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HUMAN RIGHTS SUBCOMMITTEE

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

Human Rights Subcommittee

Wednesday, 15 April 2009

Members: Senator Forshaw (*Chair*), Mr Hawker (*Deputy Chair*), Senators Mark Bishop, Ferguson, Fifield, Furner, Hanson-Young, Johnston, Ludlam, Moore, O'Brien, Payne and Trood, and Mr Baldwin, Mr Bevis, Ms J. Bishop, Mr Danby, Ms Annette Ellis, Mr Gibbons, Ms Grierson, Mr Hale, Mr Ian Macfarlane, Ms Markus, Mr Murphy, Mr Oakeshott, 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*), 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: Senator Furner, Senator Moore, Ms Rea, Mr Ruddock and Ms Vamvakinou

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 9.58 am**CONTINI, Miss Erica, Project Officer, Castan Centre for Human Rights Law****JOSEPH, Professor Sarah Louise, Director, Castan Centre for Human Rights Law****McBETH, Dr Adam, Deputy Director, Castan Centre for Human Rights Law**

CHAIR (Ms Rea)—I welcome everybody here today, including the subcommittee members. Some have travelled very long distances to be here and others not quite so far, but I do appreciate you taking the time out to come and participate in our inquiry today. I also welcome our first presenters this morning, from the Castan Centre for Human Rights Law. We have had some very interesting discussions coming out of these hearings so far, and no doubt Melbourne will also play a significant part in contributing to this discussion.

The subcommittee prefers that all evidence be given in public. Should you at any stage wish to give any evidence in private, you may ask to do so and the subcommittee will consider your request. Although the committee does not require you to give evidence on oath, you should be aware that these hearings are legal proceedings of the parliament and therefore have the same standing as proceedings of the chambers themselves. I invite you to make some opening remarks and then we will move on to questions and discussion. Thank you.

Prof. Joseph—Thank you. I will start with a few words and then Adam will follow up. In the Castan Centre we are ultimately supportive of the idea of a Pacific human rights mechanism, certainly in the mid to long term. We believe such a mechanism could be very fruitful in promoting and protecting human rights in the region, but we think it is probably premature at this stage to be discussing details of such a mechanism. For a start, it was not clear from the guidelines for submissions what was actually meant by ‘Asia Pacific’. It is potentially an enormous area. In our submission we mention this and we proceeded on the basis that you were probably talking more about the Pacific and probably not about, say, ASEAN nations. But that was a presumption and it might have been wrong. So, first of all, we have to decide which states we might be talking about.

We believe that any move towards the creation of a regional mechanism is going to necessitate serious regional dialogue. We do not think that this will really get off the ground, if it is perceived outside Australia as being led by Australia—for a number of political reasons, I do not think that would work—whereas if it is seen as being led by other countries or perhaps equally led by everybody within the region, that is going to be more successful. Ultimately, I think Australia would need to engage in dialogue with Pacific nations and perhaps promote initiatives to support those countries in promoting human rights. For example, Pacific nations have a very poor record at the moment of even ratifying the universal treaties, so Australia could engage in dialogue as to why that is and perhaps capacity build to assist them to get to a state where they feel they can ratify those treaties. Another initiative, which is not in our submission, might be the provision of human rights training in the area, through AusAID or other agencies.

Dr McBeth—In addition to what Sarah was saying about it not being seen to be an Australian led initiative, we think that if that were the case it would be open to charges of colonialism, of imposition of Western standards and the like. Any document or instrument that was ultimately

adopted on that basis formally might not be actually taken up and embedded in the individual culture, and we think that would be a dangerous thing. So it would be important for there to be more engagement and for it to be driven by at least some Pacific partners, we think.

Furthermore, any regional instrument that might come out of this process should not become a lowest common denominator exercise. While regional instruments are valuable to the extent that they can get like-minded countries together and get a stronger enforcement system than the one we have at the universal level, if they in effect water down the provisions that we have at the universal level, that would be dangerous and would be a step backwards for the human rights system. The bottom line there is that we do not say a regional system ‘at all costs’ or ‘at any cost’; we say that it should be one that reflects Australia’s existing commitment to universal human rights.

We think it is equally important that Australia be, and be seen to be, a good international citizen with regard to human rights. We know that Australia has been criticised year in and year out on the same sorts of issues for its noncompliance with Australia’s international human rights obligations. We have in the last week seen another round of the same sorts of criticisms coming out of the concluding observations of the Human Rights Committee. If Australia continues to be castigated for noncompliance with its existing international obligations, it gives a reason for other states to say, ‘Well, we can do as Australia does and implement this in form but not in practice.’ That is an important area: Australia should get its house in order first.

A final point that I want to make is that it is important in our view not to segregate human rights from other areas of Australia’s international engagements. We do not want to see Australia’s human rights commitments ‘over here’ and everything else that we do ‘over there’. It is important to integrate Australia’s human rights commitment to its aid program. Sarah suggested training programs with other Pacific nations. There was a submission from Professor Andrew Byrnes from the University of New South Wales that mentioned Australia’s involvement with the Asian Development Bank and other international financial institutions.

In terms of actual practical outcomes, that is as important, if not more important, from a human rights point of view, as a formal legal mechanism for making human rights claims. Implementation of the Millennium Development Goals and incorporating human rights principles through the Asian Development Bank and through Australia’s trade arrangements are all things that are more important in terms of a practical outcome, or at least as important for human rights, as a legal mechanism for making and adjudicating claims, so we would urge the committee to go down that path. If all of these things are sorted out first, then we think a regional human rights mechanism would very much be a good thing.

CHAIR—Thank you very much. In terms of the definition of the region, when we mention ‘Asia Pacific’ we are roughly referring to the countries covered by the Asia Pacific Forum, which is probably the best indication. It does extend right through Asia; in fact, even into some of the Middle Eastern countries. Having said that, what has been a fairly consistent comment throughout is that it is an extremely large region to try and deal with in one go, and that we are probably talking about two subregions, Asia and the Pacific, so focusing on the Pacific is fine. We have had quite a lot of people focusing particularly on that subregion. In that sense, we will open up for questions now, and I will start.

You have raised a number of interesting points that we have heard before, particularly the comment around using Australia's position as an aid funder to promote human, civil and political rights, and tying development funding in with that. There has been some discussion about that amongst the committee. Those countries, particularly in Asia, that have developed the most significantly in terms of economic development, have not necessarily translated that into civil and political rights. I am wondering if you would like to expand on, firstly, how you think that could be achieved and, secondly, how we could achieve that without being seen to be too colonialist if we cannot do it through the legal mechanisms.

Dr McBeth—The best way to look at that is to remember just how broad human rights are as a doctrine, as a principle. They include all of the economic, social and cultural rights, so economic development per se is a human rights outcome, provided that in the development process there is assurance that access is available to whatever the service may be—for instance, if you are improving the provision of water throughout a community then access is guaranteed to those who cannot afford a user-pays principle, and things of that sort. So, whatever it is that Australia is already doing in its development programs, simply to implement human rights principles in the delivery of those programs would deliver a human rights outcome.

On the one hand you have got the old-fashioned argument of conditionality—in other words, 'You may not have this aid money unless you can tick these boxes.' That is one way of looking at civil and political rights outcomes but, as far as only doing what Australia already does and implementing human rights principles in that—so in terms of accessibility and achievement of the Millennium Development Goals—that is something that we say qualifies as a human rights outcome.

As far as translating it into civil and political rights goes, that is more difficult, because there has to be some sort of cultural acceptance there. Judicial independence or weeding out political corruption is much harder to address simply through giving aid. Engagement and training programs and the like are useful there, but they are only going to be successful up to the point where there is political acceptance on the other side, and I do not think we or anyone else has an easy answer to that.

Mr RUDDOCK—I recall that, in my youth, the argument that you are running that you have to see economic and social goals as the equivalent, in a sense, of civil and political rights was always used as a basis for saying: 'These are the priorities. You don't give them that priority. We're not going to deal with civil and political rights until the economic arguments have been effectively addressed.' Economists particularly used to use that in all of the institutional debates, and I think there are some that still run that argument. But Singapore and China are the two that we had in mind in our own discussions, and there is no way you can say, in relation to Singapore, that they have not got social and economic development, but it has not brought civil and political rights.

Dr McBeth—No.

Mr RUDDOCK—My concern is that that argument—and you have used it very squarely—often prompts people to think that they are equivalent and you cannot get one until you have got the other, and so on.

The other aspect that I wanted to pick up in relation to that goes to some of the cultural issues. It seems to me—and you are running this argument—that we have to recognise cultural issues. We were having a bit of a chat about this before in relation to Fiji. There are significant cultural issues that have led to the very significant reduction in what I would regard as civil and political rights and I do not know how we are going to address those issues unless we are prepared to be more assertive in relation to those matters. In other words, I do not think we should be put off from asserting the need to deal with civil and political rights within the region on the basis that there are cultural reasons for not doing so or there are economic issues that have to be addressed first.

That brings me to this question of the aid program. One of the limitations in relation to the aid program at the moment is, of course, that we always consult. We do not want to be giving direction, we do not want to be seen to be imposing our values, so we consult. That means that if you have a view about institutionalising some process for dealing with civil and political rights and the country that you are consulting with says, ‘Well, we don’t want that,’ then it does not happen. How are you going to address that in your aid program? It seems to me that if you are going to say, ‘We will give training for dealing with these sorts of issues,’ and the country says, ‘Well, look, we’d rather it go into water, thank you very much’—

Prof. Joseph—Sorry? We would rather it go into—

Mr RUDDOCK—If they say, ‘We’d rather put it into bringing water into rural communities than spending it on sending a whole lot of people to train on human rights programs in Australia,’ which is one of the suggestions that is made in some of the papers.

CHAIR—I think Professor Joseph is keen to answer those comments.

Mr RUDDOCK—I am just trying to be challenging!

Prof. Joseph—Yes. You have traversed a lot of ground there. You yourself phrased the argument as civil and political rights and economic, social and cultural rights being equivalent, and I totally agree that they are equivalent. That does not mean therefore that economic, social and cultural rights have priority. Equivalence means equivalence. We are well aware of the arguments that might be made. It has been part of the Asian values argument that the priority should be economic development and therefore economic development comes before civil and political rights, Singapore perhaps being a perfect example of that.

In response, I would say we do not know how Singapore would have developed had it actually had civil and political rights. Singapore has proven that a country can develop without strong civil and political rights. It does not mean that civil and political rights retard economic development. That seems to be the assumption. I think that the argument that economic development takes priority assumes that civil and political rights somehow retard economic development. I am no economist, but people like Amartya Sen have written extensively on this: that civil and political rights in fact can facilitate economic development.

Mr RUDDOCK—What was the name? Singh?

Prof. Joseph—Amartya Sen.

Mr RUDDOCK—I thought it might be Singh, because looking at India, for instance, they have—

Prof. Joseph—Or Japan.

Mr RUDDOCK—Yes.

Prof. Joseph—There are many countries. There are many reasons why I think civil and political rights can grow hand-in-hand with and facilitate economic development. Accountability is one—accountability which can lead to the uncovering of corruption, because I think we could all agree that corruption is terrible for economic development. In the worst-case scenario you see countries where the opposition is so oppressed that it has no outlet apart from turning violent, and so you have some countries that have just gone through cycles of violence and have not got off the ground, largely because no-one has got on with the business of governing.

I do not have a lot of experience in being in, say, intergovernmental organisations, but it seems that a lot of the arguments are made at the most abstract level, that economic development should be the priority, full stop, and those arguments have to be queried, perhaps nicely, by asking for details, rather than the argument being at such a high level of abstraction: ‘These are Asian values,’ and, ‘These are Western values.’

Similarly, you used the example of Fiji. Where is the evidence that it is actually part of Fijian culture to overthrow the government and not have a vote? Is that what the Fijian people really want: to have no democracy for—how long ago was the coup? Ultimately, it is going to be eight years.

Mr RUDDOCK—I think it has been a democracy for Fijians but not for those that have been immigrants—a democracy that takes into account the chief system.

Prof. Joseph—I am still not convinced that most Fijians are happy with the idea that, under current plans, they will not get an election now for eight years. These arguments might have been made in Indonesia, yet Indonesia now has free elections. It is not so long ago that it had no elections, and the same argument was made: ‘This is not part of our culture.’ I think one way of countering that argument, but again it has to be done diplomatically—

Mr RUDDOCK—You are supporting my view that we ought to be more assertive in relation to these matters?

Prof. Joseph—Assertive, but I would stress that economic, social and cultural rights are equivalent. I am not sure if in your question you are implying that they should not be equivalent. You moved from the fact that they were equivalent to that equivalence then being used to prioritise, and that does not make sense to me, because if they are equivalent there are no priorities. They should move forward together. If Australia wants to be involved in a regional mechanism—whichever region you are talking about—with the countries that you are talking about, I do not think we are going to get very far if we do not include a strong component of economic, social and cultural rights.

Mr RUDDOCK—I will make it very clear: I am not suggesting that, but I am concerned that it derails the argument about civil and political rights, because there is an assertion—

CHAIR—I suspect this theme is going to come up quite a bit in our questioning. Perhaps we should move on to Maria.

Ms VAMVAKINO—In fact, Philip has raised a lot of the issues. I was thinking about this, and thought a little bit more about it as I heard you speak: you have made it very clear that Australia should not be seen to be the country that leads this initiative, for the obvious reasons, whether we agree with them or disagree with them. That seems to be a perception. My question to you is hypothetical, but we probably know enough about the region to foresee any outcomes. Let us say we were to encourage Singapore or Fiji to lead this particular initiative. How much more success would we have? What would be the strengths of Singapore being seen to be leading this initiative and what would be the disadvantages? The same, of course, applies to a country like Fiji in the Pacific. That is going from the Pacific to the south-east. I would like your views on that.

Dr McBeth—The two examples that you have chosen are probably more flawed than—I was going to say ‘at least as flawed as’—Australia but for very different reasons. We are saying that the problem with Australia leading it is not that Australia is this human rights pariah—far from it. The problem is that Australia and New Zealand are perceived to be the only Western style states. There is a perception of alienness within the region and it gives states an excuse to either reject the idea outright or simply adopt it at a formal level and not embed it in their legal and social culture.

Prof. Joseph—This leaves us open to arguments, whether they are correct or not—I am not saying that the arguments are correct—of cultural imperialism.

Ms VAMVAKINO—I understand all of that. But you have to face reality: how do you get this initiative going, in light of all these issues? I have a view that a lot of people in our neighbourhood have a totally different attitude towards human rights and priorities. As a result, I do not know whether we would get anywhere. But if you were to give the opportunity to two extreme countries—and I have chosen these two countries because they are extreme—assuming we want to be involved but we cannot be seen to be leading it for the reasons we understand clearly, where would we go and how would you see it?

Dr McBeth—The Singapore and Fijian examples would drag it down, for the other reason that I raised—namely, the lowest common denominator reason.

Ms VAMVAKINO—Yes. They are the challenges, though, aren't they?

Dr McBeth—Precisely. It seems that the idea is not any one state leader, unless you can find a cleanskin state to do it, and who would that be?

Prof. Joseph—I think it is fairly clear in the Pacific that Fiji could not lead it right now.

Dr McBeth—Not at the moment.

Ms VAMVAKINO—No, it would not. But that is the reality we have to deal with. I have chosen these two countries, because here we are, a country that has an acute interest in the human rights issue in the area. We have battled problems upon problems and we do not seem to be getting anywhere. We can put forward as many models as we want, but we do not seem to be getting anywhere, so we need to almost reverse the process and say, ‘Right; rather than us going forward that way, how about you guys?’ I think the answer to that is that it will not work. How can it be done?

Dr McBeth—If it could be done at a regional cooperative level rather than—

Ms VAMVAKINO—How do you start from the lowest common denominator?

Dr McBeth—I would have thought a group like the Pacific Islands Forum, in which no one state is seen to own this initiative, would be the best way forward. If you identify any one state, there are different problems, depending on which state you pick; we absolutely agree with that. I do not think anybody has the solution to that.

Prof. Joseph—My personal opinion—I am not being optimistic here—is that I am not sure you are going to get anywhere with ASEAN nations at the moment. ASEAN at the moment are trying to negotiate their own human rights mechanism and cannot get any agreement even amongst themselves. That is in a forum which is much more culturally similar than if you add Australia. I think that not all but most ASEAN countries would be very resistant to Australia being involved in that.

I am not a political scientist but, if you chop out ASEAN, the idea of Australia joining with India may have some value. But I think the first step Australia should take is to really focus on the Pacific and maybe add Japan. Japan could be a good partner in this endeavour. Realistically, especially when one can see what is happening in ASEAN and the way that the human rights mechanism does not seem to be going very far at all, I am not sure that ASEAN or west of ASEAN is going to help, which means focusing on the Pacific. The Pacific is not my area of expertise. You have mentioned Fiji, which is probably the biggest country in the Pacific. At the moment it is simply not viable.

Ms VAMVAKINO—It does have a human rights commission.

Prof. Joseph—It does have a human rights commission, which is not viewed as Paris compliant at the moment. I do not think that other Pacific countries are really looking to Fiji as some human rights icon at the moment, which means that there could be value in discussing it with smaller countries like Samoa or even the Solomon Islands. I name those two countries because they seem to have actually ratified a treaty. They are not the biggest countries in the world but, if you are talking about that region and if Fiji is not viable, there are no particularly big countries. It is something that has to be worked out: which countries are you really talking about? I am not trying to be pessimistic, but I just do not see, in the near future at least, Australia being able to join with ASEAN. It may be able to join with those countries in ASEAN which are a bit more progressive on human rights. Historically, that has included Thailand, and Thailand has got its issues right now, and maybe India. But again, as you go further west, it seems less likely. It does not seem geographically logical, from India’s point of view, even if it may seem logical from our point of view. I am saying that to be pessimistic and I am not a political

scientist. That is just my view. It is really clear, when you say, ‘Which countries?’ and then just plonk out Singapore and Fiji, that you have to work out which countries you are actually talking about.

Another option—and we say this in our paper—is to focus on the countries which are members of the Asia Pacific Forum which in fact do have Paris-compliant national human rights institutions, or at least institutions which are on the way. Fiji did have such an institution, but it does not at the moment. Hopefully, Fiji one day will come back into the fold. It is not looking great at the moment. Again, that is an odd grouping, because the Asia Pacific Forum countries are scattered, but at least that is some sort of grouping which might help, and there has been some commitment made by the countries involved, in that they have got Paris compliance or NHRIs which are on the way to becoming Paris compliant.

Mr RUDDOCK—What if you took out Papua New Guinea and Fiji and said, ‘We’re going to deal with Pacific islands and we’re going to establish a national institution’—we will fund a national institution which they establish, recognising that none of them could establish, and reasonably fund themselves, an individual institution? Samoa is interested in these things and we have talked to them—I have anyway, when we have had delegations here. They are interested, and you could have Samoa, Tonga, Niue, the Cooks, the Solomons, Vanuatu. Is there any other country? Does the Caribbean have a sort of—

Prof. Joseph—The Caribbean would be part of the inter-American convention. I guess we were thinking that the Pacific may even extend to Papua New Guinea and Timor-Leste. In fact, now that you have mentioned Papua New Guinea, that is another potential powerbroker and one at the moment that would be more suitable than Fiji.

Mr RUDDOCK—I have problems with Papua New Guinea because of corruption—it is endemic and it impacts on a lot of institutes—but it has an institution, doesn’t it?

Prof. Joseph—I am not sure if PNG has a Paris-compliant NHRI.

Mr RUDDOCK—It may not be Paris compliant.

Prof. Joseph—I think the only one in the Pacific was Fiji.

Mr RUDDOCK—The idea is not to have a body that overlooks but to have a body that is there to advise and counsel, a bit like HREOC does, but that has representation from each of the jurisdictions and then they select who they want to work within it.

Prof. Joseph—The Asia Pacific Forum is probably a good start there. Given we do not have a regional mechanism in Asia or the Pacific, these NHRIs and the networks that they are forming are de facto filling that gap at the moment. One option may be to develop that and see where it can go. There is at least government buy-in on these. Governments are involved in at least setting up the national human rights institutions, so that could be another option. That would include some ASEAN countries—Indonesia, for example—and it would be quite a strong grouping, if a bit odd geographically because they are a bit scattered. I think Palestine is even an observer in the Asia Pacific Forum.

CHAIR—Yes, so are places like Jordan, which gets us back full circle to where we started in the discussion about some form of regional mechanism. One of your opening remarks, if I can summarise, was firstly that we should focus on our own backyard before we start focusing on others, and secondly—and this has come not only from you but from others—that any regional forum has the potential to do more damage because it can become so lowest common denominator that it legitimises bad practice rather than encouraging or producing better practice.

If you talk about the Pacific—and this has been a big focus of the inquiry—everybody acknowledges that there are significant cultural and political differences in the ASEAN countries and also, if we want to be realistic about how far we can make something happen, that our sphere of influence should probably be the Pacific islands; not exclusively, but that has certainly emerged in lots of discussions. Now that we are going back and talking about the role of a regional body within the Pacific islands, that might have some impact.

You can see some value in involving those countries who have an interest in at least promoting human rights, can't you? They may not do it for whatever reason, whether it is their size or the capacity of their governance to be adhering to or implementing international treaties and mechanisms, but at least they have a willingness. In your view, is there the possibility of those countries at least coming together in some form of body and having an influence over others that we would like to see improve, even to the extent of Fiji and countries like it? That is a dilemma that we are currently facing. That is the purpose of this inquiry.

Prof. Joseph—It is hard to talk in the abstract. Of course there could be value. It could also be counterproductive. Maybe a start even for such a body is just, as a regional body, to discuss human rights issues. One of those issues, to help ensure it does not undercut the idea of universality and existing human rights standards, is to discuss why it is that so few countries in that region have ratified any of the treaties. Is the reason a lack of capacity? If that is the reason, our aid program could help.

Is it because of ideological opposition? If so, what I was getting at with my long answer to Mr Ruddock is the idea of engaging cultural relativist arguments at a specific level, because I find that a lot of the arguments are put at an extremely general level, which is almost useless because it is hard to argue in the abstract. But it is not aggressive to say, 'Okay, exactly what is it about the ICCPR, about freedom of expression, that doesn't fit in?' That is just putting the onus on them. 'Okay, explain what it is that is such anathema to your culture.' It may even be based on some misunderstandings.

There are a lot of misunderstandings even in Australian society, for example, about human rights. A lot of people do not understand that most human rights can be qualified; that freedom of speech does not mean the freedom to say whatever you want, whenever you want, in any circumstance. Given that that misconception can prevail in Australia, it almost certainly can prevail in other countries, so at least starting a dialogue could open the way to more participation by those countries at the international level. It might sound strange, but that could be a stepping stone to a realistic regional initiative.

CHAIR—It is an interesting point. To take a specific issue, do you think realistically a discussion around the cultural issues concerning domestic violence and the treatment of women

in Pacific island nations would move us on, or do you think that that conversation would end pretty quickly? Is it practical to say, ‘This is the way we start to talk about issues’?

Prof. Joseph—A lot of countries have come a long way, at least in rhetoric. I am not here to analyse exactly how domestic violence is being dealt with on the ground. Having been pessimistic before, I would be optimistic this time. I do not know that in many countries government officials would say, ‘Domestic violence is allowed in our culture.’ Then it can get down to specifics of what can be seen as domestic violence. I do not think domestic violence would be such a problem. The broader area of sex discrimination is more problematic.

CHAIR—Yes.

Prof. Joseph—But it is moving in little steps. Nothing is going to change overnight. We need to have dialogue over the specifics, rather than a lot of the cultural dialogue which, from what I have heard when I have been in the United Nations, say, is just a broad statement: ‘This is against our culture, full stop.’ There are no specifics, so exactly which bit is it? I do not deny that domestic violence, unfortunately, occurs in all societies and I am sure that a lot of it is culturally based, but I think you would find a government receptive to discussing it at a governmental level.

It is interesting: historically, which human rights treaties do countries which have been reticent about signing human rights treaties tend to sign first? The CRC and CEDAW. So it could be quite fruitful, but recognise that you are not going to find agreement immediately.

CHAIR—Thanks.

Mr RUDDOCK—I have some questions about the Arab Charter on Human Rights.

Prof. Joseph—I will try! It is interesting, because it is difficult to find.

Mr RUDDOCK—You have referred to it in terms of west Asia being covered by it.

Prof. Joseph—It is difficult to find information on it.

Mr RUDDOCK—Is it?

Prof. Joseph—Because most of it is in Arabic.

Mr RUDDOCK—I am interested in how it applies. Is it a regional set of arrangements that are working and changing attitudes to human rights? Is Saudi Arabia a member of it? Is it an area that you could take people to and say, ‘Have a look how this region has changed’?

Prof. Joseph—It has only been in force for one year. There was an original Arab charter in 1994 and it never got off the ground. I am not sure that anybody ratified it. Then it was revised—I think it was around 2004—and had seven ratifications, which was what it needed. It came into force early last year. I must confess, I have not tracked it a lot since then. Given that it has only been in force one year, there is not likely to have been a lot to track. But it is envisaged to be a fully-fledged regional system, including an Arab court of human rights. I have seen an English

translation of it and I have read an article about it. What was interesting about the two things was that it seemed like the article was reading off a different English version. That is an obvious problem when it comes to translation.

Mr RUDDOCK—So where is the leadership?

Prof. Joseph—The Arab League; just as, for example, the European convention is a creature of the Council of Europe.

Ms VAMVAKINO—Which country, though, within the Arab League?

Prof. Joseph—I am not sure.

Ms VAMVAKINO—The Saudis have been at the forefront of a couple of initiatives. I am interested in this. I have no idea how to get that paper or that translation. Could you send it to us?

Prof. Joseph—We could send it to you, yes.

Ms VAMVAKINO—Send it to the secretariat, I think.

Prof. Joseph—Yes. The biggest concern about the Arab charter, from memory—we have just had Easter, so I have not been studying my human rights recently—was the overuse of the word ‘lawful’; that this particular right—for example, freedom of expression—may be subject to lawful restrictions.

Mr RUDDOCK—Some of the exceptions that we speak of.

Prof. Joseph—But the way we are used to it, say under the ICCPR, is that it may be subjected to exceptions which are necessary and not arbitrary, whereas when all you have is the simple word ‘lawful’ that might mean you could just have any law, no matter how unreasonable. So there is a concern that the limitations might allow for countries, so long as they enact the law—and let’s not forget that at least that provides for some sort of law—to in fact enact an extremely oppressive law, whereas the way that is drafted, say, in the ICCPR or the European convention it attacks all unreasonable laws, whether they be lawful or not. That is one area. I will not go further because I will be trying to grasp it out of my memory, but we can send you the papers. I have got an English translation of it. There is at least one article and, in the year since, there have probably been more. My guess, however, in terms of the mechanisms under it, is that, given it has only been one year, it is quite likely that nothing has happened yet. It can take a while for these things to get off the ground.

Senator MOORE—On the whole area of cultural reasons for not complying, I cannot see where anyone has dug deeper on that yet. It just seems to be, as in the UN, that there are bland statements such as, ‘We can’t accept this for cultural reasons,’ and that is permeating all the submissions we have received: ‘We have to be sensitive to the cultural issues.’ It is interesting that we have been talking about this for a long time and no-one seems to have identified what the cultural issues are.

Another question is how you think the APF could change, because the role of the APF is permeating the submissions as well, and it does seem to have a research component, a training component and a support component, which are the things we are talking about. Does there need to be a change for the APF to actually take that forward?

The third question is on the recommendation about changing the focus of a parliamentary committee. I am fascinated to know what you mean by that. It is in one of your recommendations. It is either yours or the next people's.

Prof. Joseph—I do not think it is ours.

Senator MOORE—It is the next people. They talk about the need for a strengthened parliamentary committee. There are two questions, then. In terms of the APF, it is there, people talk highly of it in all the submissions, and they say it can be a mechanism. But, if it is going to be a mechanism, how does it have to change to make it work?

Dr McBeth—As far as the first question is concerned, I think we are in agreement on that, on the premise of your question. That is why we are advocating that Australia ought to be engaging with these countries to find out exactly what it is that they are objecting to.

Senator MOORE—And no-one has done that?

Dr McBeth—Not in the Pacific region, to my knowledge. I stand to be corrected.

Miss Contini—No.

Prof. Joseph—I think you are generally right. I am not quite sure what you mean when you say no-one has done any work on it.

Senator MOORE—There has been some work, yes.

Prof. Joseph—There are many academic papers, and many excellent academic papers, on the issue of cultural relativism, explaining why it is a valid argument or why it is not, but I think there is a need for some more empirical work on exactly where the cultural divides are.

Senator MOORE—Yes, so that it is not just a bland statement.

Prof. Joseph—I am going to put in a plug here. We have put in for an Australian Research Council grant on this very issue. If you would like to support that, we would be very happy!

Senator MOORE—The comment is made consistently, 'You've got to be careful and sensitive to the cultural issues.' It is like a mantra. But, if you do not have them clearly identified, it makes it difficult.

The Uniting Church have put in a detailed submission and they list a whole lot of areas where they have concerns. A lot are to do with religion, as you would expect. They use India as an example, and human rights abuses against Christians on the basis of their trying to change people's religion. The Constitution of India clearly says that there is no state religion, and it is

not lawful to misuse people because they are trying to convert, yet this paper says that the operations are really different. That is the kind of thing to struggle with: what is a lawful reason that something cannot happen as opposed to actuality?

Dr McBeth—I think we are in agreement that the work needs to be done to isolate what the objections are, if there are any. I suspect that many of the nonratifications arise simply from it not being a priority; these countries have got other things that they are directing their resources to.

Senator MOORE—Does it cost anything?

Dr McBeth—It is just not at the top of the list, or it may be misunderstanding or lack of resources, whatever the case may be. As we have said already, if there are genuine political or cultural objections to certain elements, we should find out what precisely they are.

Senator MOORE—Country by country.

Dr McBeth—Country by country, treaty by treaty. ‘Why is it that you haven’t ratified this treaty?’ I think we are in agreement on that.

Prof. Joseph—On your example of India, I have not read the Uniting Church submission so I do not know exactly what they are talking about, but you get various cultural arguments. At a governmental level, the government itself—in this example the Indian government—can actively disagree with something, and it does not sound like that is what is happening in this case. If the Indian government were to be quizzed, ‘Okay, how are Christians treated in this situation?’ they would be snookered by their own law. They cannot say, ‘Well, this is anathema to our culture,’ because their own law in fact says ‘freedom of religion’. Obviously, there will be the fairly elastic limitations, but I think it is almost the process, when countries do start to come on board with a particular human rights interpretation, that it will be enshrined in law first and it can take a long time to distil down through society.

That is in the case where something really is culturally held. I think some cultural arguments by governments—and I alluded to this with Indonesia circa 10 years ago—are completely self-serving. It is very self-serving to say, ‘My people don’t like voting,’ because, funnily enough, that means you stay in power forever. There are some cultural arguments which are bogus. There are also some which are real, but the government may be incrementally coming along, or it may just be for show, but by the very existence of that law the government could be snookering itself and almost stopping itself from using the cultural argument in the future. I am just using India because you used that example.

Senator MOORE—Yes, because it is clearly detailed in the submission.

Prof. Joseph—It would be difficult in that situation for India to say, ‘That’s just our culture,’ so then it becomes a question of, ‘Okay, why is it not being enforced?’ Then what can also happen is outright denial and arguments over whether something has or has not happened, and that is also difficult, but at least it is getting out of that murky cultural relativist argument. Your second question was about the APF.

Senator MOORE—Yes. How does it have to change to do the job you think it could do?

Dr McBeth—My understanding is that at the moment it is very much an informal network of national human rights institutions. They are doing very good work in terms of engagement and fact-finding in investigation, and they are engaging in some very interesting research projects, but they do not really go any further than that. They are not an enforcement body. They are an advocacy body to some extent, but it is very much a federation of national institutions, and the national institutions themselves have very different mandates from one country to another. So it is extremely loose, and it is an extremely good start, but it is a long way short of the version that they have under the Council of Europe or something of that sort.

Prof. Joseph—It could almost evolve from the Asia Pacific Forum to become the Asia-Pacific human rights commission. At the moment it is, as Adam said, this fairly loose network. It is an advisory body, effectively, and a networking body. It is not ‘a body’. It needs to become more corporeal and become—I do not know—a commission which, for example, might have a multinational membership and be able to put forward recommendations to the satellite national commissions or something like that, but actually have a standing body of some sort. At the moment it is just a tiny office in Sydney, which does great work, but it is a multinational network, probably not a multinational body.

Dr McBeth—If we are going to have a more substantive regional commission type body, it would have to be underpinned by a regional treaty or an instrument of some sort. That would probably be a really good body to start the process of getting an instrument together—the negotiating process; the engagement process; what we want in; what are the fundamental objections to certain rights or the way that certain rights are written and so on. That would be a really effective body for getting a draft together but, in order for the draft to have any legal significance, it would then have to be adopted by each of the countries involved. A legal mandate is the answer to your question. It cannot become a quasi-commission until it has got a legal mandate, but it does look well placed to put in place the first steps towards that, in my view.

CHAIR—I have a follow-up question. From talking to people involved in the APF, one of the very productive points is, obviously, that the informal networking has that level of informal influence, which sometimes can be more effective than formality, and it is bringing together the three key areas involved in human rights—the institutions, the NGOs and governments—and the APF’s strength really lies in bringing those three, sometimes very much at odds, bodies together. When you start talking about commissions and legal mandates, I wonder whether losing some of that informality might actually be a disadvantage. I do not know.

Dr McBeth—In which case maybe you would create a separate body, and maybe the APF puts together some of the groundwork for creating an instrument on which a commission would be based, and the commission is a separate entity, and the APF continues doing much as it does today.

Prof. Joseph—Having said that, I am not sure that I am in a hundred per cent agreement with Adam. When I was saying the APF could evolve to become an Asia-Pacific human rights commission, I was not necessarily thinking of a commission in terms of, say, the Inter-American Commission on Human Rights or the former European Commission of Human Rights, which did operate under a treaty and make decisions and so on. It was that it could be more like a regional

version of a national human rights institution, which are underpinned by some sort of legal instrument. For example, HREOC, or the AHRC—its website still says HREOC—

CHAIR—Yes, we know what you are talking about.

Prof. Joseph—Yes. The AHRC, the Australian Human Rights Commission, does not make decisions as such. It still has that advisory component. Maybe that is the halfway house. The idea of a commission of the sort that Adam is talking about, and a treaty and stuff, ultimately could be a good idea, but again—it is like my opening statement—we are talking mid to long term. That is not going to emerge out of the air. Even turning it into some sort of regional human rights institution is more formal than what it is, but it is not as formal as something like the Inter-American Commission on Human Rights, and it could leave most of the legwork to the satellite national commissions. But it just becomes a bit more formal in that respect, whether it be an explicit or implicit mandate that this is the regional body from which new things might evolve, and eventually it may suggest, ‘Okay, we don’t want to lose our informal role, so we will set up this new body,’ and what it is called is irrelevant—commission, council, whatever.

Mr RUDDOCK—You have given us a very interesting article on ratification. I am displaying my own ignorance here and I should perhaps have done some more work on it: do we know who the Pacific Plan Task Force is? Have we had any submission from the Pacific Plan Task Force?

CHAIR—No, we have not. Do you recall Imrana Jalal, the woman that came and spoke to us about human rights in the Pacific? I think the Pacific Plan Task Force educates politicians and runs those sorts of workshops around issues. I could be wrong about that, but I am pretty sure.

Mr RUDDOCK—I am just looking. It is very much in this Jalal article.

CHAIR—Yes.

Mr RUDDOCK—It has a positive role. It is spoken of as being the body that is in fact liaising—the way I read this—on the implementation of the accession.

CHAIR—We need to go back and reread Imrana’s submission.

Prof. Joseph—Implementation of the accession to what? To human rights treaties?

Mr RUDDOCK—These are the ones that are doing all the treaty accessions in the Pacific.

Prof. Joseph—Okay. There are not that many at the moment.

Mr RUDDOCK—I am just reading the article. It is the Pacific Plan.

Prof. Joseph—We have got here a table, if you are interested.

Mr RUDDOCK—Yes, I have seen that table.

Prof. Joseph—Did we submit that? This is just a couple of ratifications.

Mr RUDDOCK—No. I have seen bar charts that had which ones had been acceded to.

Prof. Joseph—That is the Asia and the Pacific. You can see the Pacific itself is very poor in terms of ratifications.

Mr RUDDOCK—But that is something it was working on: a national human rights treaty system. What I am really looking at is this question as to whether there ought to be a further investigation in relation to those issues. It does not seem clear to me that the reasons are other than just economic.

Prof. Joseph—I think they could easily be capacity building and may be, for example, with the economic covenant.

Mr RUDDOCK—Why would you give that a priority? I mean, ‘We’re perfect. Everybody knows each other. There are no human rights problems.’

Senator MOORE—Or, ‘We’re sinking.’

Mr RUDDOCK—Yes.

Senator MOORE—The ones that are suffering from the environmental crises.

CHAIR—Yes, that is right.

Prof. Joseph—One thing, for example, might be to find out why Samoa ratified the ICCPR, then. Why did the Solomon Islands ratify the Pacific Plan? There were some reasons and I think these countries are becoming more interested. When you say it is not a priority, it has not been a priority for 40 years.

Mr RUDDOCK—I just do not know who the task force is, who the people are, and whether they are still going around and talking to people about it. We ought to have a pretty clear picture of that.

CHAIR—We can get some information on that.

Mr RUDDOCK—Thank you for drawing my attention to that article. I do not feel as ignorant as I appeared.

Prof. Joseph—I do not think it was us.

CHAIR—I am looking for it. I cannot find it.

Mr RUDDOCK—It is here.

Prof. Joseph—You were looking at it, but I do not think we gave it to you.

CHAIR—Mr Ruddock is looking at it, but it is not part of a submission.

Miss Contini—It was included in the papers. It is Imrana?

Senator MOORE—Yes.

Prof. Joseph—If it is a good article, we will take credit for it!

Senator MOORE—But it is April 2006, and this is the other issue. A lot of this work has been done and we have been talking about it for a long time, and it is as though it is all new, and that is frustrating.

CHAIR—If there are no further questions, we might wrap it up there. I think we have occupied your time and your brains for a fair while this morning. Thank you very much, though. That was a very informative and interesting discussion. I will formally close your evidence here, but can I just say a couple of things. You will receive a *Hansard* transcript of the recording. If you wish to clarify or make any changes in terms of accuracy, you have the opportunity to do that. There are a couple of documents that you have said you will pass on to us; if you could give those to the secretariat, that would be great. Thank you very much. That was a very interesting discussion.

[11.03 am]

BALL, Ms Rachel, Lawyer, Human Rights Law Resource Centre

HOWIE, Ms Emily, Senior Lawyer, Human Rights Law Resource Centre

CHAIR—I welcome our representatives from the Human Rights Law Resource Centre. Thank you very much for coming along. We have, obviously, had several of these hearings and quite a bit of evidence and discussion. Every single one has added to the debate and it has certainly been very informative. I thank you for taking the time to talk with us.

Although the subcommittee prefers that all evidence be given in public, should you at any stage wish to give any evidence in private, you may ask to do so and the committee will certainly consider your request. Although the committee does not require you to give evidence on oath, you should be aware that these hearings are legal proceedings of the parliament and therefore have the same standing as proceedings of the chambers themselves. I invite you to give some opening remarks and then we will move into questions and answers. Thank you.

Ms Howie—Thanks very much for having us here today. As with our written submissions, we will only speak about the human rights issues in the Pacific today; we will not focus on the Asian region.

CHAIR—Sure.

Ms Howie—I am going to make some introductory remarks about human rights frameworks and how they can assist in the Pacific, and then I will talk briefly about two concerns about human rights that are commonly raised. My colleague Rachel will then set out why we think it is not the role of this committee to recommend a particular human rights model or mechanism for the Asia Pacific. However, she will set out four things that we think the Australian government can do to support the development of human rights in the Pacific, and we would respectfully request that the committee ask the government to do those four things.

Human rights principles at their core are about freedom, equality, dignity and respect. These are fundamentally universal values, demonstrated by the fact that almost all countries have signed the international human rights treaties. The Australian government, in the Prime Minister's Port Moresby Declaration, has signalled a new era of cooperation with Pacific island nations, and that will focus on partnerships to improve governance, amongst other things, including the role of civil society and the role of non-government organisations in basic service delivery.

We think human rights frameworks will be an important part of this initiative as they improve governance, for example, by providing protection against the arbitrary use of power, the rights to free movement, free speech, a fair trial, and freedom from discrimination, amongst other things. Human rights frameworks also improve basic service delivery by promoting the development of more flexible, responsive, individualised and consumer-friendly public and social services.

But there are two main concerns about human rights that I will comment on briefly. The first is the interplay between human rights and customary international law. Human rights principles may be universal, but their application will vary, depending on the context in which they operate. We say that human rights constitute core minimum standards and that they are capable of being adopted and implemented in such a way as to ensure respect for local values and customs. In many respects, local values and customs will not even be inconsistent with human rights. For example, the Pacific emphasises that all people have a divine essence and dignity, which is not dissimilar to the centrality of a person's dignity in human rights law.

In any event, human rights provide a framework rather than the predominance of a particular right or idea in every circumstance. Where individual rights are in conflict with custom, a human rights framework allows both rights and custom to be taken into account. Sometimes it will require that either rights or custom will prevail, but we do not think this is a reason for not using a human rights framework at all.

The second issue is the cost of human rights, particularly in relation to economic, social and cultural rights. There is a concern that governments will be required to provide resources that just do not exist. The answer to this is simple: we know that the international obligation for governments in terms of economic, social and cultural rights is for them to use the maximum of all available resources in order to ensure the progressive realisation of those rights. In fact, the government's aid program reflects the idea that there is a strong correlation between effective and equitable social policy, which is developed through a human rights framework, and economic development and growth. Australia has therefore recognised that the cost of not promoting human rights may be felt in peace and security.

I will now hand over to Rachel, who will provide specific examples of how this committee and the Australian government can help promote human rights in the Pacific.

Ms Ball—As you know, the terms of reference ask the committee to consider models for a regional human rights mechanism. Our recommendations do not fit squarely within the terms because we consider that an Australian parliamentary committee is not the appropriate forum in which to develop the form or function of such a mechanism. I will speak briefly about our reasons for holding this opinion, and then mention four things that we think Australia should do to actively and effectively promote human rights in the Pacific.

In the course of preparing the centre's submission, we spoke to a number of human rights lawyers and activists with experience working in the Pacific, and the almost universal response to the proposition that Australia might unilaterally develop and promote a particular model of mechanism was that such an approach would not work. This is why our submission, along with numerous others, highlights the importance of stakeholder buy-in, bottom-up approaches and enhanced dialogue.

These may well sound like hollow buzzwords, but in fact the principle that they express is one of the most important in effective human rights protection—that is, human rights are best implemented when they are well understood and accepted as being relevant to the local context. This requires an incremental approach and stakeholder participation. With this in mind, and acknowledging that Australia does have an important role to play in promoting human rights

within the region, I would like to reiterate our key recommendations concerning what we believe Australia should do to fulfil its obligation to contribute to regional human rights protection.

First, the Australian government should consult NGOs doing human rights work in the Pacific and implement policies to strengthen and support these organisations. Experience in jurisdictions around the world has shown that high-level human rights developments, such as the creation of laws or institutions, must be supplemented by on-the-ground non-government capacity. Second, Australia should continue to support the development of national human rights institutions, where appropriate. This should be done through the existing mechanisms within the Asia Pacific Forum. Third, the Australian government should develop a program that assists Pacific island countries with ratification of international human rights treaties and associated implementation, monitoring and reporting obligations. Fourth, and if possible, we recommend that this committee consult with people from the Pacific island governments and, importantly, civil society before making final recommendations. We believe that these groups are in the best position to identify the gaps in human rights protection in the Pacific and to identify the best ways to fill the gaps.

Finally, to return to the committee's terms of reference, we acknowledge that it may be that the establishment of some sort of regional human rights mechanism is the best way to promote and protect human rights in the Pacific, and I understand that the Regional Rights Resource Team advocates for the development of a regional human rights commission. If that is what governments and civil society within Pacific island countries decide is needed, Australia will have an important role to play in facilitating the development of such a mechanism through the provision of human and financial resources. But we believe that this is at least a step away from the current inquiry. We are now happy to take questions on these or any of the other recommendations contained in our submission.

CHAIR—Thank you very much. What is emerging out of this particular inquiry is that the Pacific is becoming the focus of everyone's attention because of being realistic about the level of influence you can have across such a broad region and also, obviously, because there are some real challenges in that particular region, which we are being reminded of only in the last couple of days. My question is a simple one because I know there will be others from my committee members. You talk about engaging NGOs and talking to civil society about the idea. We have been doing that through this inquiry and we have had some very interesting submissions, and spoken to people who have knowledge about the Pacific and also NGOs from the Pacific islands. I am wondering if you could direct us to any group or any particular paper that may not be already part of the submissions that we have received. That would be useful, because I do not think the committee would ever intend to make recommendations about that region without having engaged as much as possible with organisations involved on the ground.

Ms Ball—I understand from reading *Hansard* that Imrana Jalal had undertaken to provide you with a list of NGOs operating in the region.

CHAIR—Yes.

Ms Ball—I suppose that recommendation was in reference to that. We believe that it would be a really good idea to follow up on those contacts, when she provides them to you. Regarding resources, what sprang to mind first was that the University of Wellington last year held a conference in Samoa, I believe—I think Sarah Joseph was there. All the papers for that

conference have been collated into the *Law Review*, which I do not believe has been published yet but will be published soon, and the papers may be available. The woman that I spoke to at that university, who was involved in the organisation of the conference, was Petra Butler. I am not sure if you have heard of her.

CHAIR—No, I do not think we have.

Ms Ball—The conference was around the possibility of the development of a regional human rights charter. I can be in touch with her and ask her to provide the papers, and I can send them through to the committee, if you would like.

CHAIR—Thanks very much. A lot of the discussion that we have been having with other submitters as part of the inquiry is particularly focusing on the Pacific. I appreciate that a parliamentary committee of the Australian government is not going to be the mechanism by which we achieve universal human rights in the Pacific islands, but it is a start. At the same time, there is this broader view not about a parliamentary committee but in fact about Australia imposing its values and its sort of colonial past on some of the smaller countries throughout the Pacific islands. In your view, what would be one or two practical steps that we could take as a country that may facilitate a broader discussion in the region about human rights, particularly setting up institutions?

Ms Howie—The mechanisms that you choose or that you could use would be aimed at developing human rights cultures within those countries, and I think it should be seen less as Australia imposing Australian values than those Pacific island nations accepting what are universal human rights values. A lot of those need to be developed at a local level. Some of these countries have human rights laws anyway, so a lot of it is really about education and understanding these laws. Some of it is going to be about being able to enforce rights, where necessary, or advocate for your rights, where necessary. That all needs to come from this bottom-up approach that everybody is talking about, I think.

The only way to avoid it appearing to be the imposition of Western colonial values is to really promote this human rights culture, and that could be through the civil society that is already active there, and it sounds like there is a really active civil society, at least in parts of the Pacific. I think supporting that civil society in its role would be a really good start.

Ms VAMVAKINO—As you speak, I am thinking about how you would do this without being seen to be imposing. How do you change a cultural attitude that exists on the ground, let's say somewhere in the Pacific islands, that we have a different view about here? We are still doing it, aren't we? We are trying to find an indirect way of doing it.

Ms Howie—Yes.

Ms VAMVAKINO—How do you do that? Who does it? Do people on the ground, in the Pacific or anywhere else, have a serious problem with this particular thing that we think they should have a problem with and should change? It is all about cultural attitudes towards human rights; it does not mean that our attitude is the correct one and somebody else's is wrong. If we are talking about understanding each other, we have to also accept that maybe some cultures have a slightly different view about what constitutes a human right, and therefore their view

should be respected, even if we cannot live by it. Where are all those issues? They are the issues on the ground that you need to deal with in order to try and effect any change. How do we do it without being seen to be imposing it? Do we fund people on the ground to do it? We have been doing that for a while. It does not seem to be working anywhere really, because ultimately they are sovereign states and sovereign cultures. That is really where the challenge is.

Ms Howie—I think you do do it by funding local organisations to do that.

Ms VAMVAKINO—That is fine. I wonder whether that actually works, rather than just funding, reviewing and talking about it, then finding that it is not working.

Ms Howie—I do not think that one particular mechanism is going to be the answer to all of these questions, and developing a culture and society where people understand what rights mean, are able to access or advocate for those rights on their own behalf or other people, is something that you need to progressively work towards in those countries. The only way you can do it is to fund local organisations and capacity-build within those organisations. You can do it through AusAID.

In our submissions, we talk about contracts that are entered into with Defence or Trade, having human rights impact assessments as part of those contracts—so, building an awareness within those governments that these basic minimum standards are a requirement, or at least of interest, for the Australian government when they are entering into these contracts. Human rights NGOs can only do so much on the ground to change these situations.

Mr RUDDOCK—That would mean a fundamental change in the way AusAID works. My understanding is that AusAID has taken the view that it should work cooperatively with countries about the way in which aid programs will be implemented. That essentially means that, unless both countries are agreed that that is a priority, it does not happen. What you are really suggesting, it seems to me, is that we would have to suggest to AusAID that it become more prescriptive about what it is prepared to support.

Ms Ball—We are not suggesting the imposition of a conditionality on aid. I am not an expert in the way that AusAID works, but I understand that when development projects are entered into a whole lot of different factors about the likelihood of success and other things are considered. Our suggestion is that one of the things that be considered is the human rights impact of that project, at least, so it is more Australia leading by example, Australia making sure that when it goes into a country and involves itself in a development project, that project is going to have a positive human rights impact, and that being an element of what it considers.

Mr RUDDOCK—That gets down to this argument that we were having before as to whether you are looking at social and economic goals as being human rights that people are entitled to enjoy, and the funding is directed to those goals rather than civil and political goals. I am very impressed with your paper and the amount of work you have put in. Can I just say thank you for that. It is a very comprehensive paper and quite interesting.

I was interested in paragraph 86, because it was a question we were looking at before—that is, the resistance to ratification in the Pacific. You give reasons for it. Some of them I understand. I can imagine people saying, ‘We’ve got limited financial and human resources; why should we?’

I can understand that. What I am concerned about—and I might like to take it up with some later witnesses, so I would like you to give evidence in relation to it—is that we:

(d) do not wish to upset internal and powerful stakeholder groups, like the Church ...

What is the negative view of the church that you have in the Pacific that is resistant?

Ms Ball—I will start by saying that those reasons were taken directly from the paper by Imrana Jalal that is cited below. We are not professing to have—

Mr RUDDOCK—You are not adopting those?

Ms Ball—No. We are saying that these are the reasons that have been given.

Mr RUDDOCK—It is not the Uniting Church and the name of the Methodist Church in Fiji that you have in mind, is it?

Ms Ball—No. We do not.

Mr RUDDOCK—I think that was Rabuka's church, wasn't it? I am very interested in whether we are looking at, say, some of the fringe bodies, as I would see them: Seventh Day Adventists, Mormons.

Senator MOORE—Some of the churches are very influential.

Ms VAMVAKINO—Doing on-the-ground work, bottom-up.

Mr RUDDOCK—It is suggesting that they do not want to upset those powerful stakeholder groups.

Ms Ball—That is right.

Mr RUDDOCK—How would they be upset? I wonder, if we are talking to the churches, whether we might be able to get them as stakeholders for change rather than part of the internal powerful stakeholders resisting change.

Ms Ball—I cannot speak to the particular churches in the Pacific, because I do not have any expertise in that, but I imagine that it is similar to the way it works in Australia: that the church is a powerful group and there are some elements within it which resist human rights standards applying, and there are some elements that are supportive of human rights frameworks. I suppose you try to get those sectors of the church that resist on board, in the same way that you do with every other resistant sector.

Ms VAMVAKINO—But they have a values system as well. The church has its own set of values and things that form another layer, that complicate what is obviously very complicated. That is why I keep going back to 'how' and 'on the ground'. It is enormous.

Ms Ball—With all of this, human rights versus the church or human rights versus custom, we think it is a false dichotomy to set those two things up against each other; that actually human rights works with the church and can work with custom. They can work together, rather than being set up against each other. One of the things that are most important in human rights education is explaining that to people so that they do not see it as a resisting force but rather as a tool that can be used within a framework that they have already adopted and accepted as their own.

CHAIR—Is that a start? Is that one of those practical steps that we keep asking about?

Ms Howie—I think it is a very important way of going about doing anything in the world today. It is most important.

Ms Ball—We have a section in our submission on the importance of human rights education. I do think that that is very important.

CHAIR—I guess that is what I am thinking about. Is that the critical step? Whilst we could have discussions endlessly about what we would like to see happen and what we think is wrong at the moment, and why we think there is this massive chasm between the two, what is it that we can realistically begin to do that might actually see us closing that gap a bit? That is the question that we are really asking. If you had a choice, what would be the one thing coming out of this inquiry that you would say could help? Is it education and training, funding civil society, or setting up a regional body that might have some implements? What is the one thing that could start or trigger a whole range of other actions that might get us to where we want to be?

Ms Ball—Can we choose one each? As an NGO, we have a lot of confidence in the importance and the ability of NGOs to actually have a real impact. It is not just about funding: it is about supporting and resourcing through technical knowledge sharing, and human resources and all of that. But in terms of human rights education and capacity building, NGOs within the country are often best placed to do those things. So if you establish relationships with strong NGOs—and we have heard a lot of good things about the Regional Rights Resource Team, and Imrana Jalal came and spoke to you, so you would have seen the level of her expertise—

CHAIR—Absolutely.

Ms Ball—they really are in a good position to make a real, practical difference to advance human rights in the countries in which they work. That is the one I pick.

Ms Howie—Again, I think this is a difficult question to answer because it presupposes there is one thing to do that will set up those sorts of—

CHAIR—I am not presupposing. It is the start.

Ms Howie—Yes, and I think a lot of people before the committee have said that a multidimensional approach is very important.

CHAIR—Yes.

Ms Howie—I think working with Pacific island nations on treaty ratification is really important. It is more than just a symbolic gesture from that nation that the human rights of their citizens and people in their territory matter. It is also an ongoing review of that country and an ongoing dialogue with the international system about how human rights are being implemented in their countries, and that in itself is a resource-intensive process, as I am sure Mr Ruddock knows from his time, and that we know from being an NGO delegation to the UN Human Rights Committee and other UN committees.

It is a really important process for education of countries about how human rights matter within their countries. It gives governments the opportunity to report on human rights and it gives NGOs the opportunity to respond, and then there is created a body of knowledge about how human rights are relevant in particular countries. Australia could really assist in, again, helping NGOs or governments in the ratification and then in the review process under the treaties. I think that, particularly in small nations, having people involved in that process would have quite a disproportionate impact on the population. If the Australian government is going to the UN Human Rights Committee, some interested people—and hopefully more—will know what is going on there, but I think that in a small country that kind of education at government and NGO level could have a great impact on the community as a whole.

Senator FURNER—I am new to this committee, so forgive my ignorance in some of these questions. What are the countries in the Pacific rim that have human rights laws currently?

Ms Ball—Most of them have some human rights reflected in their constitutions or their existing legal frameworks.

Senator FURNER—So they are basically in constitution rather than in legislation?

Ms Ball—There is a mix, but I know some of them do have particular rights in the constitutions. The interesting thing, though, is that in the Pacific—I imagine that Sarah Joseph spoke a bit about this before—there is a very low ratification rate of the international frameworks, and that is curious, in that the human rights are drawn from these international frameworks.

Senator FURNER—So there is at least a commitment in most countries to be on a path to having better rights through either the constitution or otherwise?

Ms Ball—That would vary from country to country quite significantly.

Senator FURNER—So what is working? If we are going to start somewhere, we should look at what is working in the region and build on that. What is working in particular countries?

Ms Ball—I do not think that I can answer that question with any great level of expertise. I am happy to look into it and get more information for you. When I have been speaking to people, I have heard that these legal frameworks, like the human rights within constitutions and national laws, are not necessarily helpful for a lot of people within the Pacific who do not access the centralised government based legal systems. Instead, they solve most of their day-to-day issues and problems under the customary laws or via the chieftains within the villages.

Senator FURNER—Or their customs.

Ms Ball—Yes, which suggests that high-level legal frameworks might not be the best way to promote human rights in these societies. It suggests to me that it has to be something that is more around, or at least supplemented by, very strong education programs and those sorts of things.

Ms Howie—It is similar to the kind of change that you would hope for from something like the Victorian Charter of Human Rights and Responsibilities, which is a cultural change within government and within the delivery of public services so that people take human rights into account as they are developing policy or implementing laws, and it does not require individuals to have access to the courts every time in order to enforce them at the back end, because at the front end the amount of human rights violation is being minimised.

Ms Ball—Would you like me to provide more information about that?

Senator FURNER—That would be great. Thanks, I would appreciate that.

Senator MOORE—You said earlier, Ms Ball, that you have spoken to many human rights lawyers interested in the Pacific, and then you mentioned the legal conference that we are going to get the papers from. How many lawyers are there playing in this field? It really fascinates me. It seems to be quite a specialist area. There is human rights law, but just through this inquiry we have had a number of people who come from different consortia that are obviously looking at it.

Ms Ball—I should clarify. That conference was not for lawyers; it was run by a law school from a university.

Senator MOORE—I bet there were lots of lawyers there.

Ms Ball—I am sure there were lots of lawyers. There were also people from government departments and NGOs.

Senator MOORE—People with an interest in the area. But I am interested: is this field one that draws attention? I just noted, Ms Howie, that your position in the organisation, as you have spelt out in the front of it, has been funded by a grant from Victoria.

Ms Howie—The Legal Services Board.

Mr RUDDOCK—From interest off lawyers' trust accounts!

Senator MOORE—There must be a structural interest in the area. In Australia and New Zealand in particular—because I know New Zealand have had similar inquiries—is the area of human rights, in particular in the Pacific, of academic interest in the legal profession? Are there courses in it? Are people drawn to it? Is it a profession that is growing? I would just like some general information on that area. Do you know? I should have asked other people, but it struck me when I was looking at your submission.

Ms Howie—I am not sure that I can answer that. I do not know about university courses or if people are taking a particular interest. Again, we could have a look into it if that is of interest.

Senator MOORE—I would like to follow it up. We have had a number of submissions from different legal groups and I am fascinated by the general area.

Ms Ball—One of the traps of human rights is that it is often filled up with lawyers, but that is not a particularly desirable outcome.

Senator MOORE—I believe politics is as well! I asked the wrong witnesses this question. I am interested in your submission where, a number of times, you have mentioned changing the way a parliamentary committee on human rights operates and giving it a clearer focus. Could you put some detail on record about why you think that should happen, what would be the process, and the benefits of doing something of that kind.

Ms Ball—Sure. That is a recommendation which we include in a number of our submissions.

Senator MOORE—Yes, I know.

Ms Ball—That is why you may have seen it before. The model that we have looked to is the UK's parliamentary human rights committee. There are a number of different things that parliamentary committees could do, but we think that there is a role for them particularly in following up on the views and concluding observations of the international human rights bodies in order to strengthen accountability and responsiveness to the reporting processes under the treaties, and also in following up on the views that come out of individual communications. In the UK, that human rights committee also has a responsibility, in relation to new laws that come before parliament, to assess them for human rights compatibility. We have got a lot more information about this which is contained in the submission that we are making to the current national human rights consultation, so perhaps I will send you that chapter from the submission.

Senator MOORE—I think that would be really useful for the committee to see, particularly as I know that it is something that your organisation has been putting forward for a few years. It takes up one whole part of your recommendations.

Ms Howie—Yes, absolutely.

Ms Ball—And we also in that submission compare it to similar committees in the Netherlands and in South Africa. So there are definitely models to look to.

Mr RUDDOCK—I would like to see a copy as well.

Ms Ball—Yes.

CHAIR—Yes, because when I saw that I assumed that part of your recommendation is that this committee have as much of a domestic as an international focus, and that is obviously why you focused on that in terms of the national human rights consultations.

Mr RUDDOCK—There are certain committees that already have limited functions in that area in reviewing both legislation and delegated legislation. They are human rights issues but they are very specific and targeted.

Ms Ball—We think there would be merit in centralising and formalising that process and tying it specifically to the human rights treaties that Australia has signed onto.

CHAIR—If there are no further questions, once again I thank you for coming along today and presenting evidence and also for your submission. We do not want to diminish or try to downsize the significance of this issue, but on behalf of the committee I think it is fair to say that, given the enormous amount of academic work that has been done around this—research papers, theses, analyses—we want this inquiry to come out with some fairly practical and achievable recommendations, and that is why we wanted to drill down a little bit and ask what the bite-sized chunks are that we might be able to achieve in the short term without necessarily just adding to the many shelves that contain analysis of this particular issue. Thank you very much for coming and taking part today. We appreciate your contribution.

If you could send the particular papers or documents that you said that you would pass on to us to the secretariat, then the whole committee will receive copies. These proceedings have been recorded by Hansard. You will get a copy of the transcript, and if there is anything that you would like to change or clarify in terms of accuracy, you will have the opportunity to do so. Thank you very much.

Proceedings suspended from 11.44 am to 12.12 pm

BARR, Reverend John, Associate Director, Church Solidarity (Asia), UnitingWorld

ZIRNSAK, Dr Mark Andrew, Director, Justice and International Mission Unit, Synod of Victoria and Tasmania, Uniting Church in Australia

CHAIR—I welcome representatives of the Uniting Church. Thank you for coming in and giving evidence today. You have given us what is a very detailed and very interesting submission, which raises a lot of issues that are relevant to this particular inquiry. I believe that reading a paper is one thing but actually having the opportunity to ask questions and have a discussion really adds value to whatever is written down, so thank you for coming in. Do you have any further comments to make on the capacity in which you appear?

Rev. Barr—I work with the Uniting Church in Australia National Assembly, with UnitingWorld, which is the agency relating to overseas issues, and I am the Associate Director for Church Solidarity in Asia.

Mr RUDDOCK—Church Solidarity in Asia?

Rev. Barr—This is our new title. I balked, because we were called something else up until about a month ago. I am still trying to remember.

CHAIR—What did you used to be called?

Rev. Barr—We used to be called Uniting International Mission, and I was Executive Secretary for Church Partnerships in Asia.

CHAIR—Thank you very much. Although the subcommittee prefers that evidence be given in public, should you at any stage wish to give evidence in private you may ask the subcommittee and we will consider that request. Although we do not require you to give evidence on oath, you should be aware that these hearings are legal proceedings of the parliament and therefore have the same standing as proceedings of the chamber itself. I invite you to make some open and frank comments on your submission, and hopefully we will have a lively discussion afterwards.

Dr Zirnsak—On behalf of the Justice and International Mission Unit and UnitingWorld, we welcome this inquiry and the opportunity for us to make a submission and to speak on the international and regional human rights mechanisms and models for the Asia Pacific. Our submission is drawn from our areas of work and experience in working on human rights issues in the Asia-Pacific region. The submission does not comprehensively address all the terms of reference but focuses on where we believe the two bodies can make meaningful comment based on that experience and work.

The Uniting Church has an extensive and close network of partnerships with churches in many Asian countries and in nearly every Pacific nation. Those relationships with many churches have existed for more than a century and are varied in their expression. The Uniting Church seeks to

protect and promote basic human rights as being in keeping with our understanding of the gospel and a living out of the love of our neighbour and the love of God.

The two submitting bodies have worked in the following areas of relevance to the inquiry: murders, disappearances and harassment of church members, human rights defenders, trade unionists and indigenous leaders in the Philippines, which unfortunately are still continuing today; human rights abuses in the context of the civil war in Sri Lanka, with the war likely to enter a new phase with the likely defeat of the LTTE in conventional warfare leading to ongoing terrorism by the remnants of the LTTE and ongoing human rights abuses against Tamils by the security forces; human rights abuses in Papua; the recent waves of attacks against Christians in North India, and again we notice there are news reports suggesting this is sparking up again; the impact of climate change on countries in the region, especially the Pacific, where climate change will impact on people's ability to gain their economic and social rights; persecution of Christian communities in Vietnam, China and Laos; protecting and seeking fulfilment of economic and social rights, especially in relation to the Millennium Development Goals within the Asia-Pacific region; and ending the use of exploited child labour and people trafficking within the region.

We have interpreted the terms of reference of the inquiry widely, to include consideration of human rights mechanisms and models to address economic, social and cultural rights, as well as civil and political rights. We welcome the efforts that the Australian government is already undertaking to promote and protect human rights in the Asia-Pacific region. We have noted that they have extended across governments over time.

In terms of our recommendations, we welcome the support the Australian government provides to the Asia Pacific Forum of National Human Rights Institutions, noting that a similar recommendation is made by many of the bodies that submitted to this inquiry, and ask that the Australian government seek to enhance the role of this body by assisting in national human rights commissions to increase their effectiveness, where such opportunities exist.

We also request that the budget for the Human Rights Small Grants Scheme increase from the current just over \$1 million to \$4 million, which would represent 0.1 per cent of the aid budget, believing that is necessary to facilitate civil society groups having more access to that and to support their work within countries in the region. Specifically, there is a need to provide that those on-the-ground organisations are able to make application. We note that there is some AusAID staff time already provided for that function, but it could be expanded.

We would also continue to encourage the Australian government to seek to use what influence it has as a medium-sized and respected middle power globally and a significant regional power in the Asia-Pacific region to engage with countries in our region to effectively influence them towards protection and respect for basic human rights. We note such influence will vary greatly across the region. Australia needs to continue a policy of seeking the most effective way to promote human rights in each country it engages with and it is clear that there is no one-size-fits-all approach to this work. However, at the same time, the Australian government should resist any temptation to use this flexibility as a reason not to engage with countries in the region over human rights issues, despite the fact that raising human rights concerns may have an impact on trade relations or cooperation on antiterrorism and transnational crime measures.

Australia should continue to support UN special rapporteurs as one mechanism for the defence and promotion of human rights, and seriously consider where the establishment of additional special rapporteurs may be useful. In supporting the UN special rapporteurs, Australia must ensure there is financial support of the UN that allows for effective establishment and maintenance of such positions.

Australia should continue to support and emphasise multilateral initiatives that promote and defend human rights where it assesses the initiative in question is effective. The Australian government should have an ongoing commitment to give financial support to the valuable work of the International Program on the Elimination of Child Labour—IPEC—through funding that program on an annual basis, and we have suggested \$2.1 million would be an appropriate level of funding to start with, which would make Australia the fourth-largest donor in that area but represents only 10c per Australian. Finally, we believe Australia needs to meet its commitment to the UN that it provide 0.7 per cent of gross national income in overseas aid.

CHAIR—Thank you very much. The purpose of this inquiry, of course, is to try to find some practical recommendations which can do something towards enhancing the human rights of individuals within this region. I have two questions. The first is that a lot of comment has been made to the effect that focusing on the Asia Pacific as one region is almost unwieldy—in fact, impossible—and that perhaps we need to reduce that down a little and focus on subregions. Given your extensive work throughout the whole region, I am interested in what you would think about that.

The second is on the discussions around a regional body. Of course, the argument is that a regional body can have some influence over individuals, member states within that region, but at the same time can also legitimise bad practice in the sense that it is so advisory that it does not actually have any impact on improving; and in fact member states can legitimise. You are members representing a significant church in the region and the classic example of that dilemma of legal rights and reality can occur with freedom of religion. Many countries will have, within their constitutions or even within their laws, the right to religious freedom, yet we know in practice they can be quite oppressive towards members of certain faiths that are not regarded as the dominant faith in that country. Given your experience, do you see any form of mechanism on a regional level practically improving that situation, or would it serve to just legitimise that difference between reality and what the laws of the country say on paper?

Dr Zirnsak—We would take the view, as other bodies have, that the Asia Pacific is too large and significant to be looked at as one region, so we would simply repeat the comments others have made: that there is great diversity across the region and that currently there are subregional groupings that already work together within that.

That said, though, certainly at the civil society level across those subregions there is work, for example, on people trafficking. Just last month a member of my team was part of a regional conference on people trafficking, which was organised by churches in the South Asia region. That was held in New Delhi but it included churches from, for example, the Philippines. It included also a church from Haiti that came across to be part of that conference and to share experiences dealing with people trafficking. Clearly there are abilities, at least at the civil society level, to work across those subregional areas.

But, to our thinking, the idea of setting up an Asia-Pacific regional human rights body probably is not a reality and we need to acknowledge that there are those subregions that already exist that, from a governmental point of view, it would make more sense to engage with. Therefore, we would say that whether the subregion enhances human rights or potentially covers for existing bad practice will probably depend on the subregion in question and its history.

We note that a number of the other submissions raise concerns about ASEAN particularly, and we would share concerns about the way in which Myanmar, or Burma, has been dealt with within the region in terms of, from our perspective, a lack of political pressure to address serious human rights concerns by that regime, but acknowledging, in the approach with different countries, that one size does not fit all. So there is a need, in different countries, to nuance what would be most effective to get them to move towards promotion and protection of human rights generally.

There would be concerns about going soft. You end up with this club where some countries decide that, by going soft on a neighbouring country, it might mean there is not pressure on them to move forward. We have experienced some of this with landmines. For example, we have raised concerns about the number of landmines in Bangladesh. Bangladesh is one of the few countries in the region that have become a full party to the convention banning anti-personnel landmines. They have kept about 13,000 anti-personnel landmines which they claim are for training purposes but they have not consumed a single one since they have signed the treaty.

We have raised concerns with them but they say: 'Hang on. All our neighbours haven't even signed on to this treaty yet, so we're a lot further down the path than they are. It's a little rich, you raising concerns about our stockpile of mines and expecting us to deal with it.' These are some of the practical difficulties. I do not know if John wants to add to those.

Rev. Barr—There is enormous diversity in the Asia region. The area that I know well is Indonesia. There are enormous issues just within Indonesia. Looking from the perspective of the church—for example, at human rights in West Papua—there are greatly diverse understandings of or approaches to human rights issues, depending on where you are in Indonesia and how you relate to Islam. I just want to recognise that there is a lot of diversity there and a lot of complex issues that we need to take into account.

Mr RUDDOCK—I am glad you have been reading other submissions. You have probably noticed paragraph 86 of the work of the Human Rights Law Resource Centre.

Dr Zirnsak—I did not get to read that one. It was one on the list.

Ms VAMVAKINOU—You are about to be asked about paragraph 86. He has beaten me to it, but that is fine.

Mr RUDDOCK—I noted you referred to the very strong networks and partnerships that the churches had. We are interested in why there is resistance to ratification of international treaties by Pacific island countries. I am not going to ask you to expand on it, because the reasons are given in paragraph 86: their limited financial resources, lack of technical capacity, focus on other priorities, and a wish not 'to upset internal, powerful stakeholder groups, like the church and customary chiefs'. Given that the church is obviously, according to this, a significant

impediment to ratification, what you can be doing in using those networks and partnerships to effect support for ratification rather than opposition?

Senator MOORE—It might be useful to say where that has come from—the paper on Fiji—just so you know the background.

Dr Zirnsak—We certainly have been aware of issues around lack of—

Mr RUDDOCK—I thought you might have been, with the Uniting Church and its links with the Methodists in Fiji. I just remember Rabuka, who used to be an active participant.

Rev. Barr—Yes, a lay preacher within the church.

Mr RUDDOCK—Maybe that is what they were referring to. I do not know.

Dr Zirnsak—We do share concern about lack of ratification of treaties, but probably we are more aware of lack of capacity for Pacific countries and the sheer burden of the international treaties that may be thrust their way.

Going back to the landmines treaty, which we have had a lot of experience with around universalisation, and the Australian government has put a lot of effort into seeking that universalisation, this is a region that has no landmines—has never produced any, never exported any, never used any—so you would say: ‘Surely this is a no-brainer? You can easily sign on and ratify this treaty.’ The problem is the capacity within the foreign affairs departments within these countries. Often there are very limited numbers of staff having to deal with a wide range of international treaties and the expectation that they will universalise them all. From speaking to the Pacific countries, I would understand that that is far more the issue that they face, and the human rights treaties are another area where that is the case, even within the Australian government.

I recently had a conversation with Attorney-General’s Department about universalising the UN Convention against Corruption, which is an area we have a very strong interest in. Talking about the Pacific, the feedback from the Attorney-General’s area is that they are having ongoing discussions with the governments but, because of the wide breadth of that convention, there are a whole swag of issues in that convention that do not have relevance to certain Pacific countries. Getting them to spend a whole lot of resources to become compliant with aspects of a treaty that may never apply to them may waste resources that could be used for areas of corruption that need to be addressed by those countries.

Mr RUDDOCK—I think I understand those arguments, but do you think there is a problem of that sort?

Dr Zirnsak—Not that I have any knowledge of. John?

Rev. Barr—Yes, I am aware that there is. We have a long history in the Pacific. The recent events in Fiji may see things change, particularly in relation to the Methodist Church. In the past, I can remember talking to some of my own colleagues about this issue. I think it is fair to say there has been quite a range of opinions on Fiji in regard to coups in the past, and I have had

people saying to me, ‘Indigenous rights are even more important than democracy.’ That debate has been going on within the church.

We are very much aware of it, and I thank you for raising that, because it is an issue that comes up in West Papua and other places. We are aware of that, and we would want to be working towards addressing it and working with our partner churches in order that they do come onside, are more serious about human rights and are prepared to ratify some of those treaties. It is an issue that has divided opinion within the Uniting Church as a whole and that we are becoming more aware of and would want to address, particularly with our church leaders.

Dr Zirnsak—We also want to raise the diversity within churches. Whilst you have talked about the Pacific, on the other hand our partner church in the Philippines, the United Church of Christ, has human rights incorporated into its basic constitutional document and is an active promoter of human rights.

Mr RUDDOCK—My view is that you are looking at some people that you would not regard in the quite the same way. You have the Mormons, for instance. A lot of the elements of what is seen to be Christian have very different roots and histories and dynamics, but, being the mischievous person I am, I would like to put those things on the agenda.

Dr Zirnsak—Sure.

Mr RUDDOCK—But the positive that I was looking for was whether there was some way in which we could support the churches to become a part of the movement for change and whether you might like to think about that.

Dr Zirnsak—Regionally there is the Christian Conference of Asia. It has a very strong focus on human rights and on gender empowerment. It is particularly looking at discrimination against women across the region and how churches both contribute to and can be a part of dealing with those issues. It also has a focus on environmental issues. As churches, we are active participants within that regional forum, the Christian Conference of Asia.

Mr RUDDOCK—And that is a big conference of churches as well.

CHAIR—Is there a document, a charter or a statement of principles or whatever that we could have a look at?

Dr Zirnsak—Yes, certainly—on both of those bodies, I suspect. The Christian Conference of Asia definitely has a broad charter on those issues. One of their strong arms of focus is those very human rights issues. As we have said in our submission, looking at support for human rights small grants, and government looking within the region to more actively provide grants to worthwhile human rights based projects, here is one way very practically that the Australian government could expand that program and make more use of it.

Mr RUDDOCK—The one I really wanted to look at, to see whether it might be able to be developed further and whether there are any hooks on it, is your proposal in recommendation 4 to continue support for UN special rapporteurs and then, you say:

... ensure that its financial support of the UN allows for the effective establishment and maintenance of such positions.

Are you saying that we could identify a person whom we might want to appoint as a special rapporteur for the Pacific and we attach funding to that for the establishment and maintenance?

Dr Zirnsak—We have not gone that far in our thinking. At this stage, we are looking broadly at the way we have seen special rapporteurs work across various areas.

Mr RUDDOCK—Would the UN be likely to appoint a special rapporteur upon achieving the implementation of UN human rights instruments and ratification of them, and put him on the payroll and send him as a UN ambassador to the Pacific, with a specific role?

Dr Zirnsak—If member states had thought that was worthwhile and supported it.

Mr RUDDOCK—Would it need the Security Council, or where would the approval come from? I just do not know. You are making this suggestion and I am wondering whether you have thought it through.

Dr Zirnsak—What we were thinking is that you already have mechanisms that establish special rapporteurs and that many have fulfilled very important and useful functions. Philip Alston's visit to the Philippines as special rapporteur on extrajudicial executions was very instrumental in helping to shift the Philippines government at that time. There was other international pressure being brought at the same time, but his visit, from our perspective, did appear to add further weight and did help move the Philippines government. The President made a number of announcements in response to that report that helped move that situation forward. We have seen the usefulness of special rapporteurs in particular roles.

Mr RUDDOCK—Yes, but I do not know whether there was any specific money attached to the role of the special rapporteur, where a country that was interested in achieving change was able to specify that—

Dr Zirnsak—The submission was more suggesting there is a need to ensure that the funding mechanisms within the UN through which special rapporteurs may be funded are adequately resourced. In the past we have had special rapporteurs visit Australia, and on one occasion I can remember a special rapporteur from North Africa saying that he was still running his legal practice and that being the special rapporteur was a kind of part-time role that he did in his spare time, and often he had to put some of his own resources into making it work at that time. I am hoping the situation has improved.

Mr RUDDOCK—Yes, but just giving money for special rapporteurs might mean that we would have a special rapporteur for Sudan, and I am not saying Sudan is more important, but it would not be achieving—

Dr Zirnsak—Yes. To clarify the recommendation, it was not a suggestion that the Australian government would specifically earmark funding towards a special rapporteur position or set up a situation where we put money on the table to get certain special rapporteurs up.

Mr RUDDOCK—And have the UN doing it so that we are detached and not seen to be driving it? It gets rid of the colonial mentality. This is the UN that was instrumental in a lot of them getting their independence.

Dr Zirnsak—I am merely pointing out that that is not something we had thought through. The point we want to make is that special rapporteurs have played a useful role and that they need to be adequately resourced. We are aware that in the past special rapporteurs have not been adequately resourced. We did not have a specific model in mind for the mechanism to ensure that that adequate resourcing takes place. If the committee wishes to think further down that path, that would be fantastic.

Mr RUDDOCK—I see it as a possible alternative to a lot of the other suggestions about regional bodies and funding national institutions and doing it through the AusAID program. Maybe we should ask Foreign Affairs whether, in the way in which we work with the UN, we can earmark some money for something.

CHAIR—Given that it has come up as a recommendation from you, when the committee is considering its draft report and recommendations it may very well be something that we wish to explore further.

Dr Zirnsak—A point I want to make, though, is that I do note submissions by other bodies that point out that an earlier attempt to establish a human rights mechanism within the Pacific, where Australia and New Zealand were playing a leading role, appeared to have foundered because the Pacific felt it was Big Brother coming in. That is part of the caution I would be expressing.

CHAIR—Yes, that certainly is an issue that has been raised.

Ms VAMVAKINOU—Even for the rapporteur, Mark?

Dr Zirnsak—If the Pacific felt that Australia was directing money in to push a special rapporteur into the Pacific, I could imagine so.

Ms VAMVAKINOU—Yes. It could still fall foul of the same perception, couldn't it?

CHAIR—Even if it was via the UN.

Dr Zirnsak—That is a potential pitfall. I am not suggesting that that closes off the opportunity. It may still be worth exploring, but certainly be aware of it.

Ms VAMVAKINOU—This is probably a very basic question, but on this issue of what we are trying to do, and trying to avoid the perception of being Big Brother, what is the attitude of the Pacific islanders to the churches that come in to assist and work on the ground? Is there a perception that some of the churches are being a bit Big-Brotherish as well? I remember being in Indonesia a couple of years ago and speaking to people who thought American aid was a mechanism by which the Americans were trying to impose their value system on an Islamic country and they were very adverse to the idea. They did not even want the money. They were very suspicious about a lot of the programs that were being funded. I am assuming that happens

quite a bit on the ground, but I am interested in what the attitude towards the churches would be, given that our Western Christian churches are not necessarily indigenous to the Pacific islanders, let alone anyone else.

Rev. Barr—My experience is that, wherever the church has been strong in the past, there is a strong desire by local people to have the church there, and there is a strong feeling in many parts of the Pacific—and in South-East Asia, which I am familiar with—that the church has actually abandoned them; there is a sense of feeling abandoned. That is amongst communities where the church has been strong in the past, where there has been a strong Western presence, and wherever we go there is a longing to maintain and build up that relationship.

Then, of course, in countries like Indonesia—and I am talking now about authorities, local governments, Christians being a minority and the majority being Islam—there would be a perspective that we are in there to pull strings and to influence, so we have to be extremely careful about how we work. That is why we have a strong commitment to working with partner churches, with the local churches. We want to work on their terms and according to their needs and what they ask of us.

In the communities where the church has been strong traditionally, there is a strong yearning for that continuing relationship, but there is a real sense of reluctance in the broader community about the work of the church there. It is seen to be the West having influence there, and we have to be constantly aware of that.

Having said that, when you look at the church in the Pacific and in Asia, in terms of numbers and the direction in which the church is growing, it is becoming an Asian and a Pacific church. To a certain extent, we have a degree of decline here in Australia. Look at bodies like the Christian Conference of Asia and Pacific Conference of Churches: it is the Asian and the Pacific churches, particularly the Asian and the African churches, that are now dominating the world scene.

CHAIR—Absolutely.

Ms VAMVAKINO—Absolutely.

Rev. Barr—So to speak of Christianity as being a Western thing is no longer the case. Of course, the problem is that you have the American connection and then you have churches which you might call ‘new generation’ churches which are not working with established churches, have the intention of evangelising and have a fairly pro-Western outlook. That is one of the problems in India, for example. I have recently been to India, and you have the traditional churches which are very serious about presenting themselves in an indigenous way, seeing themselves as being a local community. Then you have American churches—or sometimes from other areas—coming in with a strong evangelical push which is highly insensitive to the traditional cultures, so you get a reaction, particularly amongst Hindus.

Some of the actions that have been taken against Christians have been perceived by, say, more conservative non-Christian groups, like Hindu groups, as being a reaction to some of these more recent new generation type churches coming in, which our own established partner churches are working against and certainly are opposed to but are being seen to be part of.

CHAIR—That is a very interesting point.

Ms VAMVAKINO—You raise something that is very important. I had not thought about it. How much of a problem have we got in our region with some of these evangelical churches? You have government on one hand trying to establish a potential model for human rights and whatever, and obviously there is the established church, the Uniting Church, that seems to have worked out a very good partnership with local indigenous communities and has an understanding of culture and sensitivities. You are doing all the right things that perhaps the politicians do not do in the way that they work with people. Maybe we can learn from some of your methods. But now you have got this other stream, the evangelical churches, that I assume would have no sensitivity or respect whatever for local indigenous cultures or, indeed, other religions, and are very fixed on imposing their own way of thinking and behaving. That kind of mirrors what we as a country are trying to avoid. We do not want to be seen to be telling our neighbours how they ought to be conducting their human rights. There seems to be this very interesting juxtaposition of the two. How much of a problem could this become?

CHAIR—What is the size of their influence?

Ms VAMVAKINO—That could be creating problems for politicians inadvertently as well.

CHAIR—To what extent are they moving in outside of the US and Western countries? In addition to Maria's comments, how big an issue would it be?

Rev. Barr—It depends on the country. I can see it as a real problem in India at the moment. A lot of it is to do with the developing middle class. Often it is the new generation types of churches that appeal more to the middle class, who have a fairly pro-Western view, and of course these churches will often have a theology that reinforces prosperity—the idea that God wants you to get rich. India does have a policy of freedom of religion. We are very much committed to being members of worldwide Christian bodies, like the World Council of Churches and the Christian Conference of Asia and the Pacific Conference of Churches, where we work together with other churches to maintain the values that we are committed to. I sometimes feel that there is kind of an abuse by some elements of the Christian church of freedom of religion in certain countries. How you get around that I do not know, because as church bodies, as the World Council of Churches, we would oppose that approach. We do not have authority over what happens in other areas. I guess our partner churches have to work very hard in local communities to convince people that that approach is potentially quite destructive.

Ms VAMVAKINO—It makes everyone's work all the more difficult, doesn't it?

Rev. Barr—Yes.

CHAIR—So they are not necessarily part of the church solidarity in Asia?

Rev. Barr—That is right. No, that would be an independent movement. Often they are fairly independent movements within the individual countries. They do not necessarily have their base back in the USA and there are strings being pulled in the USA. Sometimes they are fairly independent movements within the countries because they are people who have been successful in business, who have got money behind them, and they will go out and do their own thing.

CHAIR—Yes, and they have built up.

Rev. Barr—So they can be quite local—indigenous.

CHAIR—What level of influence would there be in the Pacific? As we know, there is a long history of Christianity in the Pacific islands. Is this new evangelism emerging there, or not as much as in Asia?

Rev. Barr—I am not absolutely certain. I know, of course, about the Mormon influence in the Pacific.

CHAIR—Yes.

Rev. Barr—And I am aware of places like Papua New Guinea, where there has been a very strong movement of the new generation type religions, and I am aware of 40 different denominations working in certain areas of Papua New Guinea. This often has a destructive influence because it reinforces a lot of the local divisions. I cannot give you an authoritative answer on that. I can only say that I am aware of the trend.

Dr Zirnsak—To emphasise the point: within the region, Sri Lanka is a good example at the moment where there have been accusations of unethical practices of evangelism taking place, and there has been a response then basically to press the government of Sri Lanka to introduce anticonversion laws, which would stifle freedom of religion in a way inconsistent, in our view, with the UN standards with regard to freedom of religion. So you end up with this kind of tension. Potentially, therefore, those churches that have not been accused of any unethical practices around evangelism get caught up with restrictions on their freedom of religion more broadly. That has been an ongoing debate there. Sometimes there are these outside influences, but those outside influences can come from within Asia as well—for example, there are a very large number of Korean churches.

Rev. Barr—Yes.

Dr Zirnsak—There is a wide variety of practice there, and a number of our partner churches have complained about the experience of having Korean churches move in and try to establish their own brand of church that matches what was in Korea, as opposed to other Korean churches who follow a similar model to us when they come here and look to assist the partner church on the ground in terms of their activity, and are respectful of the culture and what is already there, rather than seeking to impose their own particular model of what the Christian faith means.

Ms VAMVAKINO—That is very interesting.

Rev. Barr—Certainly the churches that we work in partnership with in Asia and the Pacific would want to build good relationships, particularly with groups representing other religious bodies, and in a sense isolate themselves from that movement which wants to see itself as confronting. For example, the community churches in Indonesia have very good relationships with Nahdlatul Ulama, which is the largest Islamic organisation in Indonesia, wanting to build good relationships and cooperation there and wanting to encourage members of those particular

churches to work in cooperation with people of other faiths, not seeing it as something that they are against.

CHAIR—That is very interesting and we could explore that for quite a while. It seems to me, as Maria said, that the Christian faith is having its own difficulties in terms of how to deal with its issues in these countries, as much as Australia is having difficulties trying to have some influence over human rights. I want to pick up on something that you said, Mark. When we are talking about rights, particularly around religion and other issues, there is the capacity question, particularly in the Pacific islands. You have already pointed out a couple of examples where certain treaties were either not relevant or other demands could divert countries away from focusing on the central issue, but we know there are some countries that, because of their size or the capacity of their government, are not able to implement or fulfil their commitment to certain international obligations.

That has been put as one of the reasons why a regional mechanism in some shape or form could actually work, because a regional body might give support to those countries that are too small to act on their own, but by being members of a broader body they could maybe fulfil their obligations on international treaties and things like that—because the treaty ratification issue has come up a few times. Looking at that concern about diminishing by watering down a regional body, is that in fact the only way in which some countries may have the capacity to comply with certain UN obligations?

Dr Zirnsak—It is certainly worth exploring. I do not know that we can give a definitive answer. I am only vaguely aware of the other models that exist. Europe is probably the one I am most familiar with.

CHAIR—It is very different from the Pacific islands.

Dr Zirnsak—Exactly. There are not too many countries in Europe that are part of that European Community human rights body that would struggle with the same level of lack of resources as do countries in the Pacific. It may be one mechanism worth exploring to assist countries to be able to ratify. Australia has offered templates that could be implemented, with some local modification, by countries in the Pacific region to become party to certain treaties. That is a mechanism that appears to have had some success, so that is certainly a possibility. Other bodies have promoted those templates as well. The International Committee of the Red Cross, for example, has also offered template legislation that can be modified to a local context and then further technical assistance down the track to implement all the provisions of a treaty.

While a regional body might assist with that, there are still going to be resourcing issues. For example, if you wanted to look at the International Covenant on Economic, Social and Cultural Rights, fulfilment of the obligations under that treaty may be difficult for some Pacific countries simply because of lack of overall financial capacity to meet some of those obligations. That will not be resolved by having a regional body per se, but a regional body may assist. It certainly is an idea worth exploring.

Senator MOORE—There are so many questions, but I have one in the area of intercultural issues that could be linked with politics. In your case study of Papua you talk about the Indonesian government bringing in their antipornography law. In terms of process, I would think

that under normal circumstances an anti-pornography law, which could be justified by CEDAW or CRC, would have the basis of the whole process of human rights protection. Your description of how people are seeing that on the ground, and the political impacts of that, is interesting, in terms of how terms can be used for different reasons.

I would not mind hearing a bit more about that, because you mention in a paragraph there the anti-pornography law being brought in as Indonesian law and then the people on the ground in Papua seeing that it could be an imposition of a political view which is Muslim based, which could impact on their own culture. We consistently talk about the need for us to be sensitive to the needs of cultural areas, but this is an area where a country on one level is doing something positive, just to put it on record. I found that an interesting dynamic.

Rev. Barr—The anti-pornography law is very broadly defined. I think ‘anti-pornography’ is an unfortunate term in many ways, because it is about much more than dealing with pornography. It is dealing with a whole lot of attitudes—towards dress and certain forms of behaviour—and to a certain extent it is seen as being about freedom of expression and information. The first thing I need to say is that things have got so bad in West Papua now that there is a deep suspicion about anything Jakarta tries to do. There is a real problem there. There is a breakdown of trust. I see that breakdown as a serious issue.

I understand that the anti-pornography legislation was brought out because there are huge tensions within Indonesia with Islam. Islam is developing in Indonesia. It is a very moderate form of Islam, but there needs to be a recognition of the values that Islam embraces, so I can see where it is coming from. From the perspective of Papua, there is not only a lack of trust in Jakarta but a belief—and there is some substance to this—that there is an attempt by certain Islamic groups within Indonesia to impose fairly strict Islamic values upon the wider society across Indonesia.

Papuans see themselves as being very different: they are Melanesian and Christian. So they see this legislation as yet another form of imposition upon them from Jakarta and an example of how their values, needs, identity and culture are no longer taken seriously. That is basically behind it all. Even within other parts of Indonesia, some moderate Islamic communities also felt this legislation was a bit too severe, but clearly the government and the President are trying to balance a whole lot of interest groups.

Indonesia is an emerging democracy and what has happened there in the last eight years is incredible, in terms of the move towards democracy and how they have been able to keep all these different interest groups. In around 2000 in the Maluku Islands there was a breakdown between Christian and Muslim groups, but by and large the development of democracy in Indonesia has been a great success and we ought to be congratulating Indonesia for that. I think this legislation is an attempt to keep some conservative Islamic groups onside, but the Papuans feel as though they are the victims of that and that this is yet another thing that is happening in the country which is marginalising their culture more and more. That is where they are coming from.

There have been some fairly strong reactions to that law. Some church groups are saying, ‘We will no longer consider ourselves to be part of Indonesia if this law goes through.’ There have been threats made, and if you talk to Papuans they are very serious. They believe that there are

more and more steps towards their eventual disappearance as a culture group within Indonesia. That is their perspective and those are the things that I am hearing from them.

Senator MOORE—I am fascinated that this would be the kind of law that could be justified, in terms of how it would be done in the generalist area, on protection grounds, and yet the impact locally could be seen very much as a political imposition. I have only one other question, Chair, and that is to see whether the church is involved with the Asia Pacific Forum, in that part of its responsibility is to engage with NGOs. Is the church one of the NGOs that the APF engages?

Dr Zirnsak—The Asia Pacific Forum of National Human Rights Institutions?

Senator MOORE—Yes.

Dr Zirnsak—I am not aware of our involvement. We may have to check with the national assembly. Where the federal government has organised regional forums around interfaith dialogue, we have been part of those. Uniting Church representatives have been part of the recent discussions, under both the previous and the current government. I am not sure of that particular one, nor whether there is a representation through the National Council of Churches. There is certainly dialogue between the Australian Human Rights Commission and us as churches.

Senator MOORE—Yes, there is something there. I was just not sure whether you were there in your own right.

Dr Zirnsak—I am not sure if we are involved in that particular forum.

Senator FURNER—Concentrating on Papua, your submissions indicate there are threats and intimidation directed at, generally, evangelical churches. Is that as a result of their exposure and growth in that country? Has that been broadly across the board, in other denominations at all?

Rev. Barr—It is right across all the denominations. The word ‘evangelical’ is expressed differently in Indonesia than in the West. Often, ‘evangelical’ is considered to be a conservative theological background. In Indonesia, it comes from the word ‘gospel’. It just means ‘gospel’, so the evangelical church would be considered—I do not like putting labels on things—a very mainline, orthodox Christian church. Many of the mainline reform churches in Indonesia have the name ‘Evangelical’, so it is a mainline church. Having said that, the other churches in West Papua, which include what we could consider the more conservative stream, together with the Catholic stream and even the Pentecostal stream, would also be feeling some degree of intimidation. It is related to a perception in Indonesia that the churches are pro-separatist and are pushing a barrow towards eventual independence. It is not true. The church is simply not doing that.

Senator MOORE—All churches?

Rev. Barr—No, there are some churches that would be pro independence—some of the Pentecostal churches, which have strong indigenous roots.

Senator MOORE—Absolutely, yes.

Rev. Barr—Indeed. I have spoken to some of those. But the position of the mainline churches, the Evangelical Christian Church and the Catholic Church, would not be pro-independence. They would want to see special autonomy to be implemented and would want to see themselves as being part of Indonesia, having their particular cultural rights recognised in the way that has happened in Aceh. That would be their position, but I think there is a lot of scepticism about whether that is ever going to happen. That is the big issue.

CHAIR—Unfortunately, we have run out of time. There are many things that you have raised in the discussion today that I know we could pursue a lot further if time permitted. In particular, we did not touch on, in any real depth, the issue that we as a committee are grappling with, which is different cultural practices and how they mesh with a commitment to universal human rights. Given your experience of the way certain churches have developed in that region and others have come in, I am sure it would be interesting to look at how you might have managed to deal with some of those issues, but unfortunately we have run out of time. We certainly enjoyed that discussion and it added a lot of value to what was already a very detailed submission. I think there are a couple of charters that we asked to get copies of.

Dr Zirnsak—Yes, of the Christian Conference of Asia and the Pacific Conference of Churches.

CHAIR—If you pass those on to the secretariat, they can then be distributed to all committee members. These proceedings are recorded by Hansard. You will receive a transcript. If you see inaccuracies or errors that you would like to clarify or correct, you will have the opportunity to do that. Thank you both for coming in this afternoon. We really do appreciate it.

Dr Zirnsak—Thank you for the opportunity.

[1.06 pm]

O’KANE, Ms Mary Elizabeth, Member, Burma Campaign Australia

CHAIR—Welcome, Ms O’Kane. We thank you very much for coming along this afternoon to give evidence. This inquiry, as you know, is fairly far-reaching in its terms of reference, so we want to use it as an opportunity for people who have experience right across the region to give us their insights into how we can advance the cause of human rights across the Asia Pacific.

Although the subcommittee prefers that evidence is given in public, should you at any stage wish to give any evidence in private, you may ask to do so and the subcommittee will certainly consider your request. Although we do not require you to give evidence on oath, you should be aware that these hearings are legal proceedings of the parliament and therefore have the same standing as proceedings of the chambers themselves. I invite you to make a presentation and then we will have a discussion.

Ms O’Kane—Thank you for inviting Burma Campaign Australia here. It is a very positive and exciting opportunity for us. Burma Campaign Australia enthusiastically welcomes the initiatives of the Australian government to explore ways to promote human rights in the diverse peoples, places and states referred to here as the Asia-Pacific region, and also enthusiastically welcomes your work as the subcommittee on human rights to pursue this task in such an inclusive way. As part of our appreciation of the opportunity to appear here to discuss our submission, particularly the current political, economic and social situation in Burma under prolonged military dictatorship, we also recognise that Burma is one of the countries in the region that presents one of the worst situations of ongoing human rights abuses.

Burma has an extremely long way to go to even begin turning around existing patterns and practices of human rights violations, as you are probably all well aware, and these patterns and practices of human rights are generated from very deep political structures. This requires, as we know, the development of genuine human rights institutions at the state and civil society levels. Fundamentally, however, for rights and capacity building there need to be processes of legal redress. There is in Burma impunity for human rights violators, particularly state agents who enact these violations, and the most basic enabling conditions for human rights protection and promotion are currently absent.

Until there is political change in Burma, we, Burma Campaign Australia, argue that the development of these human rights enabling capacities, institutions and environments cannot emerge; thus, in our submission we have employed a particularly broad interpretation of the concept of ‘mechanism’, perhaps broader than the terms of inquiry initially intended. We did this for two reasons. As just mentioned, until there is political change in Burma, all regional human rights mechanisms—state and civil society, if Burma’s representatives are state selected—will remain ineffective in improving human rights for the people of Burma. Long-term experience has demonstrated time and again that international and regional human rights initiatives have been woefully ineffective in promoting human rights to date.

On a related issue, this is also the case for most of Burma's millions of displaced people, both regionally and internally; thus, we cannot rely on human rights mechanisms that only consider official and officially sanctioned representation from Burma. Broader mechanisms thus must be fostered. Secondly, under prolonged authoritarian regimes, institutions and social and political processes become highly distorted and appear in forms and sites not usually considered normal.

For me, it is a little bit like somebody who has a chronic immunity disorder: when they take what are considered normal medications for most people, they distort and have unexpected effects—in this case, particularly under authoritarian regimes. Identifying sites where human rights are being actively and effectively promoted in the case of Burma requires extending our focus to include alternative sites.

Burma's human rights defenders and political representatives inside Burma, but also around its borderlands, who do transversal—that is, cross-border—human rights education and promotion have long been largely ignored by the Australian government, yet rapid growth in their capacity and reach, mostly in the past five years, has seen the development of some of the most effective mechanisms for human rights promotion in and around Burma at the moment. In recognition of this invaluable work, our notion of mechanisms has been broadened to include these existing processes in the case of Burma.

To conclude, in making these suggestions we commend and support the promotion of regional human rights mechanisms, particularly those initiatives that promote not only state-state relations but also state-civil society and regional civil society relations and cooperation. As noted in our submission, the promotion of human rights in Burma by civil society organisations of the other various ASEAN countries is already being used as a vehicle for promoting human rights within their own national frameworks as well as locally. But, in the case of Burma, promoting human rights will not be effective without supporting, including and promoting indigenous human rights defenders, wherever they may be located. Thanks.

CHAIR—Thank you. Obviously people will have a number of questions to ask you, but just to kick off, ASEAN as an organisation is currently having a discussion around the establishment of some form of human rights body. These discussions are fairly slow and there is some level of concern, maybe scepticism, about where the discussions will end up and what will actually come out of them. I am interested to learn how much level of activity there is amongst civil society organisations, not just within Burma but in the neighbouring countries, on the borders and at the pressure points. What would be the view of those organisations of a possible body or some form of institution coming out of those ASEAN discussions? Is there some faith, some optimism, that that could have an impact, or is there concern that that may just have no impact at all—that it will have minimal effect in terms of what is happening inside Burma itself?

Ms O'Kane—The space for what we would call civil society organisations inside Burma at the moment is so restrictive that they have to remain very much at the local level. As soon as they become effective and have a name that reaches beyond the local level, the state and its various structures either start to exert pressure on them to remain very quiet and local or coopt them. That is because, as we both know, civil society is a space which is outside the direct control of the state. The authoritarian nature of civil society in Burma, and we are talking about mostly lowland and urban Burma where there is not conflict going on and the state can actually reach—

CHAIR—That is why I was interested in what was happening on the outside, because I imagine that that is where a lot more open activity is happening.

Ms O’Kane—Yes. In that case, as far as these organisations are concerned, most of them probably would not even know there was such a process going on, let alone know very much about what ASEAN is, because the struggle for them is so intense at a local level. Those that do know would not get this information through state media but agents and what I call globalised actors: who have either come into the country for a purpose or who go out of the country for a purpose and are able to bring information back in.

I have worked extensively on the border areas. The impact as they understand it is far more complex. They are not so naive as to think that an ASEAN human rights body or process will affect or improve human rights in Burma itself, but they would engage in promoting this very vigorously as a political process for promoting awareness of human rights generally in Burma and its various areas and regions. They do so where there is funding to attend these meetings, and are very local.

There are a range of capacities. Some are very experienced, active human rights activists who, like yourself, probably do not see their homes very often and move around a lot from body to body, and are training up younger generations to also be able to carry out this work. They also do a number of jobs at the same time. One is building up human rights capacity amongst displaced communities on an ethnic basis. They would bring this information, train people who are politically and socially mobile and included, and then disperse information through the various networks. Some of the stuff that I can expand on with regard to this is sensitive, so not for public record.

CHAIR—If you do not want to, that is okay.

Ms O’Kane—I specifically would not like this on the public record.

CHAIR—We have two options. Either we have to officially move to go in camera so it is not recorded. If you want to tell us, that is fine. Otherwise, if you can illustrate the point without giving that level of sensitive information, then that is fine with us as well because I know there will be others who have questions of you.

Ms O’Kane—Great. Under conditions where human rights defenders of Burma are either criminal inside Burma or often in situations of effective statelessness when they are working in the borderland areas, it is difficult to talk about the extent to which they work in various different sites. The point that I would like to make is that there is considerable and growing cross-border capacity that goes into all the different ethnic states as well as into the different divisions. There are also connections across different levels of action and activity. This is something that some organisations may also pursue by going through the state and through Rangoon, but it is extensive and it is growing.

The other thing that addresses the question is that their involvement in the ASEAN human rights forums and their particular participation is a way of creating information and news which is then broadcast into Burma through the various radio and now television programs; DVB now have a television program. This is the other very important dimension of it: whereas they do not

think that there will be a direct effect on the SPDC's behaviour or standards, there are other more subtle processes which they take advantage of.

CHAIR—Thank you.

Mr RUDDOCK—Have you any specific evidence that would suggest that the United Nations Security Council referring a particular country to the International Criminal Court has achieved change in human rights terms?

Ms O'Kane—No, I do not have evidence that the actual process itself and the legal outcome of that process has. But, again, I think the political pressure and the normative and moral support that it gives for human rights and political actors—it is very difficult to separate human rights and political actors in a situation like Burma because under the present conditions they go hand in hand—is very significant, and there is more evidence for how these international processes, in particular the UN Security Council, have fostered, encouraged and promoted action inside Burma. In fact, the 88 Generation Students, who were the ones that first came out on the street at the time of the September 2007 demonstrations, were the leaders of the 1988 uprising, who had been imprisoned until only about three or four years ago, and who upon their release reorganised more as a civil society organisation. Their statements and their justifications and their rationales for protesting and arguing back publicly to the regime were based on things like the UN Security Council action and major bodies such as that.

Mr RUDDOCK—You do not think that this assertion you make that the government has broken a specific promise to work to have the United Nations Security Council refer Burmese generals to the International Criminal Court has resulted from a lack of evidence of potential success at pursuing that course?

Ms O'Kane—I take that as kind of a different question.

Mr RUDDOCK—I do not know. I am just referring to your submission.

Ms O'Kane—I definitely think there is evidence to do that. I have not got a full history of the International Court of Justice. Sorry. Is it the Court of Justice or the Criminal Court that you are talking about? The Criminal Court?

CHAIR—Yes.

Mr RUDDOCK—You say:

In opposition, the Australian Labor Party policy on Burma, as expressed by Kevin Rudd and Robert McClelland—

and you have given references to material—

stated that a Rudd Labor government would pursue justice in Burma through working to have the United Nations Security Council refer Burma's generals to the International Criminal Court.

Ms O'Kane—Do I think there is evidence for that? Yes.

Mr RUDDOCK—So you think it would work?

Ms O’Kane—I think there is definitely a case for it, yes.

Mr RUDDOCK—So why do you think the matter has not been pursued?

Ms O’Kane—It is up to a state to make that recommendation. A state has to have the political will to do that.

Mr RUDDOCK—So you think there is a lack of political will?

Ms O’Kane—Absolutely.

Mr RUDDOCK—You are hoping that this committee would request the government to implement its policy?

Ms O’Kane—If the committee feels that it can, yes, that would be good. I do not see it as the main responsibility.

Mr RUDDOCK—Anyway, having made the political point, forgive me.

CHAIR—That is going to be a hard one!

Mr RUDDOCK—I want to ask a specific question about the approach to the border areas, particularly policies relating to taking refugees from border camps from Thailand. In pursuing those sorts of recommendations, do you see that there has been a change in the attitude of surrounding countries like Thailand to those approaches being pursued? My recollection is that the Thais were unwilling to allow extensive resettlement because of the potential pull factors. Has that situation changed?

Ms O’Kane—My understanding is that it is, again, at a very slow pace and depending on the political circumstances at the time and, as you would appreciate, Thailand is fairly preoccupied at the moment with its own problems. The Thai response has been to try and work out some kind of resolution to the camps situation in recognition that these camps now—1984 was the first one—have been consolidated into nine different camps, not including the camps that they pushed over the border onto the other side in 1995.

Regarding resettlement, and taking a perspective of the people in the camps themselves, in December 2006 the United States, with the help of the UNHCR, did an open registration for resettlement for everybody in one of the largest camps, which has a population of about 50,000. Only a third of the population came forward for registration in the first place. There are different situations within the camps and a lot of people do not want to resettle. They do not see it as an option for them in their lives either. A variety of things have to occur. Do they see it as a pull factor or not? No, I do not necessarily think that they see it as a pull factor, but they certainly have very localised responses to people coming over, including refoulement. They have different ways of dealing with the issues at different times. There is currently significant conflict in eastern parts of Karen State, which is causing a lot of displacement. Even though people are not

formally allowed across the border, they make their way across. I am not sure if that addresses your question.

Senator MOORE—I want to ask you about the border. You mention in your submission that the Australian government used to fund activities in the border camps and has ceased to do so.

Ms O’Kane—Not in the border camps.

Senator MOORE—Cross-border?

Ms O’Kane—In the border areas.

Senator MOORE—Border areas, yes. What kind of funding did the Australian government give there? You can take that on notice, if you like. I am happy for you to do that.

Ms O’Kane—I might have to take the full range of things on notice because—

Senator MOORE—I just noticed that.

Ms O’Kane—It was fairly token, but in some cases very significant programs, particularly things like radio programs which addressed, through popular culture in local languages—in local popular culture—serious issues of health, health rights, health education, through various soap operas or whatever, which were not only—

Senator MOORE—That was through AusAID?

Ms O’Kane—There was one organisation through AusAID, and then they stopped the funding. Subsequently, they found some funding elsewhere. The potential is enormous. There was last year, but only for a limited period of time, a BBC production that has the capacity to reach most of Burma and up into China, and these are some of the most effective ways of promoting these rights in a way that is understandable and possible in local contexts.

CHAIR—If you were able to give us a bit more detail of those specific programs on notice, that would be very useful for the committee’s consideration on this issue.

Senator MOORE—I have a question about the ASEAN Inter-Parliamentary Myanmar Caucus. Throughout your submission you have mentioned ex-Myanmar politicians and interactions. Exactly what does your recommendation mean in terms of a formal acknowledgement—interaction, how they operate, all that kind of stuff? The ACTU’s submission also mentions them, so we thought we would ask the question here. I think you have mentioned them three or four times in your submission and I do not know about them.

Ms O’Kane—The ASEAN Inter-Parliamentary Myanmar Caucus is a group of ASEAN politicians—elected politicians, so it includes politicians, obviously, from countries where they have elections—who are committed to promoting human rights and political transformation in Burma. They meet regularly.

Senator MOORE—So they are not Burmese politicians; they are people from ASEAN nations?

Ms O’Kane—Yes.

Senator MOORE—Somewhere in my mind I got the idea that there were six politicians from Burma, from that brief moment that there were elections, but it is not that. This is different.

Ms O’Kane—They work very closely with them.

Senator MOORE—So there are two groups. That is good. That is a start.

Ms O’Kane—There is the Members of Parliament Union, which are MPs-elect, who have come out and who are based in the border area. Some of them have citizenship here. They also work tirelessly.

Senator MOORE—I think we have met some of those.

Ms O’Kane—Most likely. They work very closely with AIPMC.

Senator MOORE—I interrupted you. You were telling me that they were from ASEAN nations, politicians who have a particular focus on free rights in Myanmar.

Ms O’Kane—And political change, and a strong position, through ASEAN, for that. The caucus has expanded now, such that the ones in democratic countries have their own national caucuses as well, so it is a growing movement. Working with the MPs are Burma’s border based civil society human rights organisations and other organisations throughout ASEAN, so there is also a forum alongside it for Burma-focused or Burma-sympathetic civil society organisations throughout ASEAN to work together and collaborate.

I do not know the exact date when that started. I think it was at the end of 2004, beginning of 2005—somewhere in that period of time—and it is growing exponentially. Attending some of the forums that they have, I see that these other ASEAN civil society organisations are taking up Burma and the human rights situation in Burma at their national level as well, as a subtle way of promoting these norms and values within their own context. Funding is short. Invitations—they take every opportunity they can. Building relationships is particularly important. The Indonesian parliament have been particularly positive and reinforcing and inviting.

CHAIR—That is great. Thank you very much, Mary. Unfortunately, we have run out of time, but thank you for giving us a very interesting insight. We should pursue having a look at those parliamentary committees. At some stage we could make contact with representatives here. If you are able to give us some names or contacts, we could certainly have a discussion with them at some later stage.

Ms O’Kane—Yes.

CHAIR—Unfortunately, we do have to bring this to a close. I think there were a couple of questions on notice that you were going to answer.

Ms O’Kane—Yes.

CHAIR—And there was also that information about the parliamentarians.

Ms O’Kane—Yes.

CHAIR—If you pass those on to the secretariat, then they can be distributed to all of us. Hansard is recording this, so you will get a transcript. If there are any errors or inaccuracies that you would like to correct, you will have the opportunity to do so. Thank you very much. Good luck with your campaign.

Ms O’Kane—Thank you.

[1.37 pm]

TATE, Ms Alison, International Officer, Australian Council of Trade Unions

CHAIR—I welcome Ms Tate, representing the ACTU. Thank you very much for coming in. Although the subcommittee prefers that evidence be given in public, should you at any stage wish to give evidence in private, you may ask the committee and we will certainly consider your request. Although the committee does not require you to give evidence on oath, you should be aware that these hearings are legal proceedings of the parliament and therefore have the same standing as proceedings of the chambers themselves. I invite you to make some remarks and then we will be very keen to ask you some questions.

Ms Tate—Great. Thank you very much. Since making the submission back at the end of last year, I am pleased to see that the Australian government has been engaging in a human rights dialogue in many countries across the region, which of course are priority concerns for the ACTU and our membership. Obviously, with events in recent times in Fiji, the ongoing dilemmas in Burma, in Thailand in the last week et cetera, we can see the importance of engaging at governmental, non-governmental and parliamentary levels, so we are very appreciative of the time that you are making available to conduct these hearings and, indeed, to consider the future for the Australian government's relations in the Asia Pacific, specifically addressing and focusing on human rights.

The ACTU has had long experience in relations with trade unions in countries across the Asia Pacific and has been involved in various regional and subregional human rights fora. Obviously, taking up the fundamental rights of workers and of trade unions is something that we see as an act of solidarity with colleagues in Asia-Pacific countries, and many of them appreciate the work of unions in countries like Australia, where perhaps labour laws or, indeed, the parliamentary system is more open to considering human rights concerns. For us, certainly regional cooperation across the trade union spectrum is important, but to also see those issues raised seriously as a part of government policy is very important.

I would like to draw to your attention some of the aspects of the submission that we presented to you, speaking specifically about the kinds of mechanisms for dialogue and discussion, and also cooperation. Through our experience in working in the fora of the International Labour Organisation, for example—which, as you all know, is a tripartite body, so it has government, employer and worker representation—we find that many of our colleagues in the Asia Pacific feel that the kind of dialogue that is possible—tripartite dialogue, often called social dialogue—really benefits the development of good public policy in their countries and also provides an opportunity that is otherwise often not there, even though it may be structurally available to them, through having a tripartite dialogue forum.

So that is specifically about labour law and improvement of labour law or working conditions in those countries. But as a fundamental human rights issue, we see the capacity of the ILO's work across the region as a very clear mechanism to promote fundamental workers' rights. Indeed, to have the kind of social dialogue where non-government actors including trade unions can have input to the members of parliament and to government institutions and structures is

something that we should not take for granted in the region. To ensure both the capacity of those organisations to address human rights issues as a structure but also to fund and resource those kinds of consultations is something that we would encourage, and encourage the Australian government to think about, in the relations with those countries at a government to government level. I am happy to answer your questions that may have come from the submission or specific issues that have come up during hearings.

CHAIR—Thank you very much. I am sure that there are a number of questions that committee members will have of you. I am interested in a couple of things. You have just mentioned, and talk about in the submission, the role that the trade union movement can play in terms of promoting human rights issues within the country where it is active. I am wondering if there are some examples or campaigns where trade unions have taken up an issue that is maybe beyond the issue of individual pay and conditions and is a broader social issue that has had some impact.

The other thing I am interested in is that we talk about the Asia-Pacific region in this inquiry, and what is emerging very clearly from many people we have spoken to, and in submissions, is that that is a vast area to talk about having some sort of universal human rights body and that we really are focusing on issues around the Pacific islands and Asia, at least in terms of two subregions. In terms of the Pacific, what would be the level of trade union membership, involvement and activity in the Pacific island countries? Can you enlighten us a little bit on that?

Ms Tate—Certainly. I will answer first about the campaigns issue then specifically on what is happening with unions in the Pacific. Whilst the trade unions network across the Asia Pacific has prioritised focusing on issues of specific workers rights and conditions, obviously workers rights are a part of fundamental democratic rights, so following issues of civil and political rights and economic, social and cultural rights more broadly, the kinds of campaigns around ensuring decent work and improvement of labour laws and standards, have been the focus. That includes things like campaigning for the ratification of different conventions like International Labour Organisation conventions, the UN convention on the rights of migrant workers and their families et cetera. You would look at that specifically from a worker's perspective.

Much more broadly, trade unions are involved in social justice campaigns across the board—that is, in relation to refugee and asylum seeker rights and migrant worker rights, as I have just mentioned. Our campaign last weekend, for example, was on the arrest of trade unionists in Burma who, thankfully and amazingly, were released on the weekend. Five people who had recently attended a trade union congress on the Thai-Burma border were arrested last weekend when they returned to their homes inside Burma. There was an international campaign conducted by trade unions across the world and, as I say, amazingly they were released. That is an unusual and happy outcome.

But, certainly in terms of fundamental media rights, our journalists' unions are very active on that across the Asia Pacific. In the last couple of days, Fiji, the Philippines, Cambodia and a number of countries have been a focus for campaigns relating to media and journalist rights. Occupational health and safety in the workplace more broadly has been a focus for our campaigns, and support for decent work in general, which has included campaigns around the greening of the economy and providing for green jobs—that is, longer term issues. While the

assassination or disappearance of a trade unionist might require very urgent actions, there are other longer term campaigns that we have been very keen about.

CHAIR—Sure. Yes.

Ms Tate—That relates also specifically to the Pacific. Raising awareness around the impact of climate change, trade agreements and the transition of economies as a result of the global financial crisis et cetera, are all areas that trade unions have been involved in, and the ACTU directly involved in, in recent months. Unions in the Pacific have a long history. The unions that are perhaps strongest are in those areas where the formal economy and the formal employment relationship are strongest—that is, in the public sector; so public sector workers, health workers, education workers, teachers et cetera—but also where there are industries that are organised in the Pacific in the private sector—the banking sector, forestry, fishing and maritime, transport industries and so on. So there is an active trade union movement across the Pacific. We participate through a network called the South Pacific and Oceanic Council of Trade Unions, so the ACTU is in constant contact with our colleagues in the unions in the Pacific.

CHAIR—Thank you.

Mr RUDDOCK—How do they see you?

Ms Tate—How do they see us?

Mr RUDDOCK—Yes, as an organisation. Are you a colonial body with views that are inimical to theirs and they are resistant to your pressuring them on decent standards for union members? I am putting it in the context of some of the arguments we have heard about why Australia needs to be careful about how it engages in the Pacific.

Ms Tate—Yes.

Mr RUDDOCK—You have practice and you have labour market issues that you are pressing on, presumably. I am wondering how you as an organisation are seen in pursuing those agenda items in those forums?

Ms Tate—I am sure there would be some perspective that would put us in the camp of a colonial or postcolonial pressure group but indeed our focus has been in partnership with the trade unions in those countries and we are led by what their priorities are. We would take issues very sensitively but are always conscious that it is a Pacific voice that we are resonating rather than, ‘This is what the Australian trade union movement sees.’ Obviously a partnership is two-way and we have a dialogue about what those issues are that are important.

In many countries in the Pacific, their labour laws are still in a draft version from the colonial era, in fact, so the ways for trade unions to be able to either take concerns through a legal mechanism or seek legal redress, especially in the instances where there are disputes with companies, are often very limited because either there is not the legal base to be able to do that or it might take 20 years for a court case to go through the institutions. That is very dissatisfying for everybody concerned and not effective, of course.

Part of the work that we have done from Australia is tripartite with our government, employer groups and the trade unions, with our counterparts in the region. We have a very good working relationship with employer groups, governments and trade unions across the Pacific. I think eight members of the Pacific Islands Forum are members of the ILO. Not every country in the Pacific has joined the International Labour Organisation, but those that have then gain access to technical cooperation and assistance to be able to look at those things. Very often we find that the issues of concern in the Pacific countries have tripartite interest, and much more cooperative rather than adversarial relations. It has been very interesting to work cooperatively with our own employer groups in the Pacific.

Mr RUDDOCK—I was trying to divine, from reading your submission, what the comparisons would be across the Pacific in relation to implementation of appropriate labour standards. I do not see that in the paper. I do not know whether we look for that sort of issue. For instance, is child labour an issue in the Pacific?

Ms Tate—Indeed it is, yes.

Mr RUDDOCK—That is a significant human rights issue.

Ms Tate—Indeed.

Mr RUDDOCK—And, if your organisation is concerned about those issues, how is it working on them, what is the resistance to change, and what difficulties are you experiencing?

Ms Tate—The ACTU has not been directly involved in child labour programs in the Pacific. The ILO has been involved in providing technical and funding support for a number of programs in Fiji and in Timor-Leste, for example. In the island countries, the focus has been more on youth employment than child labour specifically. They have many challenges. Finding skills development and employment opportunities for young people has, frankly, been a higher priority, established locally, than addressing child labour per se. But, as in any country where poverty and a rural base of employment are often the only options for families, in many instances children become involved in work. Whether that means they have access to education as well often depends on the resourcing of the public education system, of course, so we would absolutely advocate for and have advocated for those issues to be addressed as a fundamental human rights concern.

I can speak specifically about areas in which we have had direct program involvement in the Pacific, and that has been more in the area of HIV-AIDS education. In many countries in the Pacific the cultural and, indeed, social awareness around HIV is limited or based on traditional concepts of transmission of HIV, so that has provided specific challenges, but in Papua New Guinea, for example, where it is a huge issue—and in a number of other countries where it is seen as an emerging issue—the ACTU, through its overseas aid and development agency, Union Aid Abroad-APHEDA, has been involved in workplace based education programs for many years.

Other programs in the Pacific have been more capacity building focused, because the trade unions in the Pacific have perhaps one paid staff person or very difficult resourcing questions, even with organising computers or telephone lines and other communications. Because they rely

on a fee-paying arrangement from their membership, often they do not have the resources that we have in Australia. The issues which they raise with us have been focused not so much on child labour but on gender discrimination in the workplace and health issues as a fundamental human rights concern. I mentioned HIV, but other occupational exposures and injury have been important, and they are campaigns that many of the unions in the Pacific have prioritised.

Senator FURNER—I have a couple of questions on the economy. Firstly, as a result of emerging economies like India and China, has the ACTU experienced any changes in respect to human rights? Secondly, have you experienced any human rights issues associated with the global financial crisis, either a decrease in rights or an improvement?

Ms Tate—Can you expand on what you mean by ‘the impact on human rights’?

Senator FURNER—An increase in child labour and that sort of thing. I am wondering whether, as a result of your network with the Pacific, you have experienced any changes in the last 12 months in not just child labour but human rights in general.

Ms Tate—In many countries across the Asia Pacific, including India and China, we have seen a large number of people made redundant or their employment has been terminated as a result of the global financial crisis in specific sectors and specific industries, but I think we would have to acknowledge that that has happened in most countries. One of the issues for us is the transition then into unemployment and if there is, as a right, social protection, access to alternative training, skills development and unemployment benefits or other entitlements.

Obviously, in many developing countries that do not have a budgetary allocation for those things, nor indeed where companies have gone bust as a result of the financial crisis and have not made allocations for entitlements, workers who under the national labour laws may have otherwise had entitlements have not had access to them. We would see that as a human rights issue. I have not seen data that can verify whether or not child labour has increased. There are anecdotes that suggest it has, but I cannot verify or document that. In terms of rights of ongoing employment, that has been true across the board.

Senator FURNER—Around 2005, I was fortunate enough to go on a delegation in Hong Kong and hear about independent unions in that vicinity trying to establish trade union rights and conditions. There were an appalling number of deaths in the mines.

Ms Tate—Yes.

Senator FURNER—I am wondering whether that sort of thing has escalated in that general area of health and safety.

Ms Tate—We do monitor mine safety in China and other countries and there have not been any major disasters that people would link to the global financial crisis. Sadly, there is ongoing death as a result of bad practices in the mining industry. It is an industry that is of particular concern. There are aspects of occupational health and safety that are important on the technical side that will have a longer term impact—for example, new equipment may not be replaced because of companies not making further investments—but there is also concern about the capacity for workers to be represented in the workplace in relation to occupational health and

safety matters such as identifying hazards and then being able to do something about that. There is certainly concern about trade union rights and freedom of association in many countries in the Asia Pacific. They are internationally acknowledged, universal, fundamental human rights that need promotion and also monitoring to ensure that they do not go backwards.

The issues that you raise are really important. The rights of workers to representation and to speak up in the workplace—indeed, in our own country—are more challenging when people feel that if they speak up they might lose their job. That is not a cultural determination; that is the reality for many people in workplaces.

Senator MOORE—Through a lot of the submissions the role of NGOs has come out—that any kind of effective mechanism has got to involve not just intergovernmental activity but NGOs—and I am wondering whether the ACTU is involved in the APF, the Asia Pacific Forum, which is a mechanism that exists as a network rather than, I think, a clear mechanism. One of the groups they engage with is NGOs and I am wondering whether the ACTU is one of those. In your submission you talk about the forum that is linked to the Pacific Islands Forum, which is one that is focused specifically on civil society. My understanding is that that is getting bigger and more diverse each time there is a forum, and you raise in your submission that we have it in Australia in 2009, which is something I did not know. The dialogue on the human rights one would be particularly effective to have with that civil society group that would be gathering anyway. I would not mind getting a little bit more on record about that.

Ms Tate—Sure. Great. Obviously the non-government sector is important in every country for raising concerns that might not otherwise be understood in government circles or not necessarily engaged with at a government-to-government level. Through the ACTU, we engage in many NGO consultations, domestically and internationally. We do liaise with the Asia Pacific Forum of Human Rights Institutions. We do not have a formal role, but we, and indeed other unions in the region, have input into those discussions. In regard to the Pacific Islands Forum meeting, yes, Australia will be hosting that in August in Cairns.

Senator MOORE—Very nice!

Ms Tate—The heads of Pacific island countries meet under that forum. As a parallel, or a separate, process there is a civil society forum, in which we have participated in previous years. This year there has not been a decision about when that will be meeting or if, indeed, it will be meeting. There is an intention to meet in Fiji in May with a smaller group of NGOs. Obviously, the travel bans that apply to ministers and governments do not apply to civil society groups. It is disappointing for us that that meeting is not happening in Australia, as we feel that to be able to engage directly in the forum process is important, but the decision was made, because of the lack of funding for NGOs to gather together and meet, that it was more cost effective to do that in Fiji, because that is where most of the regional Pacific NGOs are based.

Senator MOORE—It is also in our particular interest, because I know that Fiji has been the mother of civil society in the Pacific.

Ms Tate—Indeed.

CHAIR—And now?

Senator MOORE—And now it is under genuine threat.

Ms Tate—Absolutely, yes.

Senator MOORE—That is one of the issues. Can we keep in contact with you about that? I think that is particularly important. My understanding is that those gatherings of NGOs, linked with the forum, have been getting bigger, and more and more people have been getting involved with the UN model of having the formal meeting and the sister meeting at the same time.

Ms Tate—I would be very happy to. I participated in the meeting last year which was held in New Zealand, even though the Pacific Island Forum meeting was held in Niue, but again that was for logistical reasons.

Senator MOORE—There was not enough accommodation.

Ms Tate—Exactly. We were involved in the initial planning and discussion, and I know it was planned to be in Australia, partly because previously the meetings had gained significant financial support from NZAID.

Senator MOORE—Yes, they had a lot.

Ms Tate—And they have changed their funding priorities for this year. It is expensive, of course, to bring people across the Pacific to meet face to face, so that is my understanding of the limitations on the gathering.

Senator MOORE—We might look into that.

CHAIR—Yes. That most definitely is something that we should look into. In fact, Alison, could you give us a little bit of detail about what was going to happen, and what is not, and maybe that is something that we can pursue a bit further.

Senator MOORE—And with whom we can talk.

Ms Tate—Yes, sure.

Senator MOORE—Particularly in the celebration year for the UN human rights stuff. Thank you for that. For the record, what are the kinds of NGOs that do come? Who shows?

Ms Tate—Many of the development focused NGOs, women's organisations, environmental groups, trade unions obviously, many indigenous representative organisations, and those involved in different Pacific cultural networks, form the majority.

Senator MOORE—Churches?

Ms Tate—Thank you, yes, absolutely—very centrally, the churches, which are coordinated through the Pacific Conference of Churches, which is also based in Fiji.

Senator MOORE—They all turned up in New Zealand last year?

Ms Tate—Yes, indeed. It was a very diverse group. The organising or host group is an organisation called PIANGO, which is the Pacific Islands Association of Non-Governmental Organisations. I can give you contact details for them.

CHAIR—Thank you. That would be great, yes.

Senator MOORE—I have a question about the ASEAN Inter-Parliamentary Myanmar Caucus. You recommend that that would be a good thing for Australia to become involved in, to have interchange and so on. Is there anything you want to put on the record about that?

Ms Tate—Yes, indeed. There is a friends of democracy group in our federal parliament.

Senator MOORE—Yes, there is.

Ms Tate—That group has had contact with the AIPMC. In fact, when Natasha Stott Despoja was one of the co-chairs of the parliamentary friends of democracy group—

Senator MOORE—Is it Michael Danby and Bob Brown now?

Ms Tate—No, it is Laurie Ferguson and Marise Payne. Natasha Stott Despoja has been the only Australian parliamentarian to attend a meeting face-to-face, but there has been that ongoing network over a number of years. Why we mentioned it in this submission is that it has been a particularly effective mechanism. It has in its membership, as a previous colleague noted, members of parliament from ASEAN countries, but what is really important to note is that it is not only members of the governing parties; there are governing party representatives, opposition party representatives and independents, which is important in many of the parliaments in the countries that we are talking about by virtue of the kinds of alliances that form government, often, and generate change.

The governments of the Philippines, Thailand and Indonesia have all actively participated, and, indeed, some of their presidents have been involved in AIPMC events in their countries and have hosted meetings. The chair is currently a Thai member of parliament from the Democrat Party, and vice-chair of the AIPMC is an Indonesian MP. They are both very effective members of parliament in their own countries, and have been really at the forefront of human rights work in a number of structures in their own countries; in their own human rights subcommittees, for example, and in forwarding the ASEAN charter and other areas. They are people who are committed to human rights work in their own parliaments, but in the context of the AIPMC they have been very effective in advocating for a changing perspective around addressing human rights and democracy in Burma, where their parliaments may previously not have wanted to listen necessarily, or perhaps their parliaments had wanted to, but the governing parties were not so interested in engaging. It has provided a real base of discussion and debate and knowledge in those ASEAN governments.

Outside of a foreign ministry to ministry relationship, I think we were promoting this as one example in the region where parliamentary dialogue would be really effective, and for Australia

to benefit also from understanding the kinds of perspectives and changing perspectives in the region, around promoting human rights in general.

CHAIR—Yes, I can imagine that would be very useful. Unfortunately, Alison, we do have to leave it there, but thank you for coming along. It is very good to get the trade union perspective on what is happening in a whole range of countries in the region that we are focusing on. By participating in this discussion, you have certainly enlightened us on the issues that you raised in the submission. Thank you very much. Before we close, there are a couple of documents and contacts that you were going to follow up for us. If you could pass that information onto the secretariat, they will be able to distribute it to all of the committee members. Hansard has recorded this, so you will get a copy of the transcript. If there are any errors or inaccuracies that you wish to correct, you will have the opportunity to do so. I would like to thank everybody who came along today, and I officially adjourn the hearing.

Resolved (on motion by **Senator Moore**):

That this subcommittee authorises publication of the evidence given before it at public hearing this day.

Committee adjourned at 2.11 pm