignty will increasingly be raised for those states that are not part of a regional mechanism, given that we will see more regional mechanisms in the region. I think it would be quite legitimate for the Secretary-General of ASEAN to start having questions, as many other regional mechanisms do, about the absence of regional mechanisms in the rest of the Pacific. Clearly the questions that you raise are the ones that will need to be answered.

CHAIR—Are there any other questions?

Senator MOORE—I have a lot of questions. My first one is: can you expand on the funding base? You indicated at the beginning that you have sought funding from other areas. I would really like to know the details of that. The second point—and I will probably run out of time, so it can go on notice—is to do with the role of Australia in the whole process. There have been a number of concerns raised in many submissions about imposing human rights on areas. I know that the APF has no intention of doing that, but I think some further discussion about how you are able to work most effectively with people rather than actually telling them what to do would be useful.

Mr Fitzpatrick—I will be very quick. Again, I would be happy to supply detailed information to you in relation to the funding base of the APF and will do so.

Senator MOORE—That would be fine.

Mr Fitzpatrick—We have been successful in raising funds from governments within the region, so we have significant moneys coming in from governments within the region, such as India, Thailand, South Korea and Malaysia, over and above the Australia-New Zealand nexus—

Senator MOORE—Any Pacific nations?

Mr Fitzpatrick—and then from governments outside the region. We also have moneys coming in from philanthropic organisations. Australia's contribution is currently slightly under 30 per cent overall.

Senator MOORE—New Zealand?

Mr Fitzpatrick—Significant—multi-year funding of three or four years. On the second question you raise about imposition, from the APF's perspective I underline that we do not see ourselves as imposing anything. We work with governments who invite us to come in to establish national human rights institutions. We provide the best possible advice we can on the effectiveness of those institutions. With regard to our member institutions, the national parliaments have already vested them with a specific mandate to do X and with powers to do Y. Our job is simply to make sure that those individual institutions can do that job as effectively as they possibly can. That is unusual, in that it allows us to bypass what may be politically sensitive issues.

I will give one instance as an example. The Indonesian human rights commission came to us for assistance with regard to forensic investigation skills. They had uncovered a number of mass graves and they wanted to be provided, by the APF, with forensic medical skills to be able to determine cause of death and perhaps further information about who may have been the violators in that instance.

Senator MOORE—Could I ask: why would they come to you for that?

Mr Fitzpatrick—Because they did not have, at the national level, the skills and the ability as an institution to effectively investigate a mass grave.

Senator MOORE—I am sorry, but what would stimulate that request to the APF as opposed to the Australian government or the Australian Federal Police? It is just an interesting thing for me to know why that request, on such a specifically scientific issue, would go to the APF.

Mr Fitzpatrick—I suppose for a number of reasons. The first is that the APF has a kind of menu of training that we provide—investigation related skills. A component of investigation is forensic investigation related skills. Secondly is the almost daily contact that we have with these types of institutions. It is much easier, I think, to make that request to a member institution. The third thing is that we are best placed to provide those types of services; we may not be the best-placed organisation but we take it on as our role within the APF secretariat to then try to source that expertise wherever it may lie. The majority of times, I am pleased to say, that expertise lies within the membership itself. So we very rarely use external consultancies. We can draw the expertise from another member institution. The Philippines, for instance, has a forensic medical unit—located within the Philippines human rights institution. They have doctors trained in forensic medicine—investigative medicine. So we can go to the Philippines commission and say, ‘Can you please release these staff and make them available to the Indonesian human rights commission for further assistance?’

Senator MOORE—Thank you.

CHAIR—Unfortunately we are going to leave it there. Thank you very much for coming along. Perhaps we should rename you APF CSI after that last answer! I certainly appreciate the work that the APF does, and I think it is testament to your efforts when you see the increasing membership of the forum from a very diverse range of countries across that region. Please pass on the compliments and congratulations of this committee on the work that you do. Thank you very much for taking the time to come and talk to us today. No doubt we will be in further discussions with you in the future.

Proceedings suspended from 12.37 pm to 1.38 pm

MOWBRAY, Dr Jacqueline Frances, Program Co-Director and Centre Associate, Sydney Centre for International Law

CHAIR—Welcome. As you can see our numbers are a little bit smaller, but we do have various people doing different things over lunch. Please excuse stragglers walking in, but I think it would be good to begin. Unfortunately, we do have a timetable that we need to stick to. Before I ask you to make your opening statement, I need to go through the formal part. Please do not be frightened of it. It is a formal process, but we still wish to have a full and frank discussion. Although this committee does not require you to give evidence on oath, you should be aware that these hearings are official proceedings of the parliament and therefore have the same standing as proceedings of the chambers themselves. The way we conduct this is, if you wish, you can make a few opening remarks and present an oral submission, and then we go into questions and answers. We have a bit of a discussion, depending on the time. At this point, I am happy to hand over to you and invite you to make a few remarks.

Dr Mowbray—I should say initially that our numbers are slightly depleted as well. Unfortunately, Irene Baghoomians could not make it due to the hectic start to semester. I will keep my opening remarks fairly brief as I do not have much to add to what was in our written submission, which obviously we canvassed with our colleagues throughout the Sydney Centre for International Law.

There are three key points that we would like to make. The first is that we think it is quite exciting that this discussion is happening at all. Obviously the trajectory and development of human rights and human rights protection in the Asia-Pacific region is not over and there is a process of evolution that is going to occur there. We think that even just having this discussion about that at the moment is really useful in moving that debate forward, discussing what might be special about human rights in Asia and what role Australia in particular can play in the furthering the protection and promotion of human rights in that region.

Having said that, we would also like to emphasise a cautionary approach in that, while accepting that obviously we would like to see a stronger protection of human rights in this region, there are reasons why Asia-Pacific is the only region, if we look very generally at the globe, in which we have not had a regional mechanism develop or evolve until now. We referred in our submission to some of the reasons why that might be the case, and obvious reasons include the size and diversity within this region, certainly compared to regions such as Europe. So while we are very excited at the prospect of moving this forward and coming up with something, we think it needs to be done carefully, obviously, and it needs to be done in a sensitive way, taking into account situations in the region.

We would like that to be a successful process and a process that countries in the region feel that they can buy into. If we think about a whole lot of other human rights institutions, there are often problems if those institutions have developed very quickly and countries and individuals do not feel they have bought into that process. Obviously all of the wrangling at the international level over the Commission on Human Rights and the Human Rights Council and how we can make it better—it would be nice if we could take a fairly cautious approach to evolve something that works for everyone in the region. That is why we have recommended particularly working

within the existing framework of a whole lot of different movements and organisations to promote human rights in the region rather than coming in over the top and saying that we will come up with some whizzbang new institution.

The other reason for caution is also to be somewhat circumspect about Australia's role in the region and how Australia might be perceived. Obviously there are hugely positive influences Australia can have here—Australia taking a leadership role here can be enormously positive—but I think we also need to be mindful of not appearing to put our agenda onto countries in the region that may have very different priorities and very different ideas. The last thing we want to do is to make it appear that Australia is engaging in some sort of an imperialistic exercise of exporting our values to the region. So while we are enormously positive about this, we would recommend a fairly cautious approach, an evolutionary approach drawing on initiatives that are already out there.

My third point flows from that. You will have seen in our submissions that, while it is very important to encourage dialogue and discussion with regard to an Asia-Pacific wide mechanism, we think there might also be possibilities for perhaps progressing this project of human rights mechanism somewhat more quickly or extensively within a subregional grouping. In particular, we thought the Pacific has more commonalities of culture and outlook and pathways of dialogue that are already open; we should perhaps focus on that in a slightly different way from a more general Asia-Pacific human rights mechanism. They are our three key themes.

CHAIR—Thank you for that. From reading your submission those themes very much come to the fore. When I was reading it I appreciated the cautious approach. I think that anything we recommend must always be done mindfully and respectfully with regard to the member countries of any mechanism or organisation we might develop; that is essential. My sense of the submission is that you talk about a cautious approach. It was almost as though you did not really think this would work because of the differences within the region and within different countries. My question is: is doing nothing an option? Or do you support that we do need to be progressing this in some form, whether it is within smaller regions, whether it is subregions? Given the situation in the Asia-Pacific now can we really afford not to progress anything or do you think that that is actually a genuine option?

Dr Mowbray—We are quite clear on this. I do not think that doing nothing is an option. There are obviously some very grave human rights concerns in the region, and they have implications for Australia purely because we are part of that region, but also obviously there are security implications as well. More generally, there is a problem that there is not a regional mechanism within Asia-Pacific. I think we have let the discussion about Asian values, Asia being a bit different and Asia focusing on economic development and that once we get that up then we can progress human rights in Asia drag on a bit too long. We still have echoes of that coming through. Clearly in the economic situation we are in now we do not want to slip back into that discussion, the idea that we will solve this financial crisis and then progress human rights. If we want to see progression of human rights in this region—and I think that is everyone's aim here—I do think we have to do something. Now is probably a particularly good time to be doing something. It is quite nice and timely that it comes at the same time as Australia is starting to consider the bill of rights issue. Regardless of what may come of that debate I think that sets Australia up very nicely to say, 'We're considering this for ourselves internally, so we also want to look externally to the region.'

In response to your comment that we are almost saying that we do not think it will work, I would put it slightly differently. I would say that we think it will work if we do it in the right way. It is very easy with these things to race in and set something up and have great ideals and then, for whatever reason, it does not work. Fixing an institution up once you have established it is much more difficult than creating the groundswell of support for it first. So I think it can work if we do it in the right way, but we have to start doing that now. We would have to start progressing things as much as we can now because this is going to be a long process. Our opinion is that this is going to be something that is going to take a while to achieve but that is all the more reason to start now and to progress it carefully but as much as we can.

Mr RUDDOCK—Can I ask you what you mean by commencing a regional dialogue. It is at the end of your submission and it is really one of the points. But, if you are going to argue that there should be a dialogue, I would like to flesh out a bit more about what you expect of it and how it might be engaged. I have seen some other submissions that have suggested dialogues. I do not know whether you are building on theirs, but I just wonder what you envisage.

Dr Mowbray—Yes. ‘Dialogue’ certainly is one of those fluffy words that can be thrown in but, in terms of expecting concrete steps, we need to clarify it. I suppose there were two things in our minds. The first was dialogue, as distinct from Australia coming up with its own idea of what this mechanism might be and how it would work without, obviously, a very broad process of consultation with other people, other countries. The second builds on some of the other things we have said in our submission about using existing forums like the Asia Pacific Forum and ASEAN, and starting a process of discussion within those forums but one that may have implications more broadly. So the ideal that we could imagine coming up with would be some mechanism or some charter or some institution that would cover the entire region rather than just fragments of the region as ASEAN or other Pacific Islands Forum or other organisations do. So I suppose when we talk about regional dialogue we partly mean putting the debate within those forums, but also, I suppose, pursuing through diplomatic channels and discussions with member states or countries within the region what their priorities or interests or concerns in this area might be.

Mr RUDDOCK—But you did mention commencing a dialogue with Australia’s partners in the Pacific region first. I mean, your comment now suggests that it ought to be across the totality of the region.

Dr Mowbray—I suppose our ultimate sense of where this is headed is that it would be across the region but, in view of our idea that we may want to take a cautionary approach and we feel that perhaps prospects for a Pacific regional or subregional mechanism might be more promising, I suppose we see that as potentially a testing ground or a starting ground for that sort of dialogue, which is not necessarily to preclude it happening in other forums as well.

Mr RUDDOCK—The reason I have asked this is that the Human Rights Council of Australia, that we are going to see, has argued that there ought to be a dialogue—I think they want to conduct it! But I think they were suggesting that it might flow from or be built on the dialogue that we have had over the last 10 years or so with China and have now commenced with Vietnam. They are bilateral dialogues in which we forsake more direct criticism of potential or alleged human rights abuses to have a discussion. I am not sure that, in terms of a lot of the views that have been put to us, where you need to have ownership of what emerges—either as a

national institution or a subregional body, given that some of the countries are too small to have their own—it is desirable to have Australian fingerprints all over it when what you are desirous of getting is in fact national ownership, particularly if you are going to deal with delicate issues like sovereignty and so on. I just wonder, in that context, whether I am helping you to flesh out what you might mean by ‘dialogue’.

Dr Mowbray—I do not think we were using dialogue as any particular term of art or were trying obliquely to refer to any existing discussions or moves that might have taken place or might be on the table. What we are getting at, I suppose, is a very broad need for consultation and for buy-in from a range of stakeholders, to use the language. As you say, our sense is that this should not be something where Australia wades in and puts its fingerprints all over it—which, I think, is reflected in our idea that it should be an organic, evolutionary kind of process. And, in our view, at least the start of all those processes should be talking about things, putting them on the table and discussing what might work and what different countries’ agendas and views might be. So certainly we were not referring to anything specific, and we probably did not have any specific model in mind, but we were including the broad idea of consultation and deliberation in decision making.

Mr RUDDOCK—You have taken the view that a binding adversarial human rights court is perhaps not appropriate for this region, and I would agree with that. You would see it as being a staged approach to developing these issues where you might hope first to get a conciliatory consultative model of the sort that the Australian Human Rights Commission operates in place either in a subregion or as a national institution.

Dr Mowbray—Very much so. The starting point in a lot of these discussions tends to be some sort of charter or court. In our view, it is a relatively long way down the track before you can get to that sort of instrument. It might be possible to get agreement quite early on the content of that instrument but I would imagine it would be fairly minimal. Equally, I think going the further step and getting to a court stage would just be setting this project up for failure in terms of non-compliance or people not even signing up in the first place. We would have a vision of a commission that has, precisely as you have said, some sort of conciliatory, consultative role. Perhaps over time, as we get more consensus and more trust in each other and more trust in the commission and what it does, that commission will evolve those responsibilities and increase them.

Ms ANNETTE ELLIS—Thank you very much for being part of the inquiry. I want to pose a question from a slightly different angle, and that is to state the obvious. The countries that need to adopt human rights are generally the ones that are least likely to want to do it on their own; therefore, we have the choice open to us of how we work with them. I noticed the work of the Sydney Centre for International Law and how it operates within a wide range of countries around the region through teaching and collaboration and so on. In the most difficult of countries that we are dealing with—and we have a few of them—how would you describe the best way to infiltrate that wall? A moment ago, you mentioned that Australia did not necessarily need to have its ‘fingerprints all over it’.

I am not talking about it being at government level, because at government level it may be that very difficulty. I am talking about the more horizontal approach of like-minded citizens and officials being able to collaborate. If you can bring that influence to those countries, how can we

expect that influence to then work its way up? That seems to me to be the most realistic but, at the same time, most difficult thing to do. Recently, I visited a country—not necessarily in this region—where they had a human rights commission, which we were able to visit, but it had been established by the government of the country. People we met suggested that that could in fact be a little bit a problem. What are your views on both those aspects?

Dr Mowbray—If I can take the second question first: I think that is a very real problem. Human rights has become very trendy and something that governments in the region need to be seen to be doing. It is precisely that co-optation of this human rights discussion by governments who are really perhaps not interested in the ideal of human rights as we might envisage it is a real problem. Human rights is effectively just a language and it can be used one way or it can be used another, and that is problematic.

Perhaps the answer to that lies in the answer to your first question. I agree entirely. In our experience the sorts of projects that have worked very well in achieving institutional change, increased respect or even understanding of human rights are quite small scale projects that are targeted on the ground. A lot of our members have done training projects in various countries in the region that start out at a reasonably grassroots level. They are working with community organisations that might be active around particular issues, but that may not have necessarily articulated that in human rights terms—they have been working for better housing, better health, lack of arbitrary detention and that sort of thing. To some extent going in and working with those organisations can create a human rights awareness that was in effect already there but we can sort of work with that knowledge.

Other projects go in at a lower level within the bureaucracy, such as training police officers or military officials. They are often the groups that are derided as engaging in massive human rights abuses—and often they are. But when you come in at that base level of individuals you are not dealing with all those problems of governments feeling that their record is on the line. You are simply dealing with individuals who are genuinely interested in what the obligations under international law are, why in a country like Australia we think there are certain standards and that human rights are important, how that is useful and what implications might that have on a day-to-day basis. I have to say that I was one of those people who was initially quite sceptical about that. But I think that it has been shown that working with people on that fairly basic, non-confrontational level can gradually and incrementally build up a culture of awareness of these obligations that will, as those people rise up in their positions and as there is more of a groundswell of understanding of human rights, then have more of an impact at higher level, rather than raising it straight on and saying, ‘Here are these terrible human rights abuses; what are you going to do about it?’ We are focusing on achieving change on the ground.

Ms ANNETTE ELLIS—The level above that, in my mind, would be exchanges between academics and influential office bearers of one kind or another from some of these countries. Do you have anything from your experience at that level that you could share with us? I could imagine that in some cases it may be very difficult for those individuals to actually be allowed out again. I would be interested to know what your view is, because it is that second level of not direct government but definitely of influential contact.

Dr Mowbray—Yes. Earlier this year we had a delegation of judges from China who wanted to come and talk to us about issues of corruption and related human rights issues. In a sense it is

a little hard to judge how effective that was because they are obviously constrained by representing the position that they come from. The discussion we had with them was enormously frank and open and they appeared genuinely interested, from an intellectual perspective, in how human rights are protected in this country. In some ways they were quite surprised that we did not have a bill of rights and they then asked how that worked and we got into complicated discussions about common law and those sorts of things. So it is a little difficult to say exactly how effective those are. But what I would say is that firstly those people are interested just at an academic and intellectual level. I suppose as an academic I would say that any exposure to those kinds of ideas and those sorts of practices is something that people always take on board and build into their perspectives in what they do in their lives. Secondly, I suppose there is just the fact that that discussion has been there and that those opportunities have opened up. We obviously have their contacts and they have our contacts and, again, that probably contributes to getting different perspectives on things—as opposed to simply the one perspective that you have been given. Certainly I cannot say that they came and did this and suddenly when they went back all of this happened. I think that it is a gradual thing but that opening of horizons and that discussion was useful.

Ms ANNETTE ELLIS—To finish, can I make the observation that, having lived some years ago in a country similar to what I am describing, it was very interesting that we knew people in academia or similar areas who were always open to very quiet discussion, albeit that they had to be careful in having it. It is interesting to know that it can operate at that level, given that it is fraught with difficulties in some cases. There are influences there if we can use them.

Dr Mowbray—Yes, absolutely.

Senator MOORE—Dr Mowbray, I know you have looked at the submissions because of the background. Consistently raised in them is the issue of Australia's role and the fact that in the past perhaps it has not been as effective as it could be because of the perception of imposing oneself with the best will in the world as opposed to working cooperatively and sensitively. Certainly your submission talks about the need for dialogue and for working effectively in that way. Is there any particular model or any particular way that you think that could be done in a cooperative way as opposed to as an imposition from outside?

Dr Mowbray—I suppose from our perspective the key point that we would emphasise is that Australia is coming to this as a country that also has human rights issues, obviously, as no doubt you will hear later today. We have a whole body dealing with these things. I think the problem with the debate is that we tend to focus—or the media certainly focuses—on countries with incredible human rights abuses. In that debate is an implicit assumption that we are okay, which is not, of course, what we are saying. From that perspective I do think it is very useful that we in Australia are having much more of a debate about human rights on the national level as well. I think that provides a very nice starting point for going to other countries in the region and saying, 'We are interested in our own national interest as well. We recognise that we need to strengthen our own national institutions. We also want to play a role in strengthening those throughout the region.'

I would not say we have turned our mind to any particular model or way of doing that. We would emphasise more the core concept that we are on an evolutionary path as well. Human rights is an evolutionary concept with the idea of constant progression and achieving higher and

higher standards of protection. So the starting point has to be that we are all somewhere on that path and that we are not positioning ourselves any better or worse than other countries in the region. Certainly, in having that discussion, this distinction between economic and social rights and civil and political rights is useful and very significant in the region in that a lot of countries in the region might have very good levels of protection in terms of economic and social rights—perhaps better than we have. So there is room to acknowledge that diversity and acknowledge that we are part of the story as opposed to leaders.

Senator MOORE—Regarding the countries that are signed up and have been ‘leaders’ of this issue in both the Asia and the Pacific region, some of those have their own issues. In the context of the current discussions encouraging other people to come on board, has there been any particular impact on the fact that some countries—like Fiji, Indonesia and the Philippines—are all very early signatories to a whole bunch of conventions and have been working in this area for a long time but from outside can be seen to have some particular issues? If you are encouraging more people to get involved, is there any reaction from people saying, ‘Well, look what’s happened in this country’?

Dr Mowbray—I think the key point there is that human rights protection is not just about signing up to treaties—and perhaps does not need to be about signing up to treaties at all. It is much more a cultural thing. In line with our suggestion that any kind of charter or court should be a much later stage in the process, I think it is completely open to Australia and to human rights advocates everywhere to say, ‘Yes, these countries may have signed up and yet have enormous issues,’ which in a way merely highlights the need for perhaps more discussion of these issues and more development of a culture around human rights rather than ticking the box of having signed this treaty.

Perhaps we need some sort of reconceptualisation or reframing of what human rights protection in the region might mean—rather than going out and selling it as treaties and courts and binding decisions, selling it as national institutions working with people to protect certain values that perhaps people have not necessarily articulated in rights language but are nonetheless important to different countries.

Senator MOORE—I take the point, but all the countries I have mentioned also have their individual national institutions, which is one of the things we are pushing as being one of the building blocks towards the process. I mentioned particularly those which have been very early champions of having those institutions.

Dr Mowbray—Yes, which I suppose comes back to the point about co-optation of institutions or setting up institutions that are not effective or worse. It comes back to emphasising human rights at a more fundamental level than what we have—to focus on it as principles or values. I completely take the point that we have human rights institutions in particular countries, and yet we have not got to where we need to be. Again, I would say that should encourage us to reassess what we are doing, what our approach is and why that has happened in those particular cases. Perhaps the best organisations in exploring that issue are really non-government organisations who are on the ground and who have a sense of why that has been set up but it has not happened, a sense of what is going wrong. Certainly, it would need some sort of grass-roots input as to what was happening there. They may have—and I expect do have—very interesting ideas of how to progress that.

CHAIR—Thank you very much. Once again, we really appreciate you taking the time and I must congratulate you on flying solo. You did extremely well even though your colleagues unfortunately were not able to be with us. The submission is very interesting and it has highlighted many of the issues that we have already heard about from earlier submissions this morning and in the written submissions that we have received. We appreciate that.

Dr Mowbray—Thank you for the opportunity.

[2.14 pm]

BRANSON, The Hon. Catherine, QC, President, Australian Human Rights Commission

GOLDIE, Ms Cassandra, Director, Sex and Age Discrimination Unit, Australian Human Rights Commission

ROBINSON, Mr David, Deputy Director, International Programs Unit, Australian Human Rights Commission

CHAIR—I welcome members of the Australian Human Rights Commission. I also welcome the Hon. Catherine Branson; I think it is the first opportunity that you have had to meet with this subcommittee since you have taken over your position. On behalf of the committee I congratulate you. We hope to have a very productive and good working relationship with you and the commission.

From the submissions we have received, the topic of this subcommittee is a very interesting one. The committee has very broad parameters and there are many ideas, views and options about how we might look at a regional mechanism. It is particularly significant to have you presenting to us at this inquiry given that, in parallel with this, we are actually conducting our own internal—domestic, if you like—inquiry into human rights issues, laws and mechanisms within Australia, and there is quite a nice synergy between the two. As both inquiries progress it will be interesting to see what comes out of them and how we can work in with your consultation and take some of those ideas into our inquiry. This discussion will be particularly interesting because we will have a discussion in the regional context, but bearing in mind the domestic focus.

I will begin by stating that although this committee does not require you to give evidence on oath you should be aware that these hearings are official proceedings of the parliament and therefore have the same standing as proceedings of the chambers themselves. Notwithstanding that formal note, we do hope to have a fairly full and frank discussion about these matters. I invite you to make opening statements after which the committee will ask you some questions.

Ms Branson—I thank the subcommittee for inviting the Australian Human Rights Commission to appear here today. The topics that I would like to address in my short opening remarks are, first, models of human rights protection mechanisms that are available in the Asia-Pacific region and, second, what role the commission could play in development of those mechanisms.

Turning first to models of human rights protection mechanisms, as we noted in our original submission to the subcommittee, the Asian and Pacific regions face quite distinct issues in relation to the protection of human rights. The development of human rights mechanisms in Asia, and particularly South-East Asia, is substantially further progressed than in the Pacific region. For this reason the greater part of our submission recommends a series of strategies aimed at building and strengthening mechanisms for human rights protection specifically in the Pacific region. These strategies are: supporting the progressive development of national human

rights institutions; supporting processes to develop a regional human rights mechanism; promoting ratification of international human rights standards alongside appropriate education about human rights; and, finally, providing civil society organisations with practical support to promote human rights. It is important, we think, to note that these strategies are not mutually exclusive. Rather, they are all important and necessary for strengthening human rights protection in the region and maximising the ability of organisations and governments in the region to access human rights mechanisms locally.

We also recognise that these strategies may need to involve government and public sector bodies, as well as civil society organisations, and we believe that this approach will enhance and strengthen Australia's institutional and personal linkages in the Pacific. As to which models should be adopted by particular Pacific states, we consider that that is an issue for each state to decide. Australia's role, as it seems to us, could be to provide them the support they need to be able to make such decisions.

Turning to the role that the Australian Human Rights Commission could play, the commission has the willingness, the capacity and the expertise to play a more active role in the Asia-Pacific region in developing human rights mechanisms than it currently plays. With appropriate support the commission is well placed to take a more active role, particularly through technical cooperation and active participation in substantive regional human rights activities. The commission already manages well developed human rights technical cooperation programs which provide bilateral technical assistance to government and non-government organisations involved in human rights and government work. These technical cooperation programs are funded externally from the commission by AusAID and are currently operating in China and in Vietnam. The activities in China and Vietnam have been highly successful and we encourage the government to consider whether it might wish to expand the programs into other countries in Asia, in particular in the Pacific region. The commission frequently receives requests for bilateral technical assistance on human rights issues from institutions in both Asia and the Pacific. More often than we would wish—indeed, most often—we are unable to respond, due to a lack of capacity in the commission.

I am pleased, however, to be able to say that within the last 48 hours we have been advised by AusAID that the commission will be provided with funding specifically for the purpose of providing a series of short training programs, across I think nine Pacific countries, to progress disability issues in those countries. It seems to us that greater participation would be of benefit to regional partners and to the Australian government's interests in the region. The commission's participation and positive engagement with our neighbours on human rights issues is a valuable way to strengthen Australia's relationships in this area, and indeed it adds to our own knowledge and our own capacity to undertake our domestic work.

That is all that I wish to say in opening, but of course we are very pleased to answer such questions as you would wish to put to us.

CHAIR—Thank you very much. I am sure there will be a number of questions. I might begin by first of all talking to you particularly as a national human rights institution. There has been a lot of discussion in previous evidence that has been presented today, and in the submissions to the committee, that broad based, sweeping mechanisms that cross a whole region really do not have the same impact as a national human rights institution and that therefore it would be better

to simply focus on establishing institutions in each of our neighbouring nations. I wonder whether you would like to make a comment about whether you see your model as the most effective—which I guess most people would agree with—but whether there is a role for a regional body as well in promoting national institutions.

Ms Branson—I think the view that I would offer in particular—and it is informed not only by my short time at the Australian Human Rights Commission but also by other involvement I have had in development work—is the importance of countries being assisted to do that which they are persuaded is right for them. In this area, we think that is the appropriate approach—that each country should develop for itself a strategy as to how it wishes to advance human rights protection. There may be a role for Australia to assist them in making appropriately considered decisions by capacity building to assist them in making those decisions. But our principal position is that each country should ultimately be making decisions for themselves and Australia should, if it wishes, stand ready to assist them both to have the capacity to make those decisions appropriately and to support them once the decisions are made.

National institutions have benefits such as often being more readily accessible and being closer to the individual nation but there are resource considerations for countries to consider. Regional mechanisms can be helpful but they carry with them perhaps some difficulty of less ready accessibility to ordinary citizens. Particularly in the Pacific, there will be an issue for citizens having access to mechanisms. I am not sure if either of my colleagues wish to add to that answer.

Ms Goldie—No, thank you.

Mr Robinson—No, thank you.

CHAIR—Are there any other questions?

Senator HANSON-YOUNG—Yes, Madam Chair. Throughout the various submissions we have received, different organisations have highlighted specific human rights concerns in the broad region. Today we are focused quite a lot on the Pacific, and I appreciate that. From the commission's point of view, what do you see as the glaring human rights concerns within the broader region and, in terms of Australia's role, what is the best approach? Is it through a regional institution or working locally with individual nations to work through those issues and highlight them? At the same time, Australia has our own human rights record that we need to be aware of.

Ms Branson—I fear my answer to that may not be as helpful as you would wish. It is not the Australian Human Rights Commission's mandate to maintain a surveillance of the human rights records of other countries.

Senator HANSON-YOUNG—I appreciate that.

Ms Branson—As I think the previous witness said, all nations have human rights issues and Australia is one of those. Our interest, if that is the mandate given to us, is in working with national human rights institutions. If the smaller states are starting with more modest proposals, then there are more modest things that can be done. An ombudsman can play an important role

in this area. It is not necessary to move immediately to a Paris principles compliant national human rights institution although, of course, we would urge countries to move ultimately to that step. Our interest would be in working bilaterally or under the umbrella of a regional institution with other nations to assist them with human rights issues to the extent that they were seeking that support. I do not think we are in a position to make a comment on the human rights records of other countries in the region.

Senator HANSON-YOUNG—So you do not feel that the commission is in a position to comment on, say, women's rights as something that we could work with other nations on or how we respond to climate change in ensuring that people's rights are not violated in whatever Australia's response is to working with those other countries? They are the issues that have been flagged by previous witnesses. From my perspective, we see our role as promoting human rights within the region and, whatever mechanism we take to do that, surely we need to be aware of not only the impact of the human rights issues in Australia but also perhaps what we contribute to the region as well.

Ms Branson—Thank you for that. Australia does have, through its Australian Human Rights Commission, a track record of working, as I mentioned, particularly in China and Vietnam although some work has been done elsewhere. The methodology that we have found particularly valuable is to allow our capacity to provide assistance to be known, to allow institutions, agencies or non-government organisations to identify where they think that expertise that we have can assist them and then to work with them. I might ask Mr Robinson to speak a little bit more about that in a moment.

I can identify for you the sorts of areas in which we have done what we think is really quite successful work in the past. That involved assisting other nations in areas around complaint handling and family violence and abuse, including in an indigenous context. These are things which we have in fact done. Others include human rights monitoring, the delivery of technical cooperation programs, consultation and policy development and education and capacity building regarding fulfilling international human rights obligations under the various conventions. We have worked on issues to do with women and the rights of women and children. I can give you that general information. If you would like, Mr Robinson can give you some more detail about that.

Mr Robinson—Of the two main human rights technical cooperation programs which the commission manages—they are in China and Vietnam—I will talk about China first. It is the largest of the two. The methodology is not so much about highlighting or identifying the issues of human rights concern in the other countries that we should be working on with them but rather about encouraging the partner countries to identify their own concerns or priorities in human rights. The next step is to work together to identify expertise and skills in Australia that can be used to assist those countries, China and Vietnam, in advancing their human rights priorities through various reform programs, pilot projects and whatever.

Senator HANSON-YOUNG—Can I clarify something? Is that work being done through arms or branches of the different government departments or are you also working with non-government agencies?

Mr Robinson—It is primarily government agencies at this stage, but, particularly in the China program, as the program has developed over the years and relationships have become closer and the other side more comfortable with the program, it has tended to expand further and involve a number of civil society and NGO players. In China, for example, we work with quite a number of government agencies—legal sector agencies—but we also work with agencies like the All China Women’s Federation, the peak women’s rights body in China. We also have in recent years started working with a community based legal aid organisation in Beijing on advancing the rights of migrant workers. The program has very much expanded to incorporate a wider range of not just government but civil society players.

Senator HANSON-YOUNG—The reason that I asked that in particular—going back to the presenter before you—is because of the idea that even if we have human rights institutions created around the region they might not necessarily be there to uphold human rights and provide avenues for grievances or complaints or whatever in terms of human rights. They might instead be for ticking that box and saying, ‘Yes, we’ve done this.’ The way past that, I guess, is to ensure that there is this balance of independence.

Ms Branson—The quality of institutions and what they are doing will vary dramatically across the region. But because of your interest in gender and women’s rights, I will invite Ms Goldie to speak to you about some work that she did previously with Indonesia, which will address some of the concerns that you are raising.

Ms Goldie—I will share a couple of examples with you, one in which we were not able to progress further collaboration and another example which deals with some of the issues that you have highlighted about the link between these international conventions and real change on the ground—which is an important question; it is one that we are all challenged by every single day.

The first example is how, through our domestic work, in our work with the Asia Pacific Forum, we have built some very positive relationships with commissioners from the Indonesian Human Rights Commission. There has been some change in those commissioners and we are aware there is a very active commitment from that commission to have a much stronger role in promoting gender and women’s rights in the country. We shared with them the experience we have had at the Human Rights Commission in the way in which we have gone about engaging with the community in identifying the issues and supporting women’s participation in the work of the commission. You may be aware that Elizabeth Broderick, the Sex Discrimination Commissioner, and I conducted a national listening tour at domestic level. Perhaps some of you were present at some of those discussions. We shared with the Indonesian commission just how powerful we felt that process was, both in terms of us being able to articulate at the national level some of the key issues for women in the country in Australia and also for the way it provided an opportunity at many levels for both men and women to have an open discussion about how on track we are in protecting women’s rights and promoting gender equality. So that bottom-up impact was crucial as well. The commissioners were very keen to hear more about that. Unfortunately, we had to decline an invitation to go to Indonesia and work more closely with them due to the constraints. As the president highlighted, the commission is very aware that, with the resources we have, our primary mandate is at a domestic level.

The other example, which again highlights the link between the conventions and how they impact on the ground, is the work that the president referred to in relation to disability rights. As

you would be aware, Graeme Innes, who is the Disability Discrimination Commissioner and the Human Rights Commissioner, was very actively involved in all the work to lead up to and celebrate the adoption of the Convention on the Rights of People with Disabilities. It was a very significant event internationally. Of course, there was an enormous amount of work that went on behind that, from governments and non-government organisations. And our natural partners in that work are the Pacific region because that is the region in which we typically engage in terms of international processes. Arising out of that work, those relationships led to the discussions with our commission about: 'Okay, we have the convention—what does that mean for us on the ground?'

Senator HANSON-YOUNG—How do we implement it?

Ms Goldie—That is right: what does this really mean for people who have nothing, who can't get education, who can't get food on their table? A number of the Pacific countries already have disability persons organisations and there is a network called the Disability People's Forum. We partnered with the Disability Rights Unit and the Disability Discrimination Commissioner partnered with the network to propose to AusAID a process of trainings, a series of trainings, that will happen at a country level. That will involve a strong representation from civil society—there will be 12 representatives from people with disability organisations. There will be a strong commitment to gender balance—everybody was very clear about that. It will also include some government representatives because, as I think we are all aware, to really impact on human rights we all have a role to play. I think we will learn a lot from that engagement with our colleagues in the Pacific region and we will look forward to being able to report with more accuracy, I suspect, on some of the broader issues in terms of disability rights and what the Australian Human Rights Commission and Australian more generally could do to respond to some of the learning we will do out of that technical cooperation initiative, which we just had approved 48 hours ago.

Senator HANSON-YOUNG—I have a question that is jumping topics because it is more about the practicalities of engagement with other nations. When you are talking about experiences and therefore giving support on the ground to people who want to implement these things and make them real for their own communities, do you feel that the Australian Human Rights Commission is in a good place to have those discussions and share ideas because you are seen as relatively independent from the Australian government? My reason for asking that is that there have been a number of comments about how we do that: if Australia's vision is to see a region that celebrates, upholds and embraces an idea of human rights, and the principles and values that we believe are under that banner, how do we do that without having Australia's fingerprints all over it? Do you feel that the commission is it in a good place because you are seen as relatively independent?

Ms Branson—I think we feel we are in a good place in part because of the number of requests we get asking us to provide assistance. That leads us to conclude that we are seen as a natural source of assistance in our region. People would understand that we are an independent organisation but, to be realistic, they also recognise that we are funded by the Australian government. I think, therefore, that there is a great potential benefit in our doing that. We assist others and we learn from assisting others. We are assisted in operating at an effective regional level in international forums if we can work with our colleagues in the Pacific. And we learn things that assist us in our domestic work as well. We have noticed that New Zealand, with a

smaller commission, appears to have a greater capacity than we do to engage in work in the region. That, no doubt, reflects the different judgments made by the respective funding agencies. But our principal reason for thinking that we can help is that people ask us to help.

Mr RUDDOCK—That is interesting. New Zealand has a greater capacity but with a smaller commission.

Ms Goldie—I should add to those comments that most of the Pacific work that the New Zealand commission has done has been funded by NZAID. For a lot of reasons, which I am sure the committee has been discussing, there has been a lot more interaction within the Pacific region with the New Zealand Human Rights Commission over a longer historical period as well. So to build up those relationships and to be well-placed to then propose how some additional funding could be used is really critical. I think we all know that you have to build relationships if you are going to get it right. As the President has highlighted, we have that potential, I think, amongst many others in Australia, to be partners in supporting greater human rights protection at a regional level and on the ground.

Ms Branson—Mr Ruddock, you obviously found my remark curious, so I should expand on it.

Mr RUDDOCK—No. I thought that we would see your role expanded by reducing your funding!

Ms Branson—That is a point I think I should make clear: neither the Australian Human Rights Commission nor the New Zealand Human Rights Commission, as I understand it, can do any work of this character without special funding. The entirety of our international work is done on special funding; none of it is able to be funded from our core budget. The New Zealand Human Rights Commission, as I understand it, is working in the same situation. So our international technical assistance is measured precisely by the funding that we receive to do it. I think I need say no more.

Mr RUDDOCK—Anyway, you are about to see how much more mischievous I intend to be! Can I just say that I would be happy for you to take these questions on notice and give me a substantial and considered response rather than just handballing them. These are really quite important questions. If we are going to make recommendations, in resourcing terms, to the government and justify the measures that we might propose, I think we might need to have some idea about measures that have worked, why they have worked and why we might want to further them.

Let me come first to China and Vietnam—where, you have asserted, both of the human rights dialogues have been successful. Let me say first of all that I think, in terms of international politics, these measures were important. But if I was going to adopt them in other circumstances where that was not the issue, in the context of trying to get in place a sound approach to furthering human rights outcomes I would want to know whether we have any measurable outcomes in terms of what we spend on advancing human rights in China and Vietnam.

Ms Branson—Could I just say, Mr Ruddock, by way of clarification, that I was not referring to the dialogue itself. I suspect you were not either, but I would like to have that clarified. Our

technical assistance work grows out of the dialogue but is not the dialogue; the dialogue is a government-to-government process. We were at one recently. I was invited, as others were, but it is ultimately a government-to-government process. The work that we have done in China has grown out of that dialogue. Mr Robinson will correct me if I am inaccurate here. It is approved as part of the dialogue but is then something that is managed independently. Yes, I assert that it is successful. I think you are able to speak about that, Mr Robinson, or would you prefer to take it on notice?

Mr Robinson—I would be happy to make some comments now, but I would also be more than happy to provide further material on notice. By way of practical success of the programs in China and Vietnam, there are some quite concrete things that can be pointed to. But not all is concrete. Some of it is very quantifiable. Some of it, as is the nature of human rights change and human rights reform, involves changes in thinking and attitude on the part of government and decision makers, which is a very long-term process.

The practical successes of the China program arise from the fact that it does have a very practical focus. It focuses on encouraging practical change at the operational level of government officials and government agencies, working in a hands-on way to protect human rights. It brings together Chinese and Australian professionals to exchange information and experience to advance those practical needs that China has in those areas.

One very positive example is the work that has been done under the Australia-China Technical Cooperation Program in the field of women's rights—in particular, domestic violence. The work on this subject area in China has been undertaken parallel with the development of quite specific laws and regulations dealing with the prohibition of family violence and violence against women in China. Our role in supporting that over the past eight years or so I guess has been to a large degree working with provincial decision makers and provincial women's federations in developing and implementing the provincial regulations to give effect to those national laws that prohibit domestic violence. We have been working with different provinces, women's federations, police and other key agencies in those provinces to develop the regulations but also implement them in a practical way through service delivery. I think that, in the time that we have been working with the All-China Women's Federation on the subject area, over 20 of the 30 or so provinces in China have developed very good implementing regulations on domestic violence. The role of this commission and this program, of course, is not the sole factor giving rise to that change, but it has certainly been a positive support in moving those changes forward.

Mr RUDDOCK—We are about to get some further submissions that will argue that there should be dialogue, as previous submissions have. Conceptually, I do not know what precisely is understood by 'dialogue', but it is believed to be important that Australia initiate dialogue to produce change in countries. Essentially, I think the argument is that, as with China and Vietnam, if it was a dialogue we were not seen as criticising human rights performance; we were engaging with them. It is seen to be a more appropriate international way of taking those matters forward. I come back to the question: how do you measure, out of the engagements that we have been in, whether further engagements of that sort are likely to be successful? I do not see anything, other than an assertion to that effect, against which we can make those sorts of judgements at the moment.

I have been involved in these issues since Sir Ronald Wilson and Brian Burdekin. I attended international conferences in which I was told about the importance of national human rights institutions. That is probably 20 years ago, maybe a bit less; I do not know. You are our national institution and you are advocating for other national institutions. If I asked you, looking at your resources—and I assume some of your resources go into commissioners travelling abroad, attending conferences and talking up these issues; I do not know what the amounts are, but there are sums of money—what are the measurable outcomes that we can assert have been influenced by this commitment, would you be able to give me such a measurable outcome?

Ms Branson—I do not think we are working here in an area of science. It is plain that it cannot be measured in a scientific way. But I am sure there are indicators and other assessment processes that can be identified. Because these things do not happen in a vacuum, of course no controlled experiment can be undertaken. But you have asked us if we would like to consider giving you some written material on the topic, and I would like to take you up on that offer.

Mr RUDDOCK—I very deliberately put it that way because I think it does require a considered response. We are getting a lot of material suggesting that we work bilaterally to get such institutions—that we should not do so prescriptively; that we should not try and tell people what they should have but allow them to develop their own. We have got to deal with issues of sovereignty and issues of culture and so on. We may make recommendations, and they may involve quite considerable resources. So, if I ask myself where we get advice as to how likely those measures are to work, it seems to me we can only get that advice from our past experience, and the only entity that has really been involved in these tasks and has advocated that it should be involved in these tasks is your organisation under its earlier titles.

Ms Branson—We will try and prepare for you just as quickly as we can a comprehensive report on that. But, lest there has been any misunderstanding, let me clarify that when we say we leave it to China or Vietnam to nominate areas where they would like our assistance—because our judgement is that that is when our assistance will be most valuable and lead to the greatest change—that does not mean we do whatever they ask. There have been occasions where they have proposed things and we have said: ‘No, we don’t regard that as a human rights endeavour. Our offer is to help you in human rights areas.’ So it is not that we do whatever they ask, but we do allow them to nominate within the area of human rights’ technical operation what they see as valuable things for them, because apart from anything else that tells us that they are ready to move in that area and are receptive to assistance in that area.

CHAIR—Thank you very much. I just want to follow up on that point in terms of your submission. There is a lot of information here regarding the technical operations, particularly in the dialogues coming out of China and Vietnam, but earlier today we heard evidence from the Asia Pacific Forum—and obviously the Australian Human Rights Commission is a leading member of that organisation—and it is the closest thing we have, I guess, to any sort of regional network or organisation within the Asia-Pacific. So, when we have a discussion about a regional mechanism or a regional body, I was just wondering, from your experience of being involved in that organisation, about the value of not just the bilateral dialogues but being part of a body such as that, where NHRIs actually lead the discussion and are the key members. Also, do you think that, as a result of our involvement in that, there is some scope for another organisation to come out of that which would involve governments or their nominees at some sort of human rights body or commission in this region? That follows on from earlier evidence today.

Ms Branson—I am not sure I understand precisely what you have in mind.

CHAIR—I guess I am just asking: do you think the APF is valuable? Do we get something out of it? And, as a result of our involvement in it, have we built up enough of a network throughout this region to see that progressing into something else or, indeed, to keep it but with the offshoot of another body that would be more of a regional human rights organisation?

Ms Branson—My experience is limited, as you would understand, because of the limit of holding my position.

CHAIR—Absolutely; I appreciate that.

Ms Branson—It seems to me—and informed in part by my predecessor—that the APF is playing a very valuable role in the region. My personal experience of it is limited, but it is an umbrella under which human rights institutions in the wide region which it covers can provide support to each other and can discuss issues of mutual interest. When we are in international forums, we have an impact which seems to me to be disproportionate, probably, to the size of the nations in the region, because we can attend international forums having discussed amongst ourselves issues of importance, taking them jointly into a forum in which—as it seems to me, in my limited experience—no other group is as well serviced by an umbrella organisation as this region is by the APF.

I think it is possible to imagine various models if we were to go beyond the APF. We could have more Pacific nations under the umbrella of the APF. There could be a Pacific regional organisation that could itself liaise with the APF and work with it in some way yet to be determined. It is entirely possible that there could be some other alternative open, but I am already persuaded that the APF—of which of course the Australian Human Rights Commission is currently a deputy president and is a former president—is playing a very valuable role in the region.

Mrs MARKUS—I will just make a comment and then ask a question about your report, where you refer to strategies. I will just follow on from what Philip has said—that is, taking your point that in the social sciences it is always important to identify measurable outcomes. I certainly would look forward to seeing them. David, you talked about domestic violence, for example, and family violence being one of the projects that you were involved with in China. Certainly if there were some measurement of the increasing number of women who were accessing services, an increase in the number of services that directly impacted them, an increase in accessing police, for example—those kinds of outcomes; Philip may think otherwise—I would certainly like to see some measurable outcomes that pertained to that. You may want to comment about that after I ask the next question.

Where you talk about strategies there is a list—and these are themes that we have heard throughout the morning: ‘establishing NHRIs in the Pacific’, ‘establishing a regional human rights mechanism’, ‘promoting ratification of human rights treaties’, ‘supporting civil society’ and ‘technical cooperation’. You have talked about bilateral arrangements, but we have had a number of different opinions about where you begin—whether you begin practically—and some people have actually said you need to start at different levels. This is probably a broad question but, given your experience, where would you begin?

Mr Robinson—On the first point, in terms of getting some more concrete indicators of improvements that have happened or been contributed to through the technical cooperation work, in relation to the examples that I mentioned earlier, the work on women's rights and domestic violence in China, for example, we can access some quite specific information for you about the development of women's advice hotlines for violence. This has been one of the main focus topics that we have worked on within this subject area. The number of new hotlines that have been developed at the local level in China and the sorts of numbers that have been accessing them are some concrete areas where we have contributed. I think I would be able to get you some detailed information on it.

Mrs MARKUS—I understand there would be other quantitative information that obviously would be hard to measure.

Mr Robinson—Yes. I am sure we could get you some quite concrete information around those sorts of service delivery issues. On the second point about at what level do you start, I think the programs with China and Vietnam, which are within the framework of the bilateral dialogues with the two governments, indicate that there is advantage and indeed a need for a multilevel approach with the dialogues focusing on the big picture and the broad, political type issues around human rights, with a technical cooperation program that focuses on a more practical level to give practical substance to the dialogue process. Certainly looking at the China and Vietnam programs, both of those technical cooperation programs are targeted not so much at high-level decision makers within government, although there are some, but primarily at the middle-operational level, the practical level, of government and non-government organisations, where programs are developed and delivered with the aim being to assist those middle-level decision makers to be able to better protect and promote human rights in the way that they develop those programs. Also bear in mind that many of those middle-level people will one day be the high-level decision makers within the political sphere. If they are influenced by a program of this type relatively early in their careers, there is perhaps the added long-term benefit from a program like this that it will have bigger policy ramifications than can even be imagined now as they progress through their careers to more senior positions.

Ms Branson—In response to your more general question, it is never easy I think to identify where to start and it is not likely that a single model will be appropriate for every place. You may be aware that the Pacific Islands Forum Secretariat is currently advertising for a senior human rights adviser. I think this may prove to be a very valuable initiative because it will assist in raising awareness and consciousness, and ultimately capacity building to begin addressing human rights issues in many of the smaller nations.

Ms Goldie—If I could add to that, I think whilst we can certainly learn from experiences from other regions in terms of the relationships between international mechanisms and regional ones and those at the domestic level, we have to always be assessing this in the current context in which we are. The European regional mechanism was well and truly in place long before they were national mechanisms in some of those countries.

In the Pacific region we are at a stage, as the president has said, where we have got fairly minimal development in terms of national institutions and debate about the merits of the regional mechanism. I think we need to build on the positive developments at a number of levels, and we will continue to reassess that.

CHAIR—I think that is a good point to end on. Thank you very much. We really appreciate your taking the time in coming to present to us. I think all of us would agree that the work of the commission and the individual commissioners as well as the organisation itself is something we are all very proud of. We certainly look forward to working with you in future. And thank you very much for your submission.

Ms Branson—Thank you, Madam Chair. We appreciate your kind remarks.

[3.06 pm]

van BEEK, Mr Harris John, Member, Human Rights Council of Australia

CHAIR—Welcome. I know it is not always the easiest position to be the last in line of what has been a fairly long and very interesting today. Certainly a lot of issues have been raised. But we still look forward to hearing the evidence that you wish to present to us. Although this committee does not require you to give evidence on oath, you should be aware that these hearings are official proceedings of the parliament and therefore have the same standing as proceedings of the chambers themselves. Would you like to make some opening remarks and hopefully we will have a much more free-flowing discussion and questions and answers after that.

Mr van Beek—Thank you very much for the opportunity. Even though I have only heard the latter part of the presentations that you have been listening to all day, it was a very nice segue into our submission in that the proposal that was submitted to you, which is for a human rights centre for dialogue and cooperation, very much fits into that perspective that the Human Rights Commission just presented around the complexities of implementing human rights standards needing a multidimensional approach. As Philip knows, wearing his badge there, he and I go way back a long way as members of Amnesty International. We have also been active in looking at government approaches. I guess after the many years that Philip referred to we have also all come to the realisation that you cannot just rely on a single hope that either governments on their own will deliver this or NGOs on their own will deliver this. The range of issues around human rights, and most particularly the implementation of human rights standards, requires consideration of the issues in the context in which they are being implemented as well as looking at how NGOs play their role, how governments play their role and so on. So the proposal for the human rights centre for dialogue and cooperation is very much born out of that perspective.

As important as many of the existing mechanisms are, such as national institutions and the arrangements around those, the important role that NGOs themselves play, whether they are international ones or domestic ones, continues to be in a range of practicalities that would be very suitably supported in the Asia-Pacific region through Australia establishing a centre for dialogue and cooperation. The proposal really just goes through both the role that that would play as well as some proposals for the particular structure, and, firstly, I will go through roughly the approach suggested.

I want to stress that it is about bringing different players together. It is not just going to be about governments or bringing human rights activists together. Firstly, our proposal is that there would be benefit in having an entity which is not specifically an arm of government, because the opportunities to do things beyond, say, the bilateral agreements that Australia has entered into with China and Vietnam can be enhanced through entities that are at arm's length from government.

The second underpinning of this is that we believe that there is a need to have dialogue at government level between Australian NGOs and domestic NGOs in the Asia-Pacific region, and also between NGOs and governments in looking at what it actually means in practice in our

particular situation and whether there are opportunities for cooperation within the regional parts of the region. That could be either in the context of looking at the detail of what happens in the China-Australia or Vietnam-Australia dialogues that are already in place or it could be with the emerging human rights movements or arrangements in smaller nations such as those throughout the Pacific. We would be looking at working relationships between the governments and the NGOs internally and fostering those as well as between Australia and those countries.

The third thing is that we expect this organisation or the centre would have a research role. It would not replace the role of, say, Amnesty International or Human Rights Watch in looking intensely at human rights violations, because that is already being pretty well covered off by NGOs and the US government through their annual reports, but rather looking at maybe the questions asked before about whether the institutions in place are doing enough and whether there are other ways of doing it, and doing some comparative analysis of whether the mechanisms are fulfilling everyone's hopes for the protection and the promotion of human rights.

In doing that, there may well be situations, as we put in our submission, where you would need to look at the comparison, and that may well highlight that the human rights situation in some places is less than adequate or they are not covering all of the human rights situations that you would like to be covered. So inevitably you will deal with some human rights violations, but it is not a human rights research organisation.

We would also envisage that such a centre would look at policy and how it could be applied. We could look at the emerging issues of human rights associated with climate change. There are the human rights agreements that were initiated in 1948 that now need to be applied in quite different contexts. The multilateral fora take a long while to adjust to those and they might come up with new agreements. But for those living in the Pacific Islands or all of us as we may wrestle with the issues around fresh water and the human rights consequence of those, there is a value in promoting the discourse around what that is going to mean in practice. So we are looking at applied policy rather than just academic research—not that that is not valuable in itself, but that is not the role of this entity. I have touched on education and dialogue. We would see that as quite specific, but also part of its role would be about steering people to the very extensive body of information that is already there but is often quite difficult to access.

We would see this as an integral part—this is not about its role but in terms of the approach—of Australia's proactive role of being an international player in the human rights space. This is an innovative approach that has been used in a few countries already, including in Denmark with centre for human rights, in Norway and there are a number of examples that exist in other parts of the world. We are not advocating bodies that are as large as, for example, the Danish Institute for Human Rights. We are looking at a much smaller centre that would either commission work, rather than having a large staff itself, or would have some resources to bring people together. We are not looking at something massive but we are saying that we believe that this would fill some of the gaps that currently exists and would allow Australia as a society, rather than the Australian government, to play an active role in the Asia-Pacific region in very practical ways that look at the diverse roles that players need to have.

In terms of the organisational arrangements that we have touched on, we have suggested that there are two ways in which this might be established. One way would be as a semi-government

organisation. Our preferred option is for an independently established organisation, albeit funded by the Commonwealth government. There are examples of such bodies. I worked in one previously in the education space where the Commonwealth set up an independent organisation to try and broker change. That required different participants at school and state government level as well as businesses. By being able to operate at arms length, albeit with due accountability for spending public funds, it freed up the organisation to do things that governments are more limited in doing. We are advocating that as a preferred model, but we believe that the alternative could be, structurally, a body like the human rights commission. That is our proposal.

CHAIR—Thank you very much. I just have a couple of quick questions to open with. Firstly, in terms of the centre or organisation you are talking about, one of the issues that has emerged from a number of people giving evidence today is that if we are to look at promoting human rights institutions with the goal of promoting and protecting human rights across the region, that cannot be led by Australia. We would be seen to be imposing our values, our culture, on nations that are obviously very different from ours. My question is how you see the centre not being purely an Australian led regional approach to human rights promotion and protection and how would we involve other nations in that? You argue that it should be an independent non-government organisation, and I certainly see the value of that. But in order to have countries within our region being serious about their approach to human rights and the protection of their citizens, it has to be led by the lawmakers or the governments of those nations. How do you see the centre actually bringing governments in, as opposed to some other mechanism which may achieve that?

Mr van Beek—In the proposal, we suggest that it would not be an Australian only board—that there would need to be representatives from a number of Asian countries, and there are examples there. The Canadians have a similar body which has representatives from other nations on its board. I guess the important thing is that this does not suggest that it should replace bodies such as the Asia Pacific human rights forum, which is looking at the promotion of appropriate government bodies to protect human rights. Through dialogue such as the ones around China and Vietnam they are very important mechanisms but they cannot do it all. So this is very much about complementing those dynamics. The conference that Philip went to in Vienna—I cannot remember what year it was, Phillip; you may remember better than me—

Mr RUDDOCK—I do.

Mr van Beek—The World Conference on Human Rights had a very important dynamic which emerged from the Asia-Pacific region. Some months earlier, at a conference in Bangkok, the NGOs of the Asia-Pacific region said, ‘It’s not good enough for government, who are often the perpetrators of human rights violations, to sit around and pontificate.’ Human rights will only be protected if we see it as a dynamic between governments, who have a very appropriate legislative role, and human rights organisations and civil society, who also have roles in these. There has to be a dialogue. At the Bangkok preliminary meeting for the Vienna conference, the Asian NGOs and others stood up and said, ‘This has no legitimacy unless we’re listening to voices other than just those of government.’ This really goes back to saying: if we were to rely only on NGOs, it would not work. If we were to rely only on civil society by itself, it would not work. If we were to rely only on governments, human rights will not be adequately protected, because unfortunately governments are often the violators of human rights.

After 60 years of having had the universal declaration, we are at the point of now realising that we need the diverse approach that the Human Rights Council spoke of. Australia can play a role in stimulating and enabling the discussions that are relevant to those communities, which is why we have very deliberately called it a centre for dialogue and cooperation, rather than saying, 'We have the answers. We'll just tell you what to do.' That may be about how organisations resource themselves. That may be about being prepared to have the fora around what happens with rising sea levels and human rights issues in Pacific nations and mass flows of people. It is about doing that sensitively and not saying that any one entity is the only guardian or that there is only one entity that has responsibility for human rights. It is not about replacing it but it is about saying that it is filling a gap. We believe—and not just by having three board members from outside Australia—that, by doing that in an appropriate way, that is providing a resource that would not otherwise be available in the Asia-Pacific region. We can play a constructive role rather than a proselytising role.

CHAIR—Thank you.

Mr RUDDOCK—This submission was produced for somebody else, was it?

Mr van Beek—It was originally produced for you, Philip, when you were elected in 1996. We originally presented a proposal in 1996 to the incoming government and—

Mr RUDDOCK—I saw the reference to CDI—

Mr van Beek—That became CDI. We then produced it again—

Mr RUDDOCK—This talks about a proposal for 2007 and the Human Rights Council recommending to the Labor Party the establishment of the Human Rights Centre for Dialogue and Cooperation.

Mr van Beek—That is right. We produced it at the time, and we also gave it to the coalition, saying that the CDI has a valuable role but we believe that the original proposal is still worthy of further discourse.

Mr RUDDOCK—Can I just pin you down a bit, as I tried with HREOC—I am not used to the new name.

CHAIR—The Australian Human Rights Commission—'the commission', we can call it.

Mr RUDDOCK—You are not going to be able to get an acronym for it.

CHAIR—AHRC.

Mr RUDDOCK—Mr van Beek, I was interested in your argument that you thought an NGO may be more appropriate than a statutory authority, presumably directly funded by government. I wonder what evidence you have for that. I had the distinct impression that in many cases NGOs are seen by some governments as being more difficult to deal with than other states.

Mr van Beek—Yes, I am sure that is the case. It is certainly not suggesting the setting up of an NGO. It would be clearly a government funded, independent organisation but it would have on it, for example, ex officio, the president or whatever the nomenclature of the human rights commission is at that particular time. It is not saying that a human rights organisation or an NGO should be set up; otherwise, you may as well go and fund the local branch of Human Rights Watch. It is deliberately trying to say, ‘We need a body that has defined representation but is not restricted in the way that governments by definition are going to be restricted because they operate through diplomacy or international things. That is the reason. As I said, from personal experience as the CEO of an Australian organisation deliberately set up to do that, I was able to go to business, to state governments and to the Commonwealth. All of them were treated as equal players, with appropriately defined roles. We are seeing this body as an honest broker, which governments often cannot do by the nature of government, and NGOs do not necessarily have the authority or the resources to do it.

Mr RUDDOCK—I see in attachment 4 the details of the Canadian body. That is helpful. Again, I ask the same question that I put to the Australian Human Rights Commission: from the way in which they are operated, are you able to produce measurable outcomes as to what they have been able to achieve? I saw a couple of examples, which I think were offered by way of illustration, of work in Ecuador, the women rights project, and another one in Burkina Faso. I would not ask you to produce it but I wonder whether you are aware of any material that would indicate that there are measurable outcomes that a body of this sort has been able to achieve?

Mr van Beek—I am not aware of them. Interestingly, the ones in Norway and Denmark have now become human rights commissions, so they have morphed into quite different roles. You are referring to the Canadian one, and I do not have that information available. We can try and get that for you.

CHAIR—That would be useful.

Senator MOORE—I have a funding question. The proposal that you have put up looks like a government funded body

Mr van Beek—That is right.

Senator MOORE—That would obviously be out of DFAT, mainly through AusAID. When we were talking with the Asia Pacific Forum, they were clear that, whilst they may have started focusing mainly on AusAID support, they have evolved to a stage where AusAID provides about 30 per cent of their funding. They are going to provide to the committee more details about how that operates. Would that be something that this organisation would operate as a model, or would you prefer to see it standing in the models that you have presented either as a statutory authority or as a purely government funded agency?

Mr van Beek—We have mentioned that we believe that it may well be able to offer some services, whether it is through some level of consultancy or through payment for, say, information that was available. But we did not envisage that that would ever become a major source of income for the organisation.

Senator MOORE—The Centre for Democratic Institutions is mainly government funded.

Mr van Beek—Yes.

Senator MOORE—They are the two organisations to which you draw comparisons. That was just for my interest. Thank you.

CHAIR—That brings this particular session to a close. Mr van Beek, thank you for coming along once again. It has been a very informative day and your contribution, along with the other contributions, has certainly raised some ideas for the committee to consider as part of its inquiry. Thank you for your patience. We look forward to talking with you further.

Mr van Beek—Thank you for the opportunity.

Resolved (on motion by **Mr Ruddock**, seconded by **Senator Moore**):

That, pursuant to the power conferred by paragraph (o) of sessional order 28B, this committee authorises publication of the evidence given before it at public hearing this day.

Subcommittee adjourned at 3.31 pm