



COMMONWEALTH OF AUSTRALIA

Official Committee Hansard

JOINT STANDING COMMITTEE ON FOREIGN AFFAIRS,
DEFENCE AND TRADE HUMAN RIGHTS SUBCOMMITTEE

HUMAN RIGHTS SUBCOMMITTEE

Reference: Human rights mechanisms and the Asia-Pacific

TUESDAY, 7 APRIL 2009

CANBERRA

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

Human Rights Subcommittee

Tuesday, 7 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 Julie Bishop, Mr Danby, Ms Annette Ellis, Mr Gibbons, Ms Grierson, Mr Hale, Mr Ian Macfarlane, Mrs 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*), Furner, Hanson-Young, Moore and Trood and Mr Danby, Ms Annette Ellis, Ms Grierson, Mr Hawker (*ex officio*), Mrs Markus, Mr Oakeshott, Ms Parke, Mr Kelvin Thomson and Ms Vamvakinou

Members in attendance: Senator Forshaw, Senator Hanson-Young, Ms Grierson, Ms Rea and Mr Ruddock

Terms of reference for the inquiry:

To inquire into and report on:

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

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

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Subcommittee met at 10.01 am

CHAIR—As it is now 10 o'clock, we will formally commence our proceedings. I welcome everybody here today: my fellow committee members, participants, contributors and interested people. Thank you for taking the time to contribute to this inquiry and to participate in this discussion. We, of course, think this inquiry is very important. I know that there are many issues happening at the moment internationally, nationally and locally, but I do not think the issue of human rights ever goes away, nor should it ever be diminished. Regardless of how significant the events that take over the media cycle may be, we need to continue this discussion in any way, shape or form that we can; so I thank you for your participation today.

[10.02 am]

HARRIS RIMMER, Dr Susan Gail, Board Member, UNIFEM Australia

CHAIR—Welcome. 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 subcommittee will consider your request. Also, although this subcommittee does not require you to give evidence under oath, you should be aware that these proceedings are legal proceedings of the parliament and, therefore, have the same standing as proceedings of the chambers themselves. Before we proceed to questions and discussion, I invite you to make a few opening remarks.

Dr Harris Rimmer—UNIFEM Australia is extremely pleased to have the opportunity to comment on the review by the Human Rights Subcommittee into human rights mechanisms around the Asia Pacific region. We thank you very much for the invitation to appear. We think this inquiry is extremely timely and it also builds on the important work that this committee has done in previous inquiries—for example, the link between human rights and aid, various inquiries into bilateral dialogues and other more general inquiries into Australia's aid program in the Pacific. I will say just a few words about UNIFEM and then take you through the key points of our submission.

UNIFEM Australia exists basically to support the work of UNIFEM—we focus particularly on our region: the Pacific and East and South East Asia—through raising funds for UNIFEM in the region and also through advocacy. We have four key strategic goals: reducing women's poverty and exclusion; ending violence against women; reversing the spread of HIV-AIDS among women and girls; and supporting women's leadership in governance and post-conflict reconstruction. All four of those strategic goals are at play in the Pacific, East Asian and South-East Asian regions, in relation to the rights of women.

In the *Hansard* of previous meetings of this committee on this subject, I have noticed that members of the committee—including, I think, you, Mr Ruddock—have asked questions about what the significant human rights issues in the region are, and that is where we might be of use to the committee. We have lots of facts and figures and information to support the fact that gender discrimination is one of the biggest issues in our region and difficulties are being experienced in finding institutional mechanisms to combat this discrimination. That is partly because there is very low representation of women in parliaments in the region, partly because of the lack of strong human rights mechanisms in our region and partly because of the very difficult issues of culture and dialogue between UN agencies and member governments.

One issue that we point to in particular is that violence against women in our region is at pandemic levels, particularly in Papua New Guinea and Melanesia. We also draw your attention to the impact of HIV-AIDS on women in the region. As part of this whole picture, we have to recognise the lack of gender equality in governance and leadership positions in the region. This is particularly so in the Pacific, with it having only two per cent of women elected as leaders in local, provincial and national positions, which is the lowest percentage in the world. From our point of view, mechanisms that will have an effect in the Asia Pacific region should be measured

against how far they will promote women's rights and how efficacious they will be in promoting those rights. I will close my opening remarks at that point.

CHAIR—Thank you very much. First I will take up your last comment, which is that mechanisms obviously should be measured against the impact they have on the rights of women in those countries. We already have various mechanisms through international and national bodies that deal with issues around gender equality and improving the rights of women, and we are looking not just at the geographical area of Asia but also at the effectiveness of existing human rights mechanisms, as we consider what sorts of recommendations we would make for this particular region in terms of human rights. I would be interested to get UNIFEM's views on whether existing mechanisms have been effective at all in dealing with women. If possible, can you pinpoint those that you think might have been more effective than others?

Dr Harris Rimmer—The value of UNIFEM's approach is seen in it being very multilayered. UNIFEM, obviously, is an intergovernmental organisation that is based in New York. It has one regional office in Thailand and another quite small one in Suva, in the Pacific. Also, there is now a separate office in Papua New Guinea and smaller offices will be opening in other areas of the Pacific.

UNIFEM works on many levels. It works primarily with governments and it often works around big areas of law reform or implementation of treaties. One of those issues—and it is a big one—is the implementation and ratification of CEDAW; and another is Security Council Resolution 1325 on women's participation in peace building and peace operations, which is very important in places like the Solomon Islands and Bougainville. So UNIFEM undertakes that sort of very high-level diplomatic activity, which is important. Where it is resourced, it is effective. It seems that there is a lot of energy and interest from various parliaments around the Pacific and Asia in these initiatives; but they have to be resourced and put in place structurally so that they are not just at the whim of the particular person who is there at the time and liable to fall apart after that person leaves.

UNIFEM has put extra effort into this region, which is starting to pay off. One of its most recent initiatives is that, in June-July, there will be four new Millennium Development Goals and international human rights officers deployed in the Pacific—and I will get to the MDGs in a moment. UNIFEM also works very closely with civil society, partly through liaison with the other UN offices, which are all based together. There is the new One UN strategy, which is where UN agencies try to work as one in terms of their contact with civil society. UNIFEM funds a lot of Pacific NGOs to do work in the areas of HIV-AIDS and poverty, particularly in terms of women's access to markets and leadership activities. The area of civil society is a very profitable one that the committee should think about. I know that you have taken some very good evidence from the RRRT. It would be excellent to get further evidence from Pacific and South Asian NGOs, which are very developed and very sophisticated, as you saw from the evidence given.

One of the issues specific to NGOs is that often they are very small and are working in very remote areas. In trying to assist them to gain funding, UNIFEM has set up what is called the Pacific Facility Fund. That helps NGOs to get their governance requirements to a level where they can apply for and successfully administer grant funding. You all know that DFAT has a human rights grants program at a very small level; even those very small grants entail quite a

heavy load of administration and accounting for money spent and quite a level of bureaucracy. UNIFEM is trying to make sure that Pacific NGOs have the capacity to deal with those sorts of governance requirements.

In terms of regional mechanisms, UNIFEM is very involved in the Pacific Islands Forum. There are a few other mechanisms; sometimes there are meetings of ministers who deal with women's or community affairs issues. A lot of the mechanisms in the Pacific, in particular at the civil society level, are arranged around the churches; so the Pacific Council of Churches is a very important organisation. But it is extremely difficult in the Pacific to engage across all the islands and across all the groupings—from Melanesia, Polynesia and Micronesia—in an effective manner, so that is the challenge.

Just coming back to the Millennium Development Goals, two of them feature gender equality: firstly, the education of girls and, secondly, maternal health. That has added extra impetus to the search for gender equality outcomes, particularly in the Pacific region. The Pacific is one of the regions that are not going to meet the MDGs at all in those two areas. One of the important ways to promote human rights, particularly in the Pacific region, is through development outcomes. That is why in our submission we have focused on the fact that sometimes it is important to build human rights into what we are already doing, for example, in the aid program and in our discussions with the Asian Development Bank, the World Bank and the IMF and in trade dialogues.

At the moment, all Pacific countries are very interested in the very important forum of climate change and its effects on human rights and human security. Climate change, as we know, will have an inequitable effect on women and girls. Research into the tsunami found basically that, during the tsunami, women were more vulnerable and were drowned at greater rates than men because of a range of issues: inappropriate clothing preventing their escape, and their waiting for permission to be told to leave—all these various things. I have the research to hand, if you would like me to table that later on. We know that climate change will have an impact on everyone in the Pacific; and that might be an area where we can start talking, in a profitable way, about human rights and human security.

CHAIR—Thank you. That is a very interesting point and it would be interesting to get hold of that paper.

Mr RUDDOCK—I was very interested in the emphasis that you placed on Melanesia, but I was surprised at the absence of comment in relation to West Asia, for instance—honour killings and specific policies of some groups to deny women even elementary schooling. I do not know how you rank these things. In a sense, I can understand in relation to Melanesia, given the stage of development and so on, that there will be cultural issues. But your presentation seemed to be short on comment in relation to another aspect of the region that we are looking at. I wonder whether you want to address how we might deal with some of those issues.

Dr Harris Rimmer—Absolutely. We did not address such issues, because UNIFEM Australia tends to focus on Australia's aid program in our region, which is heavily concentrated on East Asia, South East Asia and the Pacific. But West Asia has very strong issues in terms of the human rights of women. All those things that you mention have been the subject of UNIFEM research and advocacy at the intergovernmental level. At the moment particularly, UNIFEM is

very engaged in discussion around Afghanistan and the Shiite status laws; I have those to hand also, if you would like to look at them. At the recent International Women's Day, we focused on acid attacks against women and girls in Bangladesh, Pakistan and India.

To answer your question: no, they are not easily ranked. In fact, we say that they should not necessarily be ranked, because a lot of the issues around gender discrimination, in fact, come out in very culturally specific ways, even though they are based on the same concepts of inequality of women and girls. So the strategies have to be different, but the cause or the fundamental problem is the same across many societies. You can try to address and research or understand the basic cause of inequality across societies, but the strategies in each place have to be independent. That is what UNIFEM does. That is why we have officers all around the world in various local places.

I find it interesting that, when thinking about women's rights problems, we often think of women under the Taliban, women in Iraq, popular examples of women in Somalia, women not being able to drive in Saudi Arabia or whatever is in the press, but we tend to forget issues amongst smaller countries in our own region; for example, it is not headline news that women represent only two per cent of the Pacific parliaments. But such issues are equally important and that is one place where Australia can have a particular impact. That is why we have raised those issues today; but certainly we are not suggesting that, in terms of human rights protection, West Asia is better in any way.

Mr RUDDOCK—Your organisation is global and I just want to tease out that other issue. As far as I am concerned, when I focus on women's issues and look for comment but often see that it is absent, it is in relation to things like honour killings that I have seen and been aware of in Pakistan—but they occur in other parts of West Asia as well. I think we are losing ground in relation to women's education in places like Afghanistan, with the Taliban and so on. To my way of thinking, when you are losing ground, it is far worse than failing to make it up.

Dr Harris Rimmer—We are losing ground in the Pacific as well; we are losing ground in many places. Education of girls is one of the MDGs, and one of the worst indicators globally is going to be in the Pacific and in PNG. Maternal health—

Mr RUDDOCK—Is that a matter of resourcing or of deliberate policy?

Dr Harris Rimmer—I see what you mean. I think it is not only resourcing but also a question of not valuing the education of girls, in a cultural sense. If you look at the last report on the MDGs, we are not doing so well right here. However, having said that, I would be the first to say that Pakistan in its treatment of women in Swat Valley, that deal with the Taliban, was reprehensible. I am sorry that the Australian government did not do more to say that, when Stephen Smith visited there. All of those things are exceptionally important. Our submission focused on this particular region because of the Australian aid program and its emphasis, not through any lack of interest.

Mr RUDDOCK—Bringing you back to our direct terms of reference, we are looking at possible models. Does the sort of discussion that we have had about differences within the region lead you to the view that we, as a committee, in the options that we bring forward, ought to recommend subregional-specific arrangements rather than look across the board?

Dr Harris Rimmer—UNIFEM Pacific works on a subregional level because of logistics and practicalities and often it is very difficult to have small offices in very remote parts of the Pacific; so I think, for the Pacific, a subregional mechanism could definitely work. But I do not think there should be an either/or proposition. Partly it has to be the decision of the people in those areas as to what kind of design of mechanism is most useful to them. All I would say is: try to think very creatively. When it comes to the protection of human rights, very many mechanisms can be used. Incorporating a bit more human rights ethos into the existing ways that we interact with the Pacific and East Asia would be one of those mechanisms. Others would be the national human rights institutions and subregional mechanisms that already exist in various ways, such as through the churches and the Pacific Islands Forum. But also it would be thinking of things that will impact on civil society in the region. I think we just need lots and lots of levels. I think a large formal Asia Pacific mechanism may evolve over time, but now is probably not the precise time to win that political support. That is what we should be aiming toward, but it might be a question of small incremental steps being taken upwards to that outcome.

Senator HANSON-YOUNG—I am interested in the comments that you made about, in particular, the two per cent of women in leadership roles. In looking at the different reasons for that, perhaps education is a key one and I am sure there are others. Can you flesh out what you think Australia's role could be in helping to encourage a change to increase the numbers regarding women's participation, whether it is in local community leadership positions or officially in parliament?

Dr Harris Rimmer—Certainly. UNIFEM has employed quite a few strategies over the years—in East Timor very successfully—by training women basically in how to present to the media. In fact, I think Senator Margaret Reynolds did the UNIFEM training for Timor elections, which resulted in 27 per cent of Timorese women being elected to parliament, which was one of the best ratios in the world let alone our region. That was very successful, but it also built on the respect that women had in terms of their participation in the independence movement. It remains to be seen whether that can be carried forward now.

In the Pacific, we have a program with NZAID. It does three things. Basically, it trains women in politics and it has establishment of the national Women in Politics organisation in each program country; it identifies potential women leaders in key government decision-making bodies; so it finds the movers and shakers and makes sure that they get leadership training. Also, they develop a database of participation of Pacific women at all levels of decision-making; so basically they make sure that those women are networked and know where everybody else is so that they can help each other. They are focused at the moment on Papua New Guinea, Fiji and Vanuatu. But they find that a lot of the difficulties with women being elected are just that often there is a perception that it is incompatible with their duties as a wife and mother. So it is often women who do not have children who enter politics, which I think is not so different from the rest of the world. Also, there is the perception that women should be deferential in the chief-type systems in some of these countries. Generally, it is just about building women's confidence, and that is what UNIFEM tries to do. It tries to say, 'You are important, your views are important, you have the capacity to present those views and we're just going to help you with the style.'

Senator HANSON-YOUNG—So it is that practical training on the ground.

Dr Harris Rimmer—Yes.

Senator HANSON-YOUNG—In relation to the Millennium Development Goals, you spoke about how we are failing in the region particularly with education of women and the maternal health goal. Apart from lack of resources, why do you think that is; or is it purely lack of resources and, if so, which resources and where? Is that something that Australia should be looking at? Alternatively, is it how those resources are being put to use?

Dr Harris Rimmer—In a recent presentation at AusAID, Rita Taphorn, one of our Pacific officials, said that the financial crisis is having an effect; when families are stretched, it is the boys who get sent to school. So it is partly resources but it is partly cultural. So there is this resource issue, as Pacific countries are finding it harder to cope—and they are coping with more natural disasters with extreme weather because of climate change. They are having an impact even on family budgets and, as in lots of countries in West Asia, the decision is made that, where money is tight, only the boy will go to school. In terms of maternal health, the issue is usually lack of access to an institution or a hospital where there are long periods of travel. So it is that remoteness, which is the same issue we have in Australia, really. That issue of remoteness to hospital is a big driver in maternal health. They are the two main issues.

The Australian government has increased its contribution to maternal health. A few statements have come from Bob McMullan recently about the importance of maternal health in the region, and I think there is some extra money. But, again, the aspect of discrimination against women must be addressed; there is no point in just giving more resources, if we do not understand the structural reasons for women not being valued for particular roles. So it is a question of deepening our understanding as well as of throwing more money that way.

Ms GRIERSON—In your submission, you say that achieving broader Millennium Development Goals in areas such as HIV, education, poverty alleviation and governance—they are fairly important ones—is directly limited by violence against women. Having been to countries where I have visited a fracture clinic and known that 80 per cent of patients are beaten women, I wonder whether you can tell us about successful programs for limiting violence against women.

Dr Harris Rimmer—I would like to table a document from a Pacific regional workshop on eliminating violence against women, in which some successful strategies are discussed. One of the most successful is something that we also do in Australia, which is to involve men as ambassadors, basically saying, ‘This is not the Pacific way; this is not the way that men should treat women.’ That has been a very effective strategy. The other one is making sure that women feel that, if they do complain, not only will they be taken seriously but also they will be assisted in particular ways.

Ms GRIERSON—How do we bring that about?

Dr Harris Rimmer—Through very simple measures, such as by making sure that there are refuges, for a start. One of the things that UNIFEM has done is helped with refuges. It has also made sure that there is a law reform program so that violence against women is actually seen as a crime; so a lot of training goes on with police. The strategies are very similar to the strategies here, and it is hard. We know that it is hard. It is hard here, it is hard in the Pacific and it is very hard in PNG. But a couple of issues that the Pacific has to deal with are, firstly, the remoteness issue, which we do not have to deal with—we do, actually—and, secondly, women’s lack of

access to power structures. If there are only two per cent of women in parliament, for example, there is not really anybody there to represent the issue of violence against women. So it is about making sure that the men in parliament who are interested in promoting female equality get as much support as possible and about getting more women into parliament.

Ms GRIERSON—So, in East Timor, where you were part of a campaign to get women into governance positions, has that been followed up in terms of their role in taking on those issues for human rights for women?

Dr Harris Rimmer—Yes, it has; it is fraught, but it has. This is my thesis topic, so I will try to keep it very short.

Mr RUDDOCK—Send us a copy.

Dr Harris Rimmer—The penal code that was promulgated two days ago has a new domestic violence law in it.

CHAIR—Good. I wanted to ask about the legal system.

Dr Harris Rimmer—So that is real progress. There are some issues with the law that are very similar to those that we have here, such as making sure that the experience for the witness is not too distressing. But, yes, I think it did have a big impact. In places like East Timor, Papua New Guinea, Bougainville and even Tonga, we know that, in post-conflict areas, there is a spike in domestic violence; there seems to be a correlation between public violence ending and intimate violence rising. It has been a real challenge for Timorese women, having fought for so long for their independence, to find themselves subject to domestic violence. They have been very, very active in making sure that one of the first priorities in the penal code is a domestic violence law and also that the police actually will respond to that law. In fact, in East Timor, in the Dili court, something like 50 per cent or 60 per cent of all cases are domestic violence cases. So I am not saying that it is ideal, but they are being prosecuted, which is something. So there has been some impact there.

Senator FORSHAW—This is more of a quick comment and perhaps for you to comment on it. Another committee of this parliament that I sit on, the Senate Committee on Foreign Affairs, Defence and Trade, is conducting an inquiry into economic security challenges for PNG and the South West Pacific. With the constant themes we hear, there are two issues. One is that, with the economy of many of these smaller countries, putting PNG aside for a moment, opportunities are very limited outside of tourism—and even that is difficult at the moment. The second is the cultural norms, particularly the chieftain or clan sorts of structures that exist. As you know, on top of that, there is Australia's reputation with some of these countries; they may look upon us as 'interfering colonial', et cetera. I am interested in how we factor in coming to grips with the economic challenges that clearly impact upon women, maybe even more so than on men, and those cultural sorts of norms it is hard to break through to get, for instance, extra representation into the parliament. I am not sure whether you have any further comment. This is not a question; it is a really hard nut to crack.

Dr Harris Rimmer—Yes. It is a really important observation though. That is what I was saying: while it is important to have specific discussions about human rights in the Asia Pacific,

it might be even more important that we talk about human rights when we deal with topics like economic security, defence and climate change, for example. As I said previously, these things are very, very intertwined. In Pacific countries, the financial crunch is having an impact on the education of girls. It is having an impact on violence because the male breadwinner feels powerless, which then has an impact on intimate violence. It is very difficult to tackle these issues. But we are not going to get even to first base if we do not understand some of the social aspects of why these problems play out in the way they do.

Senator FORSHAW—Should we be bringing this up more on the agenda of the South Pacific forum, at the risk of getting more opprobrium from various leaders around the region?

Dr Harris Rimmer—There are ways and ways. You are right about the perception of Australia in the Pacific. That is why I am a little worried about the concept of Australia somehow setting up a mechanism in the Pacific; I do not think that will fly.

CHAIR—That has been pointed out before.

Dr Harris Rimmer—Yes. I think a better approach is to say, ‘Australia has these issues like you do.’ That basically is the approach that New Zealand takes too: ‘We have the same issues, we are on the same journey and we are part of the same enterprise. These are some of the strategies that we have found to be effective. Can we help you and give you some money to help you? But you will have ownership and design.’ I think that is a more effective strategy. I think that owning that Australia has the same basic problems is very effective. We have problems with our remote and regional communities being economically viable and we have problems with cultural attitudes towards women in some of our communities. So it can be done on a shared basis and we can share experiences, and that might be more effective. But, with those economic discussions, I think it is very important to understand that there is a social policy dimension to these problems.

CHAIR—Thank you very much. Unfortunately, we will have to end our questioning there because we have other people wanting to present. I thank you very much for coming today. I note that you wished to table a couple of documents. If you give those to the secretariat, they will pass on copies to all members of the committee. Other than that, thank you very much for coming before us today; your evidence has been very informative. I think it has been a good start to what is going to be a very interesting day.

[10.38 am]

GREENWELL, Mr John Henry, Activist, Amnesty International Australia

WITHEFORD, Mr Andrew Simeon Chang, Government Relations Manager, Amnesty International Australia

CHAIR—Welcome. Although the subcommittee prefers that all evidence be given in public, should you wish at any stage to give evidence in private, you may ask to do so and the subcommittee will consider your request. Also, although this subcommittee 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. Thank you very much for what was a very detailed submission in terms of this particular issue. Amnesty, as we know, has a longstanding commitment to this very issue and a wealth of experience and knowledge, and we look forward to hearing from you this morning. Perhaps you would like to make some opening remarks and then we will go into discussion and questions.

Mr Witheford—Thank you. At the outset, I would like to welcome the work that is being undertaken by the subcommittee into this both broad and important topic. I will provide a quick overview of some salient points that will complement our written submission. You will have seen that our written submission contains a number of aspirational standards that we are moving towards, and my comments today will be based more on the here and now and how we see things tracking along.

The first issue is the UN Human Rights Council. As you know, that body was set up in response to problems that clearly existed with the UN Human Rights Commission. It is still very much a work in progress and it obviously remains constrained by the limitations of multilateral politics. For example, attempts to put on the agenda issues such as the Democratic Republic of Congo and Sudan were knocked back by voting blocs, whether it was the Organisation of the Islamic Conference or the African states. However, there are saving graces within the Human Rights Council process. Amongst these are the retention of the special procedures, including special rapporteurs, and the adoption of the process of Universal Periodic Review, which requires all UN member states to undergo a process of review with regard to compliance with international human rights standards. We also note the recent announcement by the US that it will be seeking to become a member of the council for its next session, and this engagement by what obviously is an important player in the process is certainly welcome.

Good work in the human rights area continues to be done by the Office of the High Commissioner for Human Rights and relevant treaties bodies; I refer to the recent review by the human rights committee of Australia's performance. Also, a lot of good work is being done by these agencies in educating about human rights and identifying and recommending with regard to particular human rights situations in individual countries. Amnesty particularly welcomes the initiatives of the Office of the High Commissioner for Human Rights in Asia and the Pacific. It has campaigned against impunity and has effected an extension of regional offices and advisers within the Pacific area. We welcome AusAID's contribution to the funding of the regional office and the National Institutions Unit for work.

With the development of regional mechanisms, I will turn firstly to ASEAN. We need to be realistic about how this will be a very incremental process. Our written submission outlines what we would like to see in an ideal world; this is not going to happen overnight, as you know. There are a number of competing forces within the ASEAN bloc. For example, you have Burma, Vietnam and Singapore, that essentially are authoritarian states to varying degrees. On the other hand, you have countries such as Thailand, Malaysia, Indonesia and the Philippines where undoubtedly over the last decade, as the process of economic development has continued in the democratisation process, there has been development of a fairly strong human rights culture within parts of civil society, within parliament and within government structures. One symptom of this is the development of the independent human rights commissions within these countries.

ASEAN—being an organisation that is based very much on the consensus principle and the idea of non-interference, which, to put it bluntly, essentially is the right of authoritarian states to not allow other members of the grouping or countries outside of ASEAN to draw attention to human rights issues—will trump deliberations with regard to this body; nevertheless, there is this growing human rights culture. I would say that it is going to be an incremental process, but I am generally positive about it. I cannot see ASEAN, as an organisation, now developing this mechanism as a fig leaf to protect human rights violations. What I see it as is an embryonic process that will develop gradually but will do the right kinds of things. In the initial stages it will really be education, consciousness raising, collaboration and cooperation; you are not going to get much more than that. But, in the long term, we just have to assist that process along.

Obviously, issues in the Pacific are very different. There are resource constraints; however, initiatives are also underway, deriving from the Pacific Plan 2005. A key body here is the Pacific Regional Rights Resource Team. I note that you have taken evidence already from Imrana Jalal. Amnesty has assisted with advice and will continue to do so with this process. We are hopeful that there will be a Pacific human rights mechanism under the aegis of the Pacific Charter of Human Rights in the Pacific area. But this, again, is a decade-long project; nothing will happen very quickly.

I have already mentioned that there are a number of national human rights institutions in ASEAN countries. We see the development of independent institutions within these countries as critical, provided they are consistent with the Paris Principles with regard to autonomy and independence. I would use as examples the work of the Human Rights Commission to date in Indonesia regarding the fallout of the Suharto regime and the campaign against impunity there; and the work that the Human Rights Commission did in Malaysia regarding the Internal Security Act review.

We note a suggestion raised in one of the other submissions to include human rights institutions within the Pacific Ombudsman Network. We would disagree with this, because we see the Ombudsman as playing quite a different function to a Human Rights Commission. There is no reason that the two functions could not be co-located to provide resource savings, but we think there are serious issues with trying to merge the two functions. We can explore that further in questioning. We also note the evidence of the Asia Pacific Forum of human rights institutions and the increasing number of human rights institutions it is assisting. It is obvious that, with a staff of only six people, it needs additional financial assistance to continue this developing work. We welcome Australia's support for this process. Australia should continue to encourage

improved regional accession to international human rights instruments, which, as we have noted in our submission, is quite patchy.

With regard to Australia's multilateral human rights diplomacy, Australia has been quite strong, particularly in recent years, with regard to treaty action; you can look at CEDAW, the disability convention and, most recently, the Declaration on the Rights of Indigenous Peoples. Australia was also strong in its comments regarding China in the Universal Periodic Review process at the Human Rights Council and also multilaterally in the annual death penalty resolution, which has now become a biennial process. However, we have concerns with Australia's bilateral human rights diplomacy. I have to declare that this is an area of personal interest. In a past life, I was a diplomat working on human rights issues in the region, in a country that had a poor human rights record. So I would like to bring that perspective to bear as well as my Amnesty hat. We certainly welcome the extensive work that the Australian government is doing through the aid program, such as the Technical Cooperation Program to China and Vietnam. We see these programs making a real difference in the long-term task of building an operational level human rights culture. There are also other mechanisms for doing this, such as the Human Rights Fund and the Human Rights Small Grants Scheme.

However, we are concerned with Australia's bilateral human rights dialogues. While we welcome the increased NGO participation in this process, particularly most recently in the China dialogue, we are concerned at the potential for this process to become a quarantine zone to improve the comfort zone of our diplomats and elected officials. To some extent, these protests are becoming a bit too ritualised and human rights issues are being placed into a particular box. We would love to be reassured that this is not happening at the expense of day-to-day advocacy. For example, whenever a minister or a senior official is queried about the human rights situation in a particular country and it is a country that we have a bilateral dialogue with, the standard response is, 'We have a human rights dialogue with this country and we think it is a useful process'—full stop. There is no mention of the issues. It is kind of interesting: our process has gone from these dialogues—it was good to get them on the agenda and we welcomed that because obviously there were serious issues to be addressed—but now, particularly with China, we are up to about our 12th dialogue and we are concerned that it has become more of a formality. We see that there are potential dangers there.

These dialogues also suffer from substantial unaccountability. We submit to the committee that it could consider revisiting the recommendations of its 2005 inquiry into the processes, to ensure that there is as much transparency as possible in these processes. The subcommittee of the last parliament examined this in its 2005 report and recommended that the Minister for Foreign Affairs table an annual statement in parliament on the status and proceedings of Australia's human rights dialogues with China and other countries. I have copies of that here, which I would like to hand out for your reference. At the time of the government's response, the then minister rejected this recommendation, and the unaccountability that concerned the committee in 2005 largely remains.

Another related issue here is that of recommendation No. 5 of the committee, where the committee recommended to relevant government agencies that they provide up-to-date information with regard to bilateral dialogues for areas in which they had responsibility. I have a copy of that recommendation too. In addition to this, I have provided some excerpts of what we have on our official government websites with regard to these dialogues and also just, as a point

of interest, what the Chinese Embassy has with regard to the Chinese bilateral dialogue. We propose to the committee that, as part of its current inquiry, it reaffirm these recommendations.

Another area in Australia's bilateral human rights diplomacy that concerns us is that of the death penalty. You will know from last year that there was a change in our bilateral policy, resulting from the execution of the Bali bombers. We are concerned that the practical effect of this new policy will be that we will undertake advocacy on behalf of Australian citizens facing the death penalty but, with regard to citizens of other countries facing capital punishment, it will be done on a case-by-case basis. We are concerned that the real impact of this with our bureaucracy essentially will be the bureaucracy coming to the default position of undertaking far less advocacy on a day-to-day basis because it needs to seek formal approval to follow up a case. In the past, where a position was fairly clear, we would campaign against the death penalty in all our bilateral relationships; I think it happened more at a day-to-day level. Again, this is another area where we hope to be reassured that this is not the case.

Finally, we are a bit concerned about the direction in which some of our rhetoric in our bilateral human rights diplomacy is heading. I have one more handout here. For example, the foreign minister in a recent speech to Chinese university students made some comments regarding how Australia and China do not see eye-to-eye on the issue of human rights and attributed this to political, cultural and historical differences. I appreciate the dangers of megaphone diplomacy, but I am a bit concerned that we have gone a bit far the other way.

We are really in danger here of buying into the 'Asian values' argument, which we regard as fallacious, and its associated notions of cultural relativism. There are two concerns. The first one is clearly that human rights principles are universal and this should be affirmed, but there is also the practical effect. As you would be aware, the collective systems of government in countries like China are a constant interplay between hardliners and reformers. I am a bit concerned that we are really buying into the arguments of the hardliners, who like to portray human rights as a tool of Western enemies seeking to undermine China rather than as a set of accepted principles. I think, by making statements like this, we are undermining our own position. We need to be a bit clearer about why we support human rights, whether it is in Australia or elsewhere. That is the end of my comments. I welcome any questions.

CHAIR—Thank you very much. I go back to comments that you made at the beginning regarding ASEAN and saying that, in fact, you had some level of optimism, although with very small steps being taken, that it could lead to something more effective. In your submission, you are very strident, in a sense, about the need for strong legal powers to have the ability, basically, to enforce any human rights law that is agreed to. I guess my question is: do you believe that any regional mechanism will be an improvement, or is there a concern, as has been raised by others, that, if you have a regional mechanism that is so watered down to include everyone, it could see human rights in certain countries going backwards rather than forwards? With your comments about ASEAN and what is in your submission, I would be interested to see where on the spectrum you think a regional mechanism, if one existed, could be effective.

Mr Withford—My view would be that a lot of the impetus for the embryonic mechanisms that you see developing in ASEAN is the result of Indigenous concerns, particularly in some of the South-East Asian countries that I mentioned before—Thailand, Indonesia, the Philippines and Malaysia. It is for this reason, I think, that this process is developing and why you are

having the development of the ASEAN human rights body. As I mentioned before, I do not see this process developing as a fig leaf, because I do not think those constituencies would allow that. I think we do have a process which is more genuine and we need to encourage that. For example, from reports regarding the development of this process, both Burma and Vietnam were quite opposed to it. They did not see it as a way to collude and then hoodwink the rest of the world. They were fearful of this process that was being pushed along essentially by more reforming elements within ASEAN.

Ms GRIERSON—I have found your submission and your presentation today to be very interesting. Obviously, you are inspired by the challenge, but the challenge is a very real one. I take you first to this day-to-day advocacy. I guess we look at our leaders and our ministers as the people who do that, but I think we underestimate the role of parliament and the other ways that we do it. I just point out that in a week's time I will be part of the Asia Pacific public accounts and audit conference, seeing fledging countries coming to terms with corruption and governance—and that is a wonderful way for parliamentarians to impact. I think the support of governments for the sorts of activities that bring people together around a particular goal is important. Perhaps you would like to comment on other ways that you see the parliament being able to do that day-to-day advocacy rather than just leaving it up to the heads of governments.

Mr Witheford—I completely agree with that. It is interesting to note: obviously, your counterparts in the region vary from rubber stamp legislatures, as you would have in China or Vietnam, to quite vibrant, active parliaments. Nevertheless, throughout my time, I have noticed that, even within the most constrained systems, a lot of parliamentarians are still reformers; they are still keen to chip away. They may be more constrained and the parameters may be tighter; nevertheless, they are still quite active on issues such as corruption, administrative reform and moving things ahead. So I think there is an important role to be played there by parliaments, even the ones in the more restrictive systems. I would welcome any engagement that this committee can have through the ASEAN parliamentary process, the international process and, also, more informally.

Ms GRIERSON—You talk about your optimism for a growing human rights culture and you mention the four ASEAN countries that are taking on the human rights institutes, and some of them are outstanding; I have found the people involved in the Malaysian one to be particularly inspiring. How do we know though that that human rights culture is developing, and would you comment on the direct 'people action' taken in Thailand and how you would interpret that—the passive sit-in of mass numbers?

Mr Witheford—I think there has been a proliferation of NGOs, particularly in the more democratic South-East Asian countries. That is evidence of a developing human rights culture and also, just generally, a culture of a stronger civil society. It is another centre of power that is not the government and is not business interests. I think this is at the root of healthy economic development, as a country tracks along. With regard to Thailand I think that situation was a more politicised one. There was obviously mobilisation of supporters by the respective political groups. We are not saying that this is a process where things will be improving continually; there will be bumps—and I think Thailand is an indication of that. Nevertheless, it is a vibrant political culture, albeit a rocky one.

Ms GRIERSON—Did you react to that? Were people punished and did persecution result from that, or do you think there were signs that they were being more accepting of that sort of action?

Mr Withford—With regard to Thailand?

Ms GRIERSON—Yes.

Mr Withford—Certainly, more government restraint was shown with regard to civil opposition to government policy.

Ms GRIERSON—That is what I was hoping you would say. Thank you.

Mr RUDDOCK—I have one comment to make about ASEAN. I look at the sort of change that occurred in Indonesia, which was surprising, rapid and welcomed. I suspect that, in the rest of ASEAN, we may see situations like that; certainly it is possible in Burma. But others, it seems to me, are more likely to be incremental, and I would have thought that was more likely the case in Singapore. There, I think you just have to continue to work away at it on issues such as the death penalty, which is one of concern to us. But I was interested to hear you mention that a number of regional organisations are interested in investigating the option of a regional Human Rights Commission, particularly regarding the resource issues. I noted your comments in relation to the Pacific, where you were of the view that you would not just build on the ombudsman and it had to be a separate role. I wonder whether you might expand on this initiative and on how Amnesty has been involved and point to which particular parties are interested in investigating and pursuing that option, in pointing us to where we might be able to build on those initiatives.

Mr Withford—As I mentioned, we have been working quite closely with the Regional Rights Resource Team and also in a number of particular events, which in a way are linked to the process. For example, late last year in Brisbane, we assisted the team with a week-long session of human rights training for MPs from a number of South Pacific countries. Funding has been obtained for this process for the next four years, so this will happen annually, by which time we hope to have had a significant number of new South Pacific MPs through the training course. This is an involved course. It is five days long and, for example, an entire day is spent on the issue of violence against women. We see that as a very useful way of raising consciousness. You are working from a pretty low base in some of these countries regarding the levels of awareness of some of these issues and what needs to be done. We see that as a fairly important process and it is an example of our engagement on specific issues.

We are also doing some research regarding women's rights activism in Papua New Guinea. In addition, in 2009 we are planning for a campaign organiser, based in Amnesty, to work in Papua New Guinea in partnership with local NGOs regarding that particular issue. Also, our international secretariat is doing some work on links between HIV and gender based violence in Papua New Guinea. So there are a number of projects at the lower level, where we see it as being important to have this engagement and not only for us to derive information but also to raise consciousness in the relevant countries.

Senator HANSON-YOUNG—I have two questions. Firstly, your submission and then your comments fleshed out a lot in relation to how we could use ASEAN more effectively, in terms of promoting human rights and different human rights mechanisms. You spoke about the bilateral dialogues. What does Amnesty see as the major human rights issues in the region and what should we be talking out about? If the issue is more effectively using the processes that we already have, what is it that we should be pinpointing?

Mr Witheford—There are a number of major issues. Firstly, there is the use of capital punishment in the region. About three-quarters of the people executed last year in the world were in the Asian region. Also, there is the issue of violence against women. Freedom of expression is an important issue in a number of these countries. To some extent, it is the flip side of a democratic culture and it is an important issue with regard to processes of transparency within government and economic development. To ensure that rights are observed you need to have this transparency within the political dialogue of countries. There are also issues regarding torture and slave labour in countries such as Burma. There are a number of issues there and, as you know, they are fairly broad. Australia should be outspoken wherever it can be on a number of these issues. They are examples of some of the most egregious ones.

Senator HANSON-YOUNG—I note your comments about the death penalty and using that as an example regarding the lack of clarity from Australians leaders. I also note the other points that have been mentioned that there are other ways to raise these issues and other dialogues that we have, but in terms of the expressions and concerns that are raised by the more formal members of our governance positions, that is through the Prime Minister, foreign minister and various other elected representatives, you used the death penalty case as an example of how we have not been as clear on Australia's position as we could have been, or maybe it is because the position has changed and no-one has told the rest of us. Is that a concern for what Australians think in terms of what values we hold for the region and, when we are travelling, what type of things as individual citizens we espouse as values that we find important?

Mr Witheford—As you would be more than aware, the death penalty debate last year obviously had a heavy dose of domestic politics. It is important to bring the debate back to the fact that essentially Amnesty opposes the death penalty because it is a breach of the right to life. We do not make any judgement with regard to the offences that the alleged perpetrators are supposed to have committed; it is all about the fact that states should not be empowered to take the lives of human beings. It is important in your day-to-day work that you emphasise that it is about universal values; we are not buying into arguments as to whether certain people deserve to be treated in certain ways. It is a blanket opposition to the death penalty because it is a fundamental breach of human rights.

Senator HANSON-YOUNG—There was a comment raised around trafficking. We do not hear much about it in Australia, although those of us who have worked on it know that it does exist and that we do have trafficked people coming into Australia more frequently than we should. I guess the reason that is allowed to continue is that there is an opinion amongst some people that the value of one person's life and freedom is less than another's. This is more of a comment, but in terms of education domestically and within our own region, I see them as one and the same. It is how you communicate it, as opposed to saying, 'We have these values here and over there you do not value them as much, so we will go for a lower common denominator.'

Mr Witheford—It is a very dangerous trap to fall into to assume that someone in China or Burma is more prepared to be tortured or executed, or more happy to do it because it is a consequence of their cultural or political circumstances. There is a real danger there of buying into the arguments of authoritarian governments and basically giving them ammunition. We really need to bring it back to the point that these are fundamental human rights that are inherent in every individual human being, irrespective of whether they are in Australia or overseas. On the trafficking issue, in particular, there was a belated response within Australia, but we are now seeing prosecutions and there is more police attention to this issue. Things are happening domestically and that is a welcome trend.

Senator HANSON-YOUNG—Thank you.

Senator FORSHAW—On page 12 of the submission you refer to the countries in the region that have become members of the United Nations Human Rights Council and the commitments made by member states. This is in your introduction. That is all good; however, there is a fair body of opinion around the world that the new Human Rights Council is not much better, and some would argue is worse, than the old one. I am interested in your comments at this point, even though you say, ‘Time will tell whether the new council mechanisms will work, particularly the Universal Periodic Review.’ Can you expand on how you see the United Nations Human Rights Council and its short- to medium-term future, particularly in regard to Asia and the Pacific? I do not need to run through all the criticisms that are being made, but I have to say I share quite a few of them having been at the United Nations General Assembly in 2007 when there was debate about the very report and its tendency to single out a particular country and not mention a lot of others. Clearly, I am interested in its role, if any, in this region. It does not seem to have much of a role. That may not be a criticism; it may be that it has a lot on its plate. But it also may reflect the fact that at the end of the day it is only interested in focusing on certain parts of the world and leaving others for cursory comment.

Mr Witheford—I take your point. As I mentioned before, it is a highly politicised body and with its track record in the last couple of years there has been an undue emphasis on particular issues. Israel and the occupied territories spring to mind. The council, as I mentioned before, because the inherent geographical voting blocs still characterise its composition, has dropped the ball on particular issues such as major human rights crises in Darfur and the Democratic Republic of the Congo.

Senator FORSHAW—They specifically dropped them. That is what had occurred in previous manifestations.

Mr Witheford—That is right. There are other areas where it is doing good work. For example, it has a Special Rapporteur dealing with North Korea. There is also another special procedure involving Burma. Sri Lanka is another issue within the region.

Senator FORSHAW—I do not quarrel with that, but the special rapporteur, for instance, in Burma, Dr Gambari, is acting pretty much under the authority or directly to the Secretary General, as well as the relationship with the Human Rights Council. There is a bit more status there.

Mr Witheford—That would assist him as well.

Senator FORSHAW—Yes. I think that puts it in a slightly different category.

Mr Witheford—There are certainly concerns where voting blocs are essentially going to trump the real need to bring certain issues into the open. It is a piecemeal process and the record is a mixed one. Nevertheless, we think the Universal Periodic Review is a useful process with regard to major issues like China and also the Congo in the last session. It did raise these issues and many countries had their say. I think 50 or 60 countries within the Universal Periodic Review process had their say on these issues.

Senator FORSHAW—Have Amnesty International or other NGOs had an opportunity to properly participate in these periodic reviews? Are you happy with that system?

Mr Witheford—There is a formal process for NGOs to input into these processes and the mechanisms are quite good for that. It operates in a quite transparent way and there are good opportunities there. With regard to what you were saying about the region and egregious situations like the appalling human rights situation in North Korea and Burma, the Human Rights Council has appointed these special processes and these have been retained. They have not been voted down by geographical blocs. Maybe we are fortunate in the region that you do not have these blocs that are going to stomp on particular issues in the way that it has happened with regard to the Middle East or the African nations. Only time will tell with regard to emerging crises.

Sri Lanka was a disappointment in which the Sri Lankan government lobbied very hard in the council to avoid any discussion of the developing humanitarian crisis in that country over the last couple of years and were successful. We have got to make the best of what we have got. It is an improvement on the commission. Bringing the United States into the process is a positive sign and you have just got to push this stuff where you can, despite being cognisant of the inherent difficulties of a very imprecise process.

Senator FORSHAW—The other thing I would add to that is to say that North Korea and Burma, particularly North Korea, have a geopolitical series of other issues attached to the whole question of human rights, as we have seen in the last couple of days with North Korea, which can then be elevated to the Security Council level for debate and so on, whereas a pure focus on human rights, whether it is trying to prevent abuses right through to promoting equality and recognition of human rights in this region, clearly does not have the same import. It is not that it is not important, but it does not have the same degree of significance as it may have in some other areas, or as you mentioned, in Africa. That is just an observation.

CHAIR—A few of us have a couple of questions about those discussions. The UNIFEM representatives made a statement which said that they felt the best way to address human rights issues, particularly in areas like the Pacific islands, was in fact around development rather than looking at legal mechanisms. I would be interested to hear what your comments are about that, but given that we have a couple of already existing institutions I would be interested in your comments about the Asia-Pacific Forum as an organisation and whether you believe it has been effective in terms of Australia's support and resourcing of that, and whether it has been an effective way of dealing with human rights issues, particularly given that it includes NGOs, governments and the actual institutions themselves.

Also, there has been a comment made by a couple of people in respect of the Pacific islands that if you want a regional or subregional mechanism to be established there that has got some teeth then it should not be Australia that is driving that. I would interested to hear your advice or views on that, and some advice for the committee on how we can encourage the development of a mechanism without necessarily being seen to be driving it from here.

Mr Witheford—With regards to your first question, we see the cooperation that happens between these Indigenous human rights institutions and civil society, more generally, as fairly important. To some extent it is more likely to be the mechanism that is going to produce results in the short to medium term. That really is about consciousness raising, an educative role, collaboration on material and resources. One specific project that it could be working on is increasing the rate of accession to international human rights conventions. There is certainly a lot of important work to be done there. To some extent it is the main game in comparison with a nation's mechanism along the lines of the ASEAN human rights body or a regional South Pacific commission. There is going to be more groundwork done through the network of Asia-Pacific forums than there is through these broader structures that are really just starting to develop. With regard to giving teeth to the Pacific body and Australian involvement—

Mr RUDDOCK—I do not think you have answered the question about where you see development. I have a fundamental difference of opinion because I suspect that development has made no difference to human rights at all in Singapore, and I suspect that development has made no difference in human rights to China, but it is certainly occurring. They are the creditor to the world, but it has not brought human rights developments forward. I just wanted to pick up that argument and get a direct answer if I can.

Mr Witheford—That is particularly true with regard to civil and political rights. No matter how rich a country gets or how it moves along the path of economic development, it really is a matter of conscious government policy on how it treats its citizens and how it deals with dissent. It is very important to not take the easy option and say, 'We'll just assist development and good governance and human rights will come out of this.' That is why you also need the higher level pressure on government by saying, 'You shouldn't be doing this. You shouldn't be doing these things.' It is a matter of asking government to desist from certain forms of behaviour, and that is important. Singapore is a classic case of a country that is quite affluent, but nevertheless it has serious issues with regards to human rights. Part of that is as a result of the fact that it is a small country. It is essentially a city state so it is easier to do some of these things. Nevertheless, whilst economic development is not going to produce improvements in the human rights situation automatically as a matter of course, it does generate wealth within the society and it increases the potential for alternative centres of power and opinion with regard to these issues, beyond governments and beyond business. I think that is an important thing. I acknowledge that there are issues there with regard to government policy and that some of these things do not change as much as we would like them to as countries develop.

Mr RUDDOCK—If you come back to the second question because I will not have to ask mine if you answer it fully.

CHAIR—I would like to clarify that I do not disagree with you. I was just interested to hear your comment. Perhaps we should give UNIFEM the opportunity, if they wish, to clarify what they meant by that statement. You can keep going.

Mr Witheford—On the issue of economic development and social and cultural rights, I think there is a more direct correlation there between the improvement of those rights and economic development and, generally speaking, the increasing wealth of a country. With regard to the South Pacific mechanism and the role that Australia should play, we completely agree that we have to avoid this neocolonial image within the region. There are obvious sensitivities there that have been apparent through the deliberations of the South-Pacific Forum over the last couple of decades. Nevertheless, Australia can play an active role through the provision of expertise and financial support for Indigenous organisations. Dr Jalal's organisation is a classic example of something that is coming out of the region itself through the desires and aspirations of people within the region. They are the sorts of process that we should support. We would be very reticent to lend support to a process that was Australia based or Australia generated.

Mr RUDDOCK—Again it is generalisation. Before we were looking at how we make a recommendation on provision of expertise. What do you mean by that?

Mr Witheford—There are a number of ways. The most obvious channel is through our bilateral aid program, and also multilateral spending through funding for the Asia-Pacific Forum of human rights organisations.

Mr RUDDOCK—What is the expertise that you are looking at?

Mr Witheford—We have experts in a number of our major cities and a number of them made submissions to this inquiry. These are people that are very interested in these issues and also have a very good understanding of the more general international human rights environment. These are areas where the level of consciousness and understanding needs to be raised within the South Pacific region.

Ms GRIERSON—We might have expertise in both directions in the mistakes that we have made as well as successes that we have had?

Mr Witheford—Indeed.

Ms GRIERSON—It is fairly obvious that there is a global financial crisis and it is often an excuse for people to sacrifice rights for supposed gains for people, economies, regional development and so on. What is Amnesty International doing about tracking any changes through that imperative of getting through a global financial crisis, and what role do you think Australia and ASEAN in forums within our region should be playing to make sure that it is not used as an excuse to sacrifice important human rights?

Mr Witheford—One area in which the global financial crisis is going to impact directly on the more disadvantaged people of the world is through possible cuts in overseas development assistance. This is one area where governments who are facing fiscal stringency are very tempted to make cuts. Amnesty has urged the Australian government and donor governments to ensure that aid funding is actually maintained at a time like this because the global financial crisis, with regard to basically the slowdown in global production and economic activity, is impacting disproportionately in Third World countries. For example, farmers with cash crops or industrialising countries with low wages where a significant proportion of the world's

manufacturing now occurs are suffering immediately and more directly as a result of the crisis than Australia, to some extent, and we need to be cognisant of that.

Later this year Amnesty is going to be launching our dignity campaign, which focuses very much on the links between breaches of human rights and poverty, and how these essentially reinforce each other. It is a focus that we have which is a way to introduce our constituency and the people with whom we are advocating human rights to our policies with regards to economic, social and cultural rights, which are also important and need to be observed. Economic downturns such as this one highlight the importance of economic, social and cultural rights.

Ms GRIERSON—When we see global action and leaders meeting, is there a way of making sure that human rights is built into some of that consideration of economic stimulus, success and development? Are you lobbying for that interaction?

Mr Witheford—As has been mentioned by some witnesses previously, we think it is important that human rights, rather than being quarantined—an example being our bilateral dialogues—really should be mainstreamed. Human rights are really about how we should govern our societies and how they should function. These things should be integral to policy making in a range of areas. Whether it is trade, financial sector reform or overseas development assistance, it should inform and guide the developments of those policies. This comes back to the educative role. It is not only overseas but within Australia with regard to our bureaucrats, our officials and the way we do things. I think that is important.

Ms GRIERSON—Thank you.

Mr RUDDOCK—I just offer this as a comment, still being a member. I think Amnesty has moved away from its core activities: torture and the death penalty. Your description of your new campaign has reinforced my concern about that. I take it that your original mandate arrangements have not changed in relation to Amnesty's willingness to accept funding from government directly?

Mr Witheford—Absolutely. Amnesty does not accept any funding from governments.

Mr RUDDOCK—I wanted to get that clear in my mind. Amnesty, as an organisation, has absolutely no interest whatsoever in receiving government money to assist in promoting these developments in the Asia-Pacific region? You could not do it.

Mr Witheford—No. We would not accept money directly.

Mr RUDDOCK—I am going to be very direct with this very question. Where do we go for that sort of expertise that you say is needed that is independent of government and credible? You may not want to put it on the public record because it means that you have to evaluate the effectiveness of particular organisations. If you are not prepared to put it on the public record, then are you prepared to give it to us in some other form?

Mr Greenwell—The Human Rights Commission in these human rights technical assistance programs, of which China is one but there is another, is providing expertise. By common consent the one in China is a very successful program.

Mr RUDDOCK—Do you mean the dialogues?

Mr Greenwell—No. The technical assistance program runs separately from the dialogue.

Mr Witheford—With China and Vietnam.

Mr RUDDOCK—Is that our Australian Human Rights Commission or the UN?

Mr Greenwell—Yes.

Ms GRIERSON—When they take evidence at the hearing.

Mr RUDDOCK—I understand that. I just want to know exactly what we are referring to.

Mr Greenwell—The Human Rights Commission has, independently of the dialogue, a technical assistance program which it has carried on for quite a number of years that involves, for instance, the training of police. There are quite a number of items. I think you might be assisted by referring to their reports. I do not know if they are appearing at this inquiry. On the question of expertise, that is almost a classic case where Australia is institutionally providing technical assistance on human rights matters.

Mr RUDDOCK—I am not sure that I did pin the Human Rights Commission down sufficiently on what I might regard as performance measurement in relation to what that technical assistance has actually achieved in terms of measurable outcomes. But if you were looking at non-government organisations that are going to be credible and not seen as being the Australian government, and where we might assist, presumably some organisations—and given my knowledge of how a number of countries saw Amnesty when it was really pursuing particular issues. I have had plenty of leaders talk to me about Amnesty in the most disparaging way when it has been on its mettle.

Ms GRIERSON—That could be good.

Mr RUDDOCK—Absolutely. I had a lot of high-level chats with Hun Sen about how he saw Amnesty; they were not very complementary remarks. I do not know whether you recognise my badge. Some organisations may not be creditable to be able to do those things. It may not be a bad thing, but I am just wondering where we look to and what is your view of those bodies that might be able to do that? We are looking for the practical role of where we are going to go. I am saying you cannot do it, so where do we look, in your judgement, to get the best expertise? Maybe you do not want to comment on that.

Mr Witheford—We do not want to get involved in the comparative merits of various organisations. I would have to add that it is not only restricted to NGOs. There is a lot of expertise within the Australian government. Mr Greenwell mentioned, for example, our police forces who have, to some extent, been involved in these technical cooperation programs, a number of other arms of government and other government agencies. Universities are also another important source of knowledge in this area, particularly in regard to international human rights law, better ways of complying with it, and international multilateral obligations.

Another important issue is to recognise that it helps to have a focus on Indigenous organisations, so NGOs that are based within those particular countries. We could certainly provide a list of ones that we have done work with in the past, but I do not think that it would answer your question with regard to who would be better. I think you have to rely on the particular issue-specific experts, because they are in the best position to assess who would be best able to deliver a particular program or design one.

CHAIR—Are there any further questions or comments?

Ms GRIERSON—You have not given any clear future direction in terms of Australia's role. You are not satisfied with just the diplomatic approach, but you think that we do have some strong organisations that are interacting well. You talk about the fear of the neocolonialism and us having that paternalistic attitude to our region. If you could put forward one clear direction that Australia should be taking in promoting human rights as a universal values system that should be always promoted and infringements of that should not be tolerated, what would it be?

Mr Withford—I do not think I want to prioritise one human right over another in this area.

Ms GRIERSON—No. Can you give us one form of action or a form where the Australian government can take a more active role or direct its energies and resources more effectively?

Mr Withford—We are coming back to the fact that it is a multilevel response and, to some extent, Australia is doing a very good job with regard to the aid program and, in particular, bilateral programs with support for the Asia-Pacific human rights institutions, and also provision of expertise in various areas. It is hard to identify a particular area where we should be doing more, but we should ensure that we maintain both multilateral and bilateral funding for a number of these projects.

Ms GRIERSON—Thank you.

CHAIR—That brings us to the conclusion of your particular contribution. I would like to thank you very much. I think it was a very useful and interesting discussion. Obviously we appreciate Amnesty's very special significant and historical role in this issue as well as the level of expertise that you bring to the table. If there are any other particular issues or questions that people may have raised that you would like to give further information on you could pass it on to the secretariat. Once again, thank you both for coming in.

Proceedings suspended from 11.31 am to 11.46 am

COX, Mr James John, Team Leader, Human Rights, World Vision Australia

KENNON, Ms Eleanor, Team Leader, Human Rights, World Vision Australia

CHAIR—It is nice to see the people from World Vision back here talking to the subcommittee. I welcome you on behalf of the subcommittee and thank you for taking the time out to contribute to our inquiry. We have had World Vision come and talk to us about a number of different issues, and I think that reinforces the very important role that your organisation plays in terms of not just human rights but development and support for emerging countries and support for local communities within those countries. Although the subcommittee prefers that all evidence be given in public, should you wish at any time to give evidence in private you do have the right to ask the subcommittee and we will consider that request. Also, the committee does not require you to give evidence on oath, but 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. Without wishing to concern you any further, having read out that formal statement, I would ask you now to present any comments or evidence that you would like to give to the committee, and then we will proceed into questions and discussion.

Mr Cox—Thank you very much for this chance to talk to you all again. I know that from our previous time in front of you we appreciate and also enjoy these chances to share and contribute to your work. As you are aware, World Vision Australia is part of an international partnership that, through a combination of community development project work, advocacy and humanitarian intervention, works for positive and sustainable transformation in the lives of people in about 100 countries around the world. We explicitly support the international human rights system, but do not actually see ourselves as a human rights organisation. We believe that the full realisation of human rights is nonetheless one of the most important contributors to the wellbeing of the world's most vulnerable people. It is this perspective that informs our submission today. Other groups have presented on the merits of different models of national and regional human rights bodies, and we support the need for such bodies to be established, as is happening in some countries in the region. However, regional bodies have perhaps somewhat further to go as rhetorically at least there appears to be some reluctance in Asia in particular to embrace human rights as an overarching regional priority. We would advocate for the Australian government to pursue the longer term goal of robust regional human rights protection with pragmatic action on important issues that are amenable to a human rights response as steps along that way, and it is those steps along the way towards the regional things that are the main focus of what we are talking about here.

World Vision's bottom-up view has informed our recommendation that, in the Asia and Pacific regions, rights based cooperation on specific issues is an effective way to make practical progress on realising a stronger human rights system. We have also recommended that civil society organisations are vital components of a functioning human rights system in any country, and that the effectiveness of national or regional bodies is influenced to a large extent by the voice and capability of civil society organisations, including NGOs, legal associations, community bodies, customary groups and many others. As development practitioners, the idea of ownership, which is itself a human rights based concept, has time and again proven to be vital to the success of our work. In the Mekong subregion the work of a coalition of UN bodies and

NGOs to combat human trafficking was dependent for its success on the acceptance by governments that this was an important issue, and moreover that they could most effectively respond by using a human rights approach. This work took several years, but the incremental approach that was taken in terms of influencing governments was successful even in Myanmar, bringing out the most challenging country context in the region for human rights obviously.

The Coordinated Mekong Ministerial Initiative against Trafficking (COMMIT) mechanism and associated bilateral treaties have emerged as the subregion's response to the trafficking situation. COMMIT is still finding its feet. As the example of the Ranong case in our submission showed, it is vital that civil society continues to be an active partner in occasional gadfly to ensure that the rights of the victims of trafficking are protected.

Another important aspect of the successful establishment of COMMIT is the role that peer pressure can play in promoting human rights. The Mekong countries have responded to leadership from within their number in their response to human trafficking, and this has begun to extend to China as well. Not unrelated is the example of the pressure that ASEAN and the UN brought to bear on Myanmar following Cyclone Nargis without which the country's borders would have been closed to international help for much longer. This peer relationship poses some problems for Australia, which continues to be an outsider in many respects in Asia. This is certainly the case with regard to the arguably Western human rights system—which is a view for the record that we do not share. The current Australian government approach is generally sound in this respect. The various human rights dialogues and programs in China and Vietnam are a pragmatic way to build strong commitment to human rights in those countries, but of course there is always potential to do more, and we know that you have been discussing some of those in the discussion before ours.

Leadership by example is also important. In anti-human trafficking work this is especially so given Australia's status as a destination country for trafficked people in the region. At the regional level, the government could increase diplomatic and financial support for the COMMIT mechanism, the Bali process—which we lead—and also for the South Asia trafficking initiative under SAARC. At home there is a number of specific steps that our federal and state governments could take to better protect the rights of trafficking victims, and our colleagues in the anti-slavery project, you would know, have been doing extensive work, and that is work that we as World Vision are complementary to, and we support their initiatives.

Mr RUDDOCK—Do we have a submission from them?

Mr Cox—Do you want clarification there?

Mr RUDDOCK—No, I just asked whether we had a submission from this anti-slavery group that you mentioned.

Mr Cox—They are based at the University of Technology, Sydney.

Mr RUDDOCK—Yes. I just do not know that they have made a submission to us; that is all I was asking. You are commenting on it.

Mr Cox—Their focus is more domestic than regional, so they may not have submitted to this particular inquiry. Turning to the Pacific and particularly to Melanesia, which is World Vision's focus, the local application of rights takes on a very different dynamic due to the very strong customary social systems there. World Vision's own research has shown the degree to which the rights of women and children are abused at home, and rights inequality extends through most aspects of women's participation in public life.

World Vision does not suggest that this is due to customary practice, but there may be aspects of custom that are involved; rather the main influence is the interaction of custom with contemporary life, which has created fault lines in communities that have encouraged these types of abuse. This poses problems for the application of human rights in Melanesia. As with trafficking in Asia, building commitment to respond to issues such as violence against women and children from within the cultural context is likely to be more productive than establishing general rights based institutions from above. We need to learn more about this. Australian support for locally led research into the application of human rights in Melanesia would be a valuable step to supporting strong internal leadership from within Melanesia to respond.

World Vision sees this local action as a vital step on the way to setting up fully fledged national and regional institutions. Both AusAID and the Australian Human Rights Commission are natural homes for Australia's support for this work. In AusAID there is huge potential for human rights to be infused right across every aspect of the organisation's work. Practical rights based development work, that is, work that encourages genuine participation and increases the understanding of rights, is another foundation for the comprehensive realisation of rights in a country. Currently AusAID's human rights response is presented as a collection of small initiatives, and they are not particularly well joined up or integrated into the mainstream program. The organisation's commitment to the Millennium Development Goals provides a great entry point to change this approach.

I will finish by saying a couple of words about the UN processes. We did not talk much about this in our submission, but we have had more experience since that time in starting to engage with the UPR processes in particular. They are proving to have some value for us as a way of getting our concerns for the status of children in many countries where we work, most recently putting a submission in on Afghanistan and on a number of other countries, and also engaging with various country delegates to the Human Rights Council as well. There is potential there that is unexplored, but we do also recognise that the situation is open to abuse from various interests and so on. The UPR is great. It is also, along with all of the other pieces of UN reporting, an increasing burden for every country but particularly for the smaller countries in our region. That is another area where the Australian government could be providing practical support to enable them to meet their reporting requirements.

CHAIR—I am interested in the COMMIT process that you talk about in this submission. I guess there is not a lot of detail in there, and that is my question. You mention that there is progress, albeit uneven, around legislative frameworks and bilateral arrangements. Can you explain in a little more detail what makes up COMMIT? Have the different countries around the Mekong instituted laws to deal with the issue? What are the bilateral agreements that exist? In the interests of time, I am interested in not too much detail but enough to give us a bit of an idea why you think it is worth while supporting and continuing and also some of the pitfalls that you can see in that process.

Mr Cox—I can also give you some more information later on this.

CHAIR—Thank you.

Mr Cox—We are between trafficking advisers at the moment, unfortunately, in our staffing structures. We have lost our key resource here. The COMMIT secretariat itself, from my understanding, is providing support to the countries in the region for the negotiation and implementation of bilateral agreements.

CHAIR—Who is the COMMIT secretariat?

Mr Cox—I am actually not precisely sure who is in there. It is funded by a number of bilateral donors, particularly European ones. The nature of the bilateral agreements is around issues such as the protection and repatriation of trafficking victims, and a number of other matters. The essential status of COMMIT is that it is immature. The process of creating that necessary web of agreements is incomplete. The implementation, as the Ranong example shows, is not fully infused through, so there is a great deal of work to be done to give life to that. It is quite genuinely an initiative of the Mekong countries themselves. It is something that is definitely worthy of greater support.

CHAIR—For what reason, though? What is it about it? Is it the principles behind it? Is it the political will that exists?

Mr Cox—It is consistency.

CHAIR—What is it about this process that you think, although it is very early days and not necessarily demonstrating much success, actually gives you some confidence that it might achieve something?

Mr Cox—It is providing consistency across the region. The region is a unified trafficking zone. The Mekong region in particular is kind of a perfect storm because the borders are porous, they are very close together, and you have strong countries that are highly attractive, such as Thailand, and countries where people are really keen to leave, such as Myanmar. It makes sense for it to be coordinated in a consistent way. COMMIT, by being based on international treaties such as the Palermo protocol, provides a consistent basis for the protection of trafficking victims across the region.

Ms GRIERSON—You say that Australia gave resources and technical advice. Were they seen in that process as having nothing to gain? Was it one of those efforts that showed Australia would just support what other countries wanted to do to support each other? Is that why it was successful, or was that part of it?

Mr Cox—I am not sure that Australia, as in the Australian government, had much involvement in the early stages.

Ms Kennon—It gave \$45,000 to us for the start-up of COMMIT. COMMIT's main benefit is that it provides a subregional plan of action. In October 2004, governments from the six greater Mekong subregions signed a memorandum of understanding. So, Australia, along with other

donors, provided some seed funding for COMMIT. Also, as part of the Youth Ambassadorship Program, youth ambassadors can go to some of the six national task force offices, which have been established in all six greater Mekong countries.

Ms GRIERSON—Perhaps it is an area where we have had a long history of involvement, and therefore we have built up some credibility and some good relationships. I would like to pursue the youth ambassadors and youth movements generally.

Mr RUDDOCK—Have you finished with that issue?

Ms GRIERSON—Yes. Would you like to come in on that?

Mr RUDDOCK—Could I? I am going to be the sceptic, I think. It strikes me that you are arguing in relation to this body that we should provide diplomatic support, facilitate its expansion—namely, fund—and then you link it with the ratification of the international convention on the protection of the rights of all migrant workers, which seems to me to be saying that we should encourage the movement of people by ensuring that those who have been ostensibly trafficked—they may not have been; they may have used a trafficker—obtained certain rights in their destination. I think Australia's engagement in dealing with and investigating—the role of the Australian Federal Police—prosecuting, essentially ensuring that children are not kidnapped and trafficked, and that women are not held in slavery, is the key way to go. But I suspect what you are asking us to endorse is something that would be rewarding those who use traffickers. Can you satisfy me that, in picking up these initiatives, we are not doing that?

Mr Cox—It is very difficult to unpick the motivations of any particular group of people or individuals.

Mr RUDDOCK—I thought it was always very easy if you were prepared to cooperate in prosecuting those who had enslaved you, to give evidence when the police were wanting to pursue a trial, and it never ceases to amaze me how many people, when it came to giving practical support to closing down the operations, were found to be wanting, but wanted the rights that might obtain by having been able to assert, 'I've been trafficked and therefore I need to be able to stay rather than be returned to where I initially came from.' It is a question of how you get the balance right in relation to those matters. I am troubled about being asked to endorse measures about which you can give us no indication that they have had measurable success, and where you are asking us to do so in a way of endorsing, as I said, a particular convention that provides rights to all migrant workers, which I assume is rights to stay.

Ms Kennon—It is protecting their rights during the prosecution process as well. To ensure that, if they are going to testify against traffickers, their rights are going to be upheld; that they will not be vilified upon returning home. We encourage Australia's prosecution-centric approach; we just think that in order to truly combat trafficking, you need to have a holistic approach to trafficking that incorporates both protection, prevention and prosecution measures. Australia has done some great work primarily through AusAID. There is the Asia Regional Trafficking in Persons Project. Under the auspices of this project, we have seen specialist law enforcement response units established in four of the six greater Mekong countries. Such units are now recommended by ASEAN as a regional standard. World Vision has engaged with some

of these units in our own work because we feel civil society in those sorts of forums can protect victims and do case management, and can work better with law enforcement officials to identify human trafficking victims and understand why their rights are. In doing that, you will see a more effective approach to combating trafficking. Australia has provided \$21 million between 2006 and 2011. It previously supplied \$11 million. There is some good work being done there, and all we are saying is that we would welcome further initiatives to ensure greater civil society government partnerships so that we can work towards prosecuting traffickers but also protect the victims of trafficking and potentially assist with their reintegration into society and repatriation back to their home countries.

Mr Cox—In the case of the Ranong victims, this event took place right before Cyclone Nargis, and the first response of the Thai authorities, which was also due to what they had available, was to put them in quite inappropriate detention centres for people who had just been, firstly, through a very hideous experience and, secondly, were victims of the traffickers. When it came down to their having a choice, they elected to return to Myanmar, and even with the advent of the cyclone they still chose to go back. They were in a situation that they did not want to stay in. Not everyone is going to make that choice, but sometimes there are reasons to stay and sometimes there are reasons to go. Under the processes established under COMMIT and through the treaties put into place, the victims are treated as victims rather than criminals, and that is the strongest reason that I am offering for the Australian government to support the process.

Ms GRIERSON—Before turning to the youth activities, I refer to the Port Moresby declaration. You say that that partnership/bilateral approach between two countries is one that is appropriate and could be used with other countries in the region. Could you tell me why you say that?

Mr Cox—It is founded on a partnership and dialogue, and a foundation of mutual respect for the priorities of the other group, and that is a strengthened component of those relationships under the declaration from what was there before.

Ms GRIERSON—How do you think it will impact on improving human rights?

Mr Cox—Because it is giving a chance for the views and priorities of those countries to be better heard, which is itself a strong human rights component. It is those countries' agendas, rather than our own, which is being pursued.

Ms GRIERSON—I congratulate your organisation on its efforts with the Millennium Development Goals and the engagement of youth in fostering and promoting human rights around those goals. It seems to have galvanised thought and been a good focus for people. How do we spread that to the region more widely, and how do we tap into those energies? I think of things like World Youth Day and how successful it is in terms of bringing people together. What sorts of activities would you propose around things such as the Millennium Development Goals and youth activity for our region, and how could government support that?

Mr Cox—I think that is one that I will defer, unless you have something to suggest?

Ms GRIERSON—You are not too old for that one?

Ms Kennon—How we engage the youth in the COMMIT process.

Mr Cox—Do you want to say something on that?

Ms GRIERSON—Do you think we do enough to engage youth in what is a terribly important issue?

Mr Cox—I do not think we do enough to engage youth in the region, but there are other people who are better qualified to give you a good answer to that in the organisation.

Ms GRIERSON—So, it is not part of your strategy at World Vision?

Ms Kennon—We have a campaign called ‘Don’t Trade Lives’, which is an anti-trafficking/slavery campaign, and within that there is a huge youth component in terms of World Vision’s youth body, which is called Vision Generation. Last November they did travel up to Canberra for A Trek against Trafficking and met with a number of MPs and senators in the last sitting week of 2008. We are continuing with that three-year campaign.

Ms GRIERSON—Could you take that on notice, and would you like to submit something later in terms of engagement of youth in our region around human rights and the Millennium Development Goals? Without too much burden on you, if there is someone in your organisation who would like to put some words to that and how governments can support that I would be very appreciative. Thank you.

CHAIR—I have one further question, going back to the COMMIT process. I appreciate that perhaps neither of you are the experts on it, but talking about the role of civil society I notice in your submission that you do say civil society was integral in terms of establishing a process and has been involved. Given the countries that you are talking about that are involved in this, what is the real involvement of civil society? I suspect that in some of those countries there is not much activity in terms of NGOs and their ability to really have an impact on some of these issues. Has this been a forum for them to play more of a role than they had previously, or is it only countries that have already had well established NGOs or well established civil society organisations that have been able to be part of the process?

Mr Cox—It has been a variety from country to country. In Myanmar it has been a very small selection, mainly of international organisations with a presence there. That is just the reality that other types of entity are not allowed to exist. But if you then head south to Thailand, the story is very different, and it is much more of a coalition of the full spectrum of different sorts of groups, including local groups. Do you want to add to that?

Ms Kennon—In Cambodia as well there has been some good civil society engagement. But just to clarify, if you like, the countries that make up the greater Mekong are China, Laos, Vietnam, Cambodia, Thailand and Myanmar.

CHAIR—Yes. Are there any other comments or questions?

Ms GRIERSON—You encourage the development of a multicountry initiative in Melanesia to eliminate violence against women and children. Could you give me a little bit more detail on how that might happen, and why you are particularly looking at a multicountry approach there?

Mr Cox—I can see why you are asking that, because in some ways it is a very domestic and private thing, but at the same time it is something that is appreciated as a common problem across those countries, and it is something that requires a response. The cultural similarity means that it is an idea to pursue.

Ms GRIERSON—How would we encourage it? How should Australia encourage it without being paternalistic?

Mr Cox—I think the best starting point will be to support learning from within those countries on how it is done. World Vision has done research. Human Rights Watch has done research. We heard from Amnesty that they are looking into these issues as well. I would like to see the research being headlined by Papua New Guinea, Solomon Islands or Vanuatu organisations, which are really taking this on.

Ms GRIERSON—Are there existing structures to tap into amongst those Melanesian nations?

Mr Cox—Yes, there are some very strong civil society organisations. There is research capability in some of the countries, and some of the existing organisations would be a useful starting point.

Ms GRIERSON—They would have a fairly strong presence here, too, I would think, that would perhaps support that.

Mr Cox—There are some strong relationships here through to the Australian institutions.

Mr RUDDOCK—You do say that we ought not to be seen to be involved in—let me just pick up the wording again.

CHAIR—A Canberra-centric focus.

Mr RUDDOCK—Some other organisations have made specific suggestions, and I wonder whether you would be saying to us that these are not suggestions we should pick up because they would be too involved. The next witness is probably sitting here when I ask this question. One was to develop a targeted five-year human rights exchange program, in other words, sponsored visits to Australia for MPs, academics, civil society, journalists; expanding funding for the Asia Pacific Forum on national human rights institutions; to expand HREOC's technical cooperation program. I am just giving you a number of examples. You are saying that we should not pick up initiatives of that sort because it would be direct involvement?

Mr Cox—No, I am not. What I am saying is that we should not be going out there and making sort of strong, high-level public statements such as, 'Why haven't you in Asia created a strong regional human rights body? Australia thinks this is something you should be doing.' Things that

are based on strengthened relationships and understanding of people at all levels in those countries as well as here—we are all for that.

Mr RUDDOCK—You would not be arguing against any of those sorts of recommendations?

Mr Cox—No.

Senator FORSHAW—I have one issue I would like to raise, which was not really covered in your submission that I could see. It is a bit out of left field, but it relates very much to human rights. One of the issues that has arisen in recent years, particularly following the establishment of the International Criminal Court, and countries looking at mechanisms for bringing people to justice for crimes against humanity—genocide and so on—is the role of NGOs, particularly organisations such as your own that work in the field, before, during and certainly more often, I suppose, post internal conflicts where these terrible human rights abuses and tragedies have occurred. Does World Vision have a policy position at this stage about its role in working with the legal mechanisms? One of the tensions that has arisen—and I have been at other meetings and conferences where this has been discussed—relates to whether NGOs should be participants in a process where, for instance, information and evidence is collected to be subsequently used in prosecutions. There are debates about this, as you are probably aware, and issues as to whether NGOs, for instance, be given not immunity but be in a position where they will not be called to give evidence of information that they may have. I think you know the issue I am raising. The Red Cross has a special position, as I understand it, but no other agencies or NGOs have that status. What is World Vision's position?

Mr Cox—There is a short and a long answer. The short answer is—

Senator FORSHAW—It was a fairly long question.

Mr Cox—Yes. We support the role of the ICC. That is the bottom line. We think it is a vital global institution. At the same time, the longer answer is that it does present some practical challenges for us, and we are this year engaged in a piece of research to try to tease out those questions. In each of the four countries in Africa which are of greatest concern to the ICC, we have various processes going ahead at the moment. We are active in each of those four countries. We are going to be exploring the reality of what is going on there in terms of the way it interacts with our work. I would not want to give a longer answer until that work has been completed.

Senator FORSHAW—I appreciate that, and I appreciate that the focus is not on Africa, but there is clear evidence and there are allegations of atrocities being committed in the region.

Mr Cox—As far as human rights instruments go, it is right up there as well in its importance.

Senator FORSHAW—But you envisage getting to some policy position at some point in time?

Mr Cox—Yes.

Senator FORSHAW—I know it is a difficult question, but thank you.

Mr Cox—Our policy is that we support it. We have some operational policy questions to be worked through.

Senator FORSHAW—Thank you.

CHAIR—If there are no further questions, I thank both of you for coming in. Again, it was very useful to have you here not just to read what was a fairly informative submission but also to answer questions and have that discussion, which always adds to the understanding of evidence and the ultimate results of the inquiry. Before you go, I remind you that, if there are any particular issues that we asked that you would like to follow up with further information, just liaise with the secretariat. We really appreciate your taking the time out. Thank you.

Mr Cox—It is a pleasure.

Ms Kennon—Thank you.

Mr Cox—The two items that we will be providing further information to you on are some more detail on COMMIT and youth participation in the region for promotion of rights in the MDGs.

CHAIR—Thank you.

Mr Cox—Thank you very much.

[12.24 pm]

RADEMAKERS, Ms Linda, Policy Manager, Australian Council for International Development

WINTER, Ms Sarah, Human Rights Adviser, Australian Council for International Development

CHAIR—Thank you both for coming in. I welcome you to the committee's inquiry and thank you for taking the time out to give us evidence this afternoon. Although the subcommittee prefers that all evidence be given in public, should you wish to give evidence in private, you have the right to ask the subcommittee and we will consider that request. Also, the committee does not require you to give evidence on oath, but 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. Having said all of that, we still want to have a full, frank and open discussion with you. Can I invite you to make some introductory remarks and then we will move into questions and discussion.

Ms Rademakers—Thank you. We very much appreciate the opportunity to appear today, and we are very pleased to hear from World Vision that they still stand by our recommendations, as they are a member. We welcome this inquiry and we see it as a good opportunity to have a discussion about Australia's role in our part of the world on human rights. The Australian Council for International Development is the peak body for Australian aid and development NGOs. Our vision is to promote conditions of sustainable human development in which people are able to enjoy a full range of human rights, fulfil their needs free from poverty and live in dignity. We welcome the opportunity to meet with the subcommittee to outline our approach to a potential human rights mechanism for the Asia Pacific.

As outlined in our submission, virtually all of our members work in more than one country in Asia or in the Pacific. ACFID's main concern regarding this inquiry is the region that was proposed in the original inquiry. In our view, as outlined in great detail in our submission, Asia and the Pacific break down into four regions with very separate characteristics where human rights issues are concerned. Therefore, it would not be effective, in our view, to try to combine these distinctive regions into one legal mechanism. Such a mechanism would be flawed and limited in practice. However, we do acknowledge and support the existing efforts to develop regional and national mechanisms and frameworks for the advancement of human rights on those four subregions, as we might need to refer to them to avoid further confusion.

Many positive developments are taking place for advancing the protection of human rights at subregional and national levels. However, developments are not taking place as quickly as often is desired. We feel, though, it is of importance to all low these processes to run their natural course and provide support and guidance where possible and appropriate. Nonetheless, an encouraging example is late March this year, only last month, the ASEAN secretariat, together with the government of the Philippines, facilitated a working group meeting that led to the establishment of the ASEAN Commission on the Promotion and Protection of the Rights of Women and Children. We see that as an encouraging example of progress that is taking place

continuously. We encourage the Australian government to work with countries in Asia and the Pacific on a regional or national basis to promote human rights mechanisms but urge that the role of our government should foremost be supporting and not leading. We encourage the Australian government to consider support of civil society debate on human rights protection as an important priority. Most progress in activism, in our view, on human rights is driven initially from a civil society level. Governments should play their part mainly through diplomatic efforts and through provision of technical assistance to foreign governments and to civil society.

In December 2008 a series of dialogues was announced between the so-called high level panel on the ASEAN human rights body and civil society, and these consultations are to take place during 2009-10. We suggest to the subcommittee that resourcing civil society bodies monitoring ASEAN could be a priority to further this process. The Asia Pacific forum on national human rights institutions, to be referred to by the abbreviation APF, is a global civil society organisation. Its focus is on supporting the establishment of national mechanisms, not regional systems or mechanisms. ACFID is pleased with the establishment of and the ongoing involvement by Australia in the APF through the Australian Human Rights Commission. Through the APF, Australia has access to this informal Pan-Asia Pacific human rights mechanism.

As for the Pacific, last year the Pacific Regional Rights Resource Team, RRRT, was integrated within the secretariat of the Pacific community. Its goal is to strengthen the capacity of the Pacific region to promote principles of human rights in good governance in order to achieve greater democracy based on social justice. RRRT works with Pacific governments, with civil society and with citizens, and it works specifically for wider and broader ratification of human rights treaties by the Pacific by providing technical support and policy advice. RRRT is another existing organisation that should be considered by the subcommittee for Australian government support.

Government support for human rights in the region can also be demonstrated through Australia's commitment to various multilateral and bilateral mechanisms. We welcome the recent address on 3 March by the Hon. Bob McMullan to the Tenth Session of the UN Human Rights Council. We welcome in particular Mr McMullan's statements around the following: Australia's deep commitment to promoting and protecting human rights at home and abroad; Australia's commitments to recognising and advancing the rights of people with disabilities and being a regional and international leader. We also welcome the announcement that Australia is taking steps to become party to the optional protocol to the convention against torture, and we welcome the commitment to substantially increase the funding to the Office of the High Commissioner for Human Rights, OHCHR, with a significant proportion of unearmarked funding. We met with the recently appointed regional representative for the Office of the High Commissioner for Human Rights, and we have some concern about the large number of countries that fall under the responsibility of this office and the limited staff resources they have available. Additional resources will strengthen their position significantly.

However, just last week AusAID released a reform agenda for 2015. It is the broad strategy to carry the agency forward to 2015, and this reform agenda does not refer to the role of human rights in development. This is of real concern to us. A key way Australia can support civil society and encourage other governments to advance human rights is by further entrenching human rights in the international development program. This could include increasing the human

rights fund by providing more funds to the existing human rights small grants scheme, but also by supporting more programs with human rights objectives, especially human rights education.

I would like to conclude my introductory remarks by highlighting four of the other recommendations we made in our submission to the subcommittee. Firstly, we urge the Australian government to seek a seat on the UN Human Rights Council for the coming elections in May this year. We note the withdrawal of the New Zealand government and the subsequent candidacy of the United States for one of the seats available. We urge the Australian government to consider nominating for the elections in 2010. We see a role for the Australian government in encouraging ratification and implementation of human rights treaties by governments in the Asia and the Pacific directly through diplomatic effort but also through organisations such as the RRRT.

Thirdly, we encourage the Australian government to establish a human rights exchange program and to expand human rights technical corporation programs, for example, through further support to the APF. Lastly, we seek inclusion of human rights education as a cross-cutting topic for AusAID's work. Recent research evaluating a human rights education program done in schools in Britain has found that human rights education does empower children and young people, and the wider community as a whole, and it will improve cohesion and communication on human rights.

CHAIR—Thank you very much. I will open the questioning. Firstly, as to the recommendation in your submission around the idea of a human rights exchange program, you are looking at five years and you mention a range of people, including journalists, civil society, parliamentarians, and academics. I am interested in why you see that program as being effective. What do you think will come out of it? As you can appreciate, in funding a program like this, many cynics would say it might be a nice little trip for the people involved, but realistically what will five years of talking and exchanging actually do for people in the region who are suffering already from a diminution of human rights? Will it have any real impact for them? I note also your focus is much more on national institutions rather than a regional mechanism. We have heard evidence already today and from others around a concern or a criticism about the bilateral discussions or negotiations that Australia currently has with a couple of countries. In particular China was mentioned, but there are others. You also refer to that in your submission. Would you like to make some comment about whether you think those bilateral negotiations are effective? Do they have any impact? Where do you see them fitting into your other recommendations?

Ms Winter—I will start off by answering those two questions. Firstly, on the human rights exchange program, the starting point for us was to think about what that adds or how it is different from the bilateral human rights dialogue processes that you are talking about. The committee would be aware of the report of the joint committee in 2005 that looked at the bilateral human rights dialogue process, and a number of criticisms came out of that report. Two of the main criticisms were that there is not enough involvement at the parliamentary or politician level, and there is not enough involvement from civil society. You were just talking about where we put our resources. It is important for us to recognise that there are a whole lot of different players in this human rights influencing program. Civil society has a role to play. Parliaments have a role to play. Government officials have a role to play. The dialogue process is very much focused at the senior government official level. Having attended the NGO part of that dialogue this year, I do not think it is a useful way for NGOs to influence China's agenda on

human rights. As to whether it is more influential at the government official level, perhaps someone like the Australian Human Rights Commission is better placed to talk about whether that is a useful mechanism. What we are really focusing on is that we have this dialogue process and it has some problems; what else needs to be done? That is why our human rights exchange program is focusing on those other people that are left out of the dialogue process. If we take the example of an exchange program focusing on MPs, we need to think about where that would be a successful and useful mechanism. I think it would be in countries where civil society does not have much of a voice. You were just talking about this earlier. Where there are not those sorts of very well coordinated and large NGOs holding the government to account on these issues perhaps there is an opening to engage at that parliamentary level and try to influence a human rights culture within individual leaders from those countries.

Secondly, we are the peak body for NGOs that work with civil society organisations in other countries. We also very much believe in the efforts of building civil society organisations to hold their own governments to account and to basically push the human rights agenda. We see that there is scope for those two focuses of an exchange program, at the parliamentary level and also at the civil society level. Just summing up regarding your question on the bilateral dialogue, I do not think the bilateral dialogue is a useful way to get that engagement. That is why we have suggested the exchange program. Is the bilateral dialogue effective? I do not feel that we are in the best position to be able to answer that. I would encourage you to perhaps seek that evidence from people who are more involved.

Mr RUDDOCK—I am sorry; you can answer in relation to the NGO participation, which you have referred to directly, and which I found quite fascinating. As I have never participated in the dialogue—I think the chair has—I do not know who you dialogue with when you are participating in that dialogue. Is it with Chinese NGOs? Is it the fact that the NGOs that have been nominated by China are not the types of NGOs you can have a dialogue with? Is that the problem? Or is it that you are talking to officials and again there is no effective discussion? I would like that to be fleshed out a little bit.

Ms Winter—How it occurred this year is that there was a group of Australian NGOs, and we were dialoguing, or they were talking with us. But the Chinese delegation, if I remember correctly, consisted of all government officials, so there was not an NGO representative. It would be far more useful if NGOs were able to perhaps talk with each other, if the dialogue worked well, and that we had perhaps more time with the Chinese delegation. We had one hour, and after introductory remarks, going through a translator, and the fact that I do not believe that the Chinese delegation was particularly interested in dialoguing with us, there was maybe 10 minutes of useful discussion.

Mr RUDDOCK—That was a group that was brought here?

Ms Winter—Yes, that was a group that was brought here.

CHAIR—There were judges and lawyers as part of that.

Ms Winter—There were judges and lawyers, but no NGOs. I think that had some limitations. I am not sure, but I believe that NGOs from China could have come and participated, but I am pretty sure that that is self-funded, so it is difficult for people to take up those opportunities.

Ms Rademakers—Just to add to our human rights exchange program, the proposal is to include Pacific South exchanges, not necessarily bringing out people from Asia or the Pacific to Australia. It could be between them, and to showcase regional experiences, and make that the focal point. It should not become another funded trip to Australia.

Mr RUDDOCK—There is a program now run by the Department of Foreign Affairs. What you are really saying is that the sorts of people who are invited do not come with this sort of background. You made a comment about the Office of the High Commissioner for Human Rights. You may or may not have been here when we had some other evidence about how the Office of the High Commissioner for Human Rights is seen, with the changes in the institution that were meant to make it more effective but have perhaps made it even less effective. You talk about having an established track record. I am asking for the objective evidence of an established track record.

Ms Rademakers—That is part of our submission, is it not?

CHAIR—Yes.

Ms Rademakers—I am just asking as our executive director wrote the submission and he has since left.

Mr RUDDOCK—If you want to put it in writing, that is fine.

Ms Rademakers—If I can, that would be fantastic, so we can include more comments in our response.

Mr RUDDOCK—I am interested in objective, measurable evidence of initiatives that are in fact working.

Ms Winter—I can comment quickly on some of the work that the Office of the High Commissioner for Human Rights does particularly in the development context. It pursues what it calls a human rights based approach to development, which aims to make those links between human rights and development more entrenched. In 2005 a report was done by the Development Assistance Committee of the OECD, which basically looked at how the development programs of governments, including Australia's, were run in relation to a human rights based approach to development. It made a number of findings about that being a particularly effective way to deliver aid and encourage donor governments to do more. That is one example that I wanted to give.

Mr RUDDOCK—I do not know; I have not seen the evidence. You might extract some of that evidence. One of the things that came out in our earlier discussion again today is that some countries that have quite developed economies still maintain quite oppressive regimes. In other words, the suggestion was that there may not in fact be a link between development and advances in human rights. If you are suggesting that there is a report that can demonstrate where there are improvements in development that have facilitated improved human rights records, I would be interested to see it. What I do know is that there have been sometimes excuses offered for not advancing human rights on the basis that some countries have not achieved meaningful

development, and that ought to be the priority. That was always the view that was put by some of the more repressive regimes—

Senator FORSHAW—Do you intend to name them?

Mr RUDDOCK—The argument is put to me very frequently when advancing the argument for civil and political rights that that ought not to be the agenda—that we have not had our social rights addressed. You address them in China. It is now the creditor to the world, and very significant economic improvement for some. Could you put that in writing?

Ms Rademakers—We will.

Mr RUDDOCK—I am interested in the seat on the Human Rights Council. I do not know how political you are in relation to that. It would not be deleterious to the government's aspirations for a Security Council role, would it?

Ms Rademakers—That is a very loaded question, I would say. The advantage from our point of view in having a seat on the Human Rights Council would be actively being involved in the discussions at a UN level. Personally I am not very certain about whether the changes to the structure of the Human Rights Council from the previous Human Rights Commission have taken away all of the concerns that we have about the effectiveness of the mechanism, but it is a high level—

Mr RUDDOCK—It has not for me, I might say, but that might be a personal view. If we were out there campaigning for a seat on the Human Rights Council, it may be possible, or it may not, I do not know. I am interested that the United States now thinks it is a useful role to pick up. You have not considered how it would apply in the broader political situation where the government is seeking a role on the Security Council?

Ms Rademakers—No, we have not looked at it from that perspective. Just from a resourcing perspective, I can see how it might be difficult to seek a seat on both the Security Council and the UN Human Rights Council at the same time, so perhaps it is something that needs to be considered further in the future. We have not considered any political detrimental effects that that might have, seeking the two seats at the same time. From a resourcing perspective, I can imagine it will be hard, but we found it very interesting to see that the United States made a very quick move and have put themselves forward as the vote candidate for the third seat this year.

Senator FORSHAW—Just following up on that, it is an interesting conundrum, the issue of membership of the Human Rights Council for a lot of countries. The argument is also put that you are better off, despite how bad it may look or be, to try to get in and get involved and fix it. I am not sure that that is workable. For instance, I do recall that the same arguments could be applied to our efforts to try to sort out the problems in Zimbabwe through the Commonwealth, which ultimately ended up in absolutely nothing being done. As a follow-up to what Mr Ruddock was asking you—and you may want to take this on notice as well: do you have any views about the United Nations Development Program, UNDP, and other bodies such as the Asian Development Bank, as to whether there are any future opportunities, if you like, to bring a human rights focus into their work? I will leave it at that. I know, for instance, of some of the work that the UNDP does with countries that we might say do not have a very good record on

human rights. Nevertheless, we have seen this through UNDP programs, including the involvement of Australia in, say, what has happened in Vietnam, where there has been a move towards a more open economy. I do not want to debate it, but will that lead to some improvements in human rights or should those bodies such as UNDP and the Asian Development Bank directly include human rights as a key measure? For instance, certainly my side of politics would argue—and I think the opposition would agree—that ensuring proper labour standards is one area that the Asian Development Bank might look at in terms of its funding of programs in country. I know that is on its agenda at the moment. Could you take all of that and perhaps respond either now or more fully in writing?

Ms Rademakers—Yes, we will definitely respond fully in writing. What I do know, and can share with you, is that the UNDP has a human rights based approach to its work.

Senator FORSHAW—But is it a real one on the ground as distinct from a paper one? That is not intended to be a criticism of UNDP. It is another thing to be able to achieve it, given some of the countries it is working with.

Ms Winter—If I can just explain a little about what a human rights based approach tries to do, it is actually not a silver bullet in that it does not look the same in every single country around the world. It is very much dependent on what you are actually looking at. A human rights based approach ultimately tries to protect and respect the dignity of people. That might mean in some countries you are focusing on labour rights. Certainly we have heard that, in the Pacific region, there has been a focus on domestic violence against women, gender rights and those sorts of things. There is definitely a case to be made that a human rights based approach does tend to get you to the priority of what the rights issue is in a particular country, but we might not see the human rights objectives that we might otherwise expect. If the UNDP is focusing and doing some really good work on women's empowerment, that does not actually mean that they have great rule of law objectives, if you understand what I am saying?

Senator FORSHAW—Yes, I understand.

Ms Winter—I do not want to discount the work that is being done. It does have very real benefits on the ground, but it also cannot do everything at once. It does tend to prioritise on particular areas. In relation to the ADB, other submissions have talked about the role that the ADB could play in terms of human rights. Certainly any mechanism that adopts a human rights based approach is likely to be beneficial in that it will identify particular problems. Labour standards could very well be one of them, depending on the country and context.

Senator FORSHAW—Thank you.

Senator HANSON-YOUNG—You have spoken quite a bit already about the failures of the NGO section in terms of the bilateral dialogues, but one of the other things that you have raised through your submission—and it was picked up by Amnesty International in their evidence as well—is the concern that we are perhaps being inconsistent with our messaging and our feelings towards what is important in terms of protecting human rights and how we speak about them, both within bilateral discussions and in other types of public statements. You raised that as an issue, but you have not really identified particular cases where you think that has happened, or not that I saw. Could you give me some examples of where you think that is a specific concern?

Ms Winter—One of the problems in what you have just raised about criticisms that it might have an inconsistent approach is that we do not have from the government an overarching human rights policy agenda, so it is very difficult to see where all of these things fit in. We have some human rights dialogue processes with a couple of countries. We do a couple of other things through the human rights fund, but it is difficult to get an overall view of what the Australian government actually stands for in relation to human rights and the objectives that it is trying to pursue through each of these different interventions that it does have.

One way that we think the Australian government could do better in providing a consistent message is to review the National Action Plan for Human Rights. The last time that we looked at that document was in 2004. As a bit of background, the National Action Plan for Human Rights is something that came out of the Vienna Declaration and Program of Action in 1993, and Australia was actually leading the way in preparing a National Action Plan for Human Rights and then subsequently we have revised that a few times, but not since this government has taken office. That would be a really useful way of clarifying some of the messaging around human rights and to ensure that we do have a consistent approach, or where we do have a different way or a different intervention for a particular country, we are clear on why we have chosen to do that. Obviously that will depend on the context of the country in question, how vibrant are the civil society organisations, what sort of government is in place, and the resourcing of the particular country—I think that would be really useful for the government in pursuing a whole-of-government approach to this stuff and also for NGOs in having a better understanding of the government's view on some of these matters.

Senator HANSON-YOUNG—Would you suggest that perhaps it is a little premature for us to suggest that Australia should go out and engage the rest of the region on whether we go with a regional or subregional human rights mechanism without actually having even in our own minds clarity over how it is that we view human rights and the way that we talk about it, both domestically and internationally?

Ms Winter—I would not say it is necessarily premature for us to withhold support from existing movements in the region to advance the protection of human rights. I definitely think that concurrently the Australian government needs to think about its overall objectives in terms of what it is trying to achieve in human rights, both domestically and internationally.

Ms Rademakers—An example of the inconsistencies is the address that the Hon. Bob McMullan gave at the UN Human Rights Council stating Australia's deep commitment to promoting and protecting human rights at home and abroad, and then a lack of mention of human rights in AusAID's strategy. It is still a very broad document, and there is no mention in that document of human rights. That is supposedly the agency's strategy towards 2015, so that is quite a concern.

Ms GRIERSON—In another submission to this inquiry mention was made of a previous proposal by ACFID for Australia to host a regional human rights centre in Darwin that could serve as a training and research centre for civil society organisations in the region, that it could complement the government-level work of the Centre for Democratic Institutions, and the training of advocates by the Diplomacy Training Program. Could you tell us a bit more about that? Is it something that ACFID still advocates?

Ms Winter—That policy proposal is something that pre-dates both Linda's and my time, but we have looked over it and it is probably a little outdated now. Having said that, when we prepared that policy, what came out of that was ultimately the Centre for Democratic Institutions, I understand. The only comment that I would really have to make about that is that human rights is broader than democracy. Focusing on governance and democracy is a vital part of the human rights agenda, but it is not all that it is. I do think there is scope for a broadening out of the functions that the Centre for Democratic Institutions plays, whether that is within that organisation or through some other regional centre. I think there could be more capacity building and training work done on a broader range of human rights issues, not just on the governance issues.

Ms GRIERSON—Indulge me, because I have a particular view of Darwin's role, and I think we have seen Darwin as a trauma centre for the region; we see it as a region that attracts people from all over the Asia Pacific region itself; and perhaps one that is at the centre of some of our own human rights endeavours that need to be advanced in our country. I was interested in that one, because I do see it as something that would have merit as a gateway to our neighbours and the relationships that have been formed through trauma, tsunamis, cyclones, bombings—all sorts of things. I just wondered whether it was still your policy or whether it had been pursued in any way.

Ms Winter—I cannot really comment further on what I have said.

Ms GRIERSON—No, but thank you for your answer.

Mr RUDDOCK—I do not know whether you participated in the CDI's programs and seen how they operate, but I have. As a member of this committee, along with the chair and some other members of the committee, I have participated in such a program. I can certainly attest personally to the fact that human rights issues were actively raised in dialogues that occurred between members of parliament in Australia and others that have been brought together by the CDI.

Ms Winter—I would just like to clarify that I am not at all criticising the CDI. I think they do wonderful work.

Ms GRIERSON—We all do advertisements here for good things. You also recommend that Australia expand its Australian Human Rights Small Grants Scheme. Could you tell me a little bit more about that briefly?

Ms Winter—Unfortunately I do not have the exact figure that goes to the Human Rights Small Grants Scheme, but it comes out of the human rights fund, which is only \$4 million, so we are not talking about an enormous amount of money that is then put aside for the Human Rights Small Grants Scheme, considering that we also fund the Asia Pacific Forum out of the human rights fund and also the Office of the High Commissioner for Human Rights. That said, a number of good projects are funded through that.

Ms GRIERSON—Can you give an example of something that has worked or some small grant that has assisted and advanced human rights?

Ms Winter—I will have to take that on notice, because I do not have that information here.

Ms GRIERSON—I would be interested in that. Thank you very much.

Mr RUDDOCK—If it just helps, can I say that we received a submission from the Castan Centre for Human Rights Law that proposed that we undertake a dialogue with the Pacific nations to seek from them the underlying reasons for low ratification rates of treaties. Would that be seen to be an undue interference by Australia, an unhelpful role that may put back meaningful human rights advances in the region, particularly in the Pacific?

Ms Rademakers—I think it is a role that the RRRT is playing at the moment. They have produced an excellent report. Ms Imrana Jalal produced a report in April 2006 on why Pacific islands should ratify international human rights treaties, and it actually lists a lot of the reasons why they do not at the moment.

Mr RUDDOCK—Do you think it is being adequately pursued at the moment?

Ms Rademakers—I think it is, yes.

Mr RUDDOCK—So we should not take up the Castan Centre's proposal?

Ms Rademakers—Unless there is a new angle to research it from. I think there are a lot of issues on the table that Pacific island countries have indicated are holding them back from ratifying some of these human rights treaties. I think it would be very worth while to look into those issues that are already on the table before we pursue anything else.

CHAIR—In conclusion, I have one last question on which I would like your comments. I go back to one of the key components of the inquiry that we are conducting, and that is the concept of a regional mechanism within the Asia Pacific region, or indeed as has been suggested perhaps two subregional mechanisms between the Pacific and Asia. I note that both in your presentation and in the submission you put a fair bit of emphasis on the importance of national institutions rather than a regional institution. This is again a chicken and egg question. Do you think that there is a role for a regional body of some sort to influence the development of more national institutions within the region, or do you think, as has been expressed before, there is a danger that a regional body could in fact be the perfect excuse for those countries that we wish to have a greater emphasis on human rights protection to in fact not do that? I know it is not fair, but if you actually right now had to make a call on whether we do it or we do not do it, do you think it would cause more damage or do you think it could have some positive effect? What would be your thoughts on that?

Ms Winter—It is a chicken and egg question. National human rights institutions and regional mechanisms influence each other. From my understanding of the Inter-American Court on Human Rights, it was set up as a regional body first before there were a number of national human rights institutions, and it played a role in fostering some of those. Having said that, we are slightly different here in Asia and the Pacific in that we already have this Asia Pacific Forum, which plays that role of fostering national human rights institutions. I really think the two are complementary and it depends on the countries in question and also the demand from the particular countries. If there is demand from a particular country for a national human rights

institution, that should be supported. With some countries, perhaps due to resourcing or just being small in size, that might not be something that is being pushed for, so it would seem artificial to suggest in that context that that might be a good way to go. In an ideal world, there would be many layers of human rights protections, of which legal mechanisms are only one. A lot of work can be done within government offices. A lot of work can be done within parliaments to further promote and protect human rights.

Ms Rademakers—We have seen some examples as well of cross-fertilisation. The ASEAN Working Group on Human Rights has helped to establish national human rights institutions in the Philippines and in Indonesia. They are two forces working at the same time, but I do not think we have a real preference for either one. The point we have really tried to make is putting all these countries together will not work. We might end up with a mechanism in the end, but it will not be as effective as it should be.

CHAIR—Thank you very much. If there are no further questions, we will conclude there. Once again, can I thank you very much for your contribution, both in terms of the written submission as well as coming along today and giving us the opportunity to question and discuss with you some of those aspects. I think it has been very informative and quite useful. As a result of questions that have been asked and issues that have been raised, there were a few things that you said you would take on notice. If you could forward that through to the secretariat, they will then send it to all of us. That would be really useful. Once again, thank you very much for coming. It was really useful, and I am sure we all look forward to the end of the inquiry and the recommendations that come out of it. Thank you very much.

Ms Rademakers—Thank you.

Ms Winter—Thank you.

Proceedings suspended from 1.12 pm to 2.01 pm

McDOUGALL, Mr James Duncan, Director and Principal Solicitor, National Children's and Youth Law Centre

CHAIR—Thank you for your patience and for taking the time to come along and give evidence to our inquiry. We think it is a great opportunity for us to receive and read the submissions, but with the added benefit of being able to talk face to face, ask questions and have some discussion which really adds value to the process. There are some formalities that I will read out before you give evidence. Although the subcommittee prefers that all evidence be given in public, should you at any stage wish to give evidence in private, you may ask to do so and the subcommittee will consider your request. Although this 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. Now that I have delivered the formal message we will move into the important part of the afternoon. I ask you to make some introductory remarks and then we will go into some questions and discussion.

Mr McDougall—The intent of the submission that the centre makes is principally as an awareness-raising exercise, specifically to highlight the opportunity that we think exists for child rights to be given greater prominence in the national affairs and, in particular, in our dealings with our immediate neighbours. The centre uses the Convention on the Rights of the Child as its framework for all of its activities. It is a benchmark that we use to test our own commitment and our own work. It is one that we have found to be valuable and challenging, and it will continue to be challenging in the future.

In terms of the activities of the centre and what brings me here, the centre has found increasingly over the last few years that there is a keen interest in child rights issues, not just in Australia but also with our regional partners. We are often visited by delegations from surrounding nations, not just those working in legal fields but also in human rights fields. Often they will ask to find out more about the child rights activities of the centre. On a personal level, I have also worked in the region, providing policy advice to a number of organisations, which is a particular passion of mine.

The combined effect of all of those things meant that when this inquiry was drawn to our attention we had a look at it to see the extent to which it was looking at child rights issues. We also looked at the submissions that were made and noticed that very rarely was there directly a mention of child rights, which seemed to us to be possibly an opportunity lost. If we look at the development work that is undertaken by organisations that are based in Australia, some of them funded by the Australian government, there is a wide range of activities which can be said to be child rights work. They work in a range of areas seeking to produce more sustainable structures within society addressing particular issues that arise in the areas of health in terms of education. It seems appropriate that if we are asking ourselves how we can engage more effectively with human rights frameworks in the region that we also look at the opportunities that child rights issues provide. To that extent we probably end up saying something similar, or perhaps a subset, of what ACFID are saying in that we think Australia should be more confident in promoting human rights in the region and to do that by not just focusing on the development of human rights institutions, but to look at the actual development work that takes place in the region.

Often that work is framed using child rights language seeking to achieve what we would describe as child rights outcomes. In essence, that is the submission that we make.

CHAIR—Thank you. There are a couple of interesting points in your submission that I would like to raise with you. I have looked through to see what the funding arrangements for your centre are and how you do that but, more importantly with respect to this particular inquiry, we have had quite a few questions asked about and submissions have raised the issue of human trafficking, particularly child trafficking and child slavery. Although you are Australian based, can you tell us what level of involvement you have with children coming here under all sorts of different circumstances and whether there are any learnings that you have out of your experience in that area that could give this committee some guidance on how we could recommend the government playing a greater role in dealing with that particular issue, and whether there are existing mechanism or perhaps your suggestion for new mechanisms that may be able to deal with that issue?

Mr McDougall—The deputy chair will be familiar with the funding arrangements for the centre. We are part of the Community Legal Services program and funded solely from the federal government.

CHAIR—So there is no other community funding?

Mr McDougall—No. We do have other project funding that supplements our funding base, and we have pro bono relationships with law firms that seek to bolster our capacity. That is the basic background of the centre. We have not had any direct involvement with the issue that you have identified of children coming into Australia. Our service delivery is largely internet based in providing responses to children that ask us questions about legal issues and rights issues in Australia. However, the area of work where we do come in contact with that issue, along with a whole range of other issues, is that we coordinate the preparation and presentation of the non-government report to the UN Committee on the Rights of the Child. In that position we act as an information-gathering centre. We seek to build and support networks that exist in the community that have an awareness of child rights issues so that information can be collected and used for advocacy purposes and in terms of the reporting process.

It is indirect. I would not want to suggest that the centre, in any way, has any particular expertise in that area. It is more as a matter of collecting information. What I can say is that we are increasingly recognising the issues that arise for children in the region which seem to be our responsibility. We have now placed ourselves as a nation that is, in many respects, a leader in the region, which means that there are difficult political questions for all of us that flow from that, but it also means that there is an opportunity.

I can give one particular example. A lot of the volunteers that come through the centre's doors often also end up becoming Australian youth ambassadors doing work in the region addressing a large number of the issues that we are reporting on and provide assistance to. We have had volunteers who have worked in Fiji, the Pacific islands and parts of the Asia-Pacific which gives them a greater awareness of the broad context of child rights issues and an understanding to recognise the privileged position, to some extent, that children have in Australia, but also to reflect on some of the circumstances where we fall behind and do not provide adequately for our children. They also compare that with the development issues that are increasingly seen to be

something that Australia can contribute to. And many of these young people are making that contribution in a very real sense.

What I am suggesting is that there is increasingly an understanding of Australia as an important player in the region. That is something that is not only shared by the parliament and by the government, but also by young people, in particular, which is an opportunity that we should acknowledge and think about as to how we can take advantage of it in terms of promoting better relations.

CHAIR—It has been raised in other submissions and by people here that, in fact, while Australia is recognised as having been a leader in terms of human rights within the region and more broadly, at the same time there is a view that if we, as a country, take the lead on this particular issue in the region it could be seen to be paternalistic and us imposing our point of view on other countries in the region. From the perspective of young people and those that are agitating for better human rights and indeed a better quality of life within their own country, do they want us to take that lead or do they share the view that it must be an Indigenous movement that we can support, rather than coming in and taking the lead? Is there a different perspective from what others have raised previously?

Mr McDougall—There is a very clear distinction between governments and the Australian people. In fact, it is harder, in a sense, for the government because the government is much more likely to have that accusation addressed to it that its actions are patronising, whether that be their intention or not. For me, on a personal level, I have never had that experience. I have always found that working with Indigenous populations and with populations in the region that they generally welcome your contribution, which probably has something to do with the Australian personality in that when we are placed in those circumstances we tend not to be arrogant, tend to be respectful and tend to also have a pragmatic approach which appeals as well.

If we look at the activities of non-government organisations and ways that we can support civil society and the connections between the development of civil society in Asia-Pacific countries that is, in a way, going to avoid that problem because it is less likely. There is a risk in some circumstances that particularly international development organisations can find themselves in a not-too-dissimilar place, so whatever we do we need to be respectful and also evaluate what we do to stand alongside the people that we are partnering to make sure that we are providing opportunities for constructive feedback and looking at producing effective outcomes. In a sense, that is something that properly framed and planned development work that uses a child rights or a human rights framework is always going to be sensitive to. That does not mean that mistakes are not made, but it does provide an opportunity for some of the groundwork around human rights to be built in the region.

Mr RUDDOCK—You made some comments personally about my engagement with community legal centres. I would like to comment that there were some conflict of interest issues and, as such, I did not make decisions in relation to community legal centres, because my daughter is employed by one and decisions were always taken by the ministers for justice and customs rather than me. It also means that I do not have a familiarity with the nature and size of your organisation, nor its budget. How large is it? How many lawyers do you employ?

Mr McDougall—On our funding there is me. We get \$160,000 from the federal Attorney-General's Department.

Mr RUDDOCK—Do you undertake test cases?

Mr McDougall—No, we do not. I do not have that capacity by myself.

Mr RUDDOCK—I was going to ask you about outcomes. Is there a need for test cases?

Mr McDougall—Yes, I would think so.

Mr RUDDOCK—On what?

Mr McDougall—There is a range of domestic issues that we would find out about during the course of our reporting.

Mr RUDDOCK—Is there one that people have been raising with you where you felt aggrieved that you have not been in a position to do so?

Mr McDougall—We cannot. We see ourselves as being within a network. We would hope if those issues were identified that there would be people who would be capable of taking on that case work. It is just beyond our capacity to do it.

Mr RUDDOCK—My next comment was going to be fairly complimentary. I am surprised, in a sense, with the nature of your resources that you had the time to do it. I thought it was a tremendously comprehensive review of all of the other submissions to us. I do not think anybody else has done quite the same review and commented on submissions in the way in which you have, so let me commend you on that. I do not know whether I can commend you on it being an appropriate use of your resources; I just wondered how you had done it, bearing in mind that I suspect government is going to find it much more difficult to find new money for a little while as the cupboard is just about bare. Given you were aware that resources were going to be extremely limited, if you had to prioritise these matters where do you think we should be looking?

Mr McDougall—I will just make a clarifying point. One of the advantages that the centre has is that we have a wealth of volunteers.

Mr RUDDOCK—Did they do all the work?

Mr McDougall—They did all the work and it was my pleasure to go through the information and sign off on the final document. Most of the work in preparation for this submission was, in fact, done by our volunteers.

Mr RUDDOCK—Does that mean that I should be putting my question to one of your volunteers?

Mr McDougall—Quite possibly. The other point that I would make is that the advantage of being able to overview the previous submissions is because we were late in putting in our own submission.

Mr RUDDOCK—I saw your apology.

Mr McDougall—Given your comments about what is clearly going to be a challenge in terms of the allocation of resources, I think that a lot of the measures that we are suggesting about taking a child rights approach do not necessarily have to mean significant additional allocation of resources. It is about having a more careful approach to identifying priorities. In the context of the government allocations for AusAID, for example, which has been one of the significant programs that the government does use for development assistance, there should be much closer attention to using a human rights framework in identifying the priorities when looking at the clear development needs and requests coming from the region. We would also be quite unashamed about the fact that they need to be assessed from a human rights perspective as well, and clearly child rights form a fairly important part in most circumstances when using a human rights framework.

Mr RUDDOCK—I was going to ask a mischievous question. You recommend ‘a coordinated human rights approach which promotes respect for cultural and Indigenous values’. How do you resolve conflicts between human rights and Indigenous values, particularly when you are making that recommendation? For instance, one of the very difficult issues that we have here is in relation to the pledging of young women in Indigenous communities to older men and the demands that that places upon them. Clearly, if it were a minor, that would conflict with the Convention on the Rights of the Child obligations. I do not know whether there are issues of that sort in other Indigenous cultures that we have to have regard to, but if there were one might be hesitant about giving them the same priority.

Mr McDougall—I would not claim to have the definitive answer to those questions. I would suggest that the human rights and child rights framework provides a way of addressing those issues. That does not necessarily mean that you are always going to reach the same conclusion in a particular cultural context, but that balancing participation, protection and basic survival and development rights, which is the context in which the convention seeks to operate, mean that you consciously look at the fact that sometimes the exercise of those rights does produce conflict and you have to make a way to ensure that you are looking at what is the most practical solution.

We do not view international human rights frameworks as being ideological. They are pragmatic political tools that hopefully we can use to try to address some of these issues. It is in that context that I would advocate for using the child rights framework. As I said, it means that if we have a commitment to proper evaluation and if we get the balancing wrong, we can take measures to address it.

Mr RUDDOCK—I will probably quote you some time in the future.

CHAIR—Clearly, in your submission and from what you said today you place a great emphasis on the importance of development in terms of addressing rights. Given the current reporting we have got around the tracking of the Millennium Development Goals, if you look at, particularly, the goal around maternal and child health, it is probably the worst performing in terms of achieving those goals. Would you care to make a comment on that as a result of the work that you and your volunteers are doing? Do you have any views about ways in which we can improve the current statistics on that one?

Mr McDougall—There is a range of international conversations where we do not play as big a role as we could and the efforts to address the Millennium Development Goals are one of those debates or discussions. I also think that the United Nations Secretary-General's Study on Violence Against Children, which has been taking place with its consequences now being sought to be implemented in terms of the United Nations program, is also an opportunity to look at violence against women and children that occurs within our region.

There is a whole range of basic survival rights and basic development rights that are not necessarily being given sufficient attention in our own region and that a greater engagement with hearing the issues that exist in the region and being much more upfront about our commitment to them would not only benefit children and women in the region, but also our own profile and our own ability to contribute.

CHAIR—That brings us to the end of time in terms of your submission. Once again, I would like to thank you for taking the time to come out and talk to us today. It is very beneficial for us all to know that your organisation exists and also the work that you do. On behalf of the committee, I would like to pass on to your volunteers, in particular, that we appreciate the effort that they made around this particular issue and thank them for the work that they have done on this submission, as well as you taking the time to come here and present to us today. Before you leave I would like to note a couple of things. If there is any follow-up information that you wish to pass on to us as a result of the discussion that we have had we would appreciate if you could give it to the secretariat to distribute. Thank you for your time.

Mr McDougall—Thank you for the opportunity and I will pass on your thanks to the volunteers at the centre.

[2.30 pm]

CHARLESWORTH, Professor Hilary, Director, Centre for International Governance and Justice, Australian National University

HARRIS RIMMER, Dr Susan Gail, Research Fellow, Centre for International Governance and Justice, Australian National University

CHAIR—Welcome, Professor Charlesworth, and thank you for your presentation last year around the anniversary of the declaration. I would also like to welcome, for the second time today, Dr Rimmer. We appreciate you are wearing two hats, at least, on this occasion. Although the subcommittee prefers that all evidence be given in public should you at any stage wish to give evidence in private, you may ask to do so and the subcommittee will consider your request. Also, the committee does not require you to give evidence on oath, but 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. Before we move into question and discussion I would like to, first of all, thank you for your submission. I found it quite interesting and I know there will probably be a lot of questions and discussions to come out of it. I would now like to invite you to make some introductory remarks.

Prof. Charlesworth—Dr Harris Rimmer will make some remarks.

Dr Harris Rimmer—We welcome the opportunity to speak to the committee today. We think this is a very important and timely inquiry into human rights mechanisms in the Asia-Pacific. The work of our centre is somewhat different to some of the other witnesses that you have heard from so far, in the sense that we focus on peace keeping, peace building and post-conflict reconstruction. The first recommendation to your inquiry, which we will not speak to today but I will just note, is that we urge a broader conception of human rights mechanisms to take into account interventions such as the RAMSI mission in the Solomon Islands, Australia's presence in Timor-Leste with policing and security and also in Bougainville, as well as the broader aid program.

We have recommended that the committee review the recommendations and responses from previous inquiries into the area. We have talked about AusAID possibly reconsidering the rights based approach to development, which you would have heard in more detail from ACFID and possibly World Vision, and also that you continue to think about human rights in the context of the struggle to meet the Millennium Development Goals in our region, which I am sure that you have heard from other witnesses and was also contained in the DFAT submission.

The other areas where we have made a few recommendations which we will not go into today rely on the Pacific proposal where you have had excellent, solid evidence from the RRRT and also Professor Andrew Byrnes and the UNSW group, and the ASEAN Charter where I do not think that we can improve on the evidence that you received from Kieren Fitzpatrick at the Asia-Pacific Forum for National Human Rights Institutions.

In the interests of advancing your time more strategically, we would like to focus on the UN human rights part of our submission where we talk about the importance of Australia modelling good behaviour in the region in the sense of ratification and development of new treaties, plus innovative ways to show our compliance with existing treaties and how important that can be in sending a regional message. Also, the Australian government can channel increased core funding to the UN agencies working in the region.

Finally, the recommendation that we would like to speak to in some detail is that we would like this committee to recommend to the Australian government that they fund and assist the preparation of both state and shadow human rights committee reports through Australian civil society partnerships with other civil society groups, such as the RRRT, and at the state level. We would probably also add to that the participation of the Pacific and Asian states in the Universal Periodic Review, which has a heavy level of civil society involvement at the Human Rights Council.

I would like to add some slightly new evidence for the committee before we get into question time. There was an excellent point made by one of the members of our centre that if Australia is interested in promoting ratification of the core human rights treaties, which is very low in our region, one of the more innovative ways it could do that is by working through the Commonwealth organisation, particularly the Commonwealth Secretariat in London, because they have had considerable success. One of the examples is that they held a 2006 meeting in Papua New Guinea which led to an excellent level of ratification in PNG and in the Maldives, and somehow managed to find a space for discussion that neither Australia, New Zealand nor the Office of the High Commission for Human Rights was able to find. The Commonwealth might be a way of addressing issues that are of interest to all Commonwealth states through the Harare Declaration and the Singapore Declaration.

The second issue that we would like to raise is that we have a very scary document to table, which is really just for the committee's reference. It is very useful. All the UN agencies working in the Pacific have compiled the various treaty body reports on human rights for all the Pacific nations. They are broken down by country and by theme and show where the committees have urged for particular reform. It is just a handy reference guide, so when we are talking about the human rights issues in the Pacific, this might be of use for the committee. That concludes our opening comments.

CHAIR—Professor Charlesworth, would you like to add anything?

Prof. Charlesworth—I am happy to move to questions.

CHAIR—I am interested in the recommendation that you made around a further inquiry into the Millennium Development Goals and their obvious link with human rights. I am wondering if you could expand on that a little in the sense of what you would want that inquiry to look at and what you hope might be some of the outcomes that would come out of it if we did that? I see the MDGs as a possibility of just falling into a massive lake and taking a long time to surface again. Is there something that you think we could specifically focus on that might achieve an outcome or a recommendation to the government?

Dr Harris Rimmer—The thinking behind that recommendation was that at the time Prime Minister Howard signed the MDG document at the summit there was the great optimism about the possibility of reaching these goals, but that optimism has been diluted somewhat by the global financial crisis, climate change and various other issues. The current government still holds the promise of meeting the MDGs in our region as much as we can through our aid program, and for Australia of course to have met those goals, but primarily through the AusAID program. If you look at the AusAID website they have a significant amount of research and documentation into how the AusAID programs are trying to promote the MDGs in the region. It is also, of course, a very big issue for the United Nations in terms of promotion.

The question is: given that the world is not quite the same as it was when we signed the MDGs, how are we going to cope and how are we going to recognise these minimum targets for humanity in our region? What can Australia's contribution be to seeing these MDGs achieved? As I raised earlier for UNIFEM, the two that seem to be the most resistant are maternal health and the education of girls. That is why Mr McMullan has been putting lots of energy into maternal health as a goal.

I think there needs to be further thought put into that particular desire, and it might even be the sort of inquiry where this committee needs to travel to talk to people in the region about how the Australian aid program is targeted and how it is working. It is a very practical thing. If we cannot meet the MDGs it would be a deep shame. I believe the will is there, but events seem to have overtaken us.

Prof. Charlesworth—I understand the reservations about embarking on something that seems to be huge. One suggestion might be to incorporate that in the work of this inquiry, because there is a tendency, certainly at the UN level, that each part of the UN will produce its own documents and wants separate reporting, so they are often compartmentalised in ways that are not necessarily very useful, but the MDGs are essentially human rights documents. Resigning a little from a full scale inquiry, a shorter term prospect might be to weave them into your current inquiry because they provide a very real guide and enough evidence to at least some of the major human rights issues in the region, so bettering human rights in the region will also impact on delivery of the MDGs. In that sense they can be intertwined in that respect.

CHAIR—I asked the question not because I was reserved about doing it. It was in fact something that I had been thinking about myself, and in particular the maternal and child health MDG and its connection with human rights of both children and women. Indeed, I think it reflects on the status of a whole community and the connection with human rights of all individuals within that community. I was interested to see whether you had drawn that connection and to ask a follow-up question around existing human rights mechanisms, that goal in particular, but in terms of the others, how effective do you see existing mechanisms contributing to the achievement of those goals and is there another way or a new idea that we could approach in this particular region that might improve the achievement of those goals and the figures around those goals?

Prof. Charlesworth—As many people who have appeared before you have pointed out there is one issue in the region, the low level of ratification of human rights treaties, which straightaway takes away one forum for pressure to make governments more accountable. One mechanism that is hardly original is to promote ratification which at least provides a forum for

countries who have ratified to have to put in their periodic reports and so on. That provides one pressure point for them with the knowledge that they are going to have to report against those to improve things on those particular indicators.

Generally what we found happening was when the MDGs were introduced there was huge optimism about it. Most people thought they were capable of being fulfilled, but as we get closer to the deadline you just notice a lot more weasel words, one could say, and that we may not even get there. In one sense, that is scandalous because there is absolutely no reason, with concerted efforts, why we cannot deliver on all of those goals. I find it a concern that every year you find the language supporting them getting weaker and weaker as the will perhaps to achieve them is lessening, and certainly the financial crisis is increasing that pressure.

Mr RUDDOCK—I have some questions about priorities, but I am just a little troubled. Having actually appeared before UN committees where Australia is meeting its obligations, the resource implications are enormous once you sign up to those obligations. You can have a country like Tuvalu with 80,000 people. I do not know how many missions they have abroad, but I am fairly sure that they do not have one sitting in Geneva. It seems to me that you have to find far more practical ways to enable people to sign on, to meet those obligations and to report on them than are utilised now. If you had to sit down and talk to some of the governments about why they had not signed up, it would get down to this very question of priorities, resources and why you would put so much money into writing reports that are so comprehensive and then have to go and submit to an examination by a committee in Geneva.

Prof. Charlesworth—That relates to one of the suggestions that we made. That is precisely the point where a major aid donor, such as Australia, can be useful. I guess your point is a more basic one: is that a good use of aid money.

Mr RUDDOCK—You may not have heard my questions to the previous witness, but I do not think in the present economic climate that governments are going to be finding new money very easily. If you are really expecting that you are going to make recommendations—if you have got a wish list, that is fine. I have had to look at the other side of the coin where you get a committee report and you then have to think about where you are getting your money, go through an ERC process, and you are really talking about where you can make a difference. Yours is a very ambitious wish list, in terms of funding commitments. I am really asking whether people are prepared to pare them down and look at where we can make suggestions that will be able to make the greatest difference for the least financial commitment.

Prof. Charlesworth—The role of submission writers is to provide as many ideas as possible. It is not necessarily to cost them. I say that as an explanation of why we put those ideas forward. That is precisely the role of this committee, to investigate that. We were just responding to the terms of reference. Taking your point that one would have to prioritise, it seems to me that some of them are not going to involve huge sums. I note that a number of other people that have appeared before the committee have made a really important one, that Australia looks to itself, in a sense, to model what is good human rights global citizenship. That is something that does not have to come out of an aid budget, that is something that we can do and, in fact, is being done.

I noted last week that the UN Human Rights Committee wrote in its concluding observations on Australia's report under the ICCPR that it was impressed by the national human rights

consultation and so on, but it seems to me that in our area what Australia has to confront is a sense from a number of smaller countries that Australia is very good at generally preaching the virtues of human rights, but perhaps is slower itself to model the behaviour that it preaches. In my travels in the region one gets that sense very much, in fact sometimes I have encountered almost resistance or resentment, one could say, from groups in the region who say, ‘Australians are always coming here telling us what we need to do better, but we look at you and we see a number of issues.’

Mr RUDDOCK—I have never known over 30 years of public life for it to be any different. In fact, the major resistance to Australia’s pursuit of civil and political rights were those who were saying: ‘Why are you arguing about civil and political rights? We have not got these economic aspirations in place. They ought to be the real priority.’ Making us feel guilty has been part and parcel of the argument that has always been taken up to us when we are arguing in relation to civil and political rights.

Prof. Charlesworth—I am certainly not suggesting Australia go around with sackcloth and ashes in this respect at all. It is a certain level of self-scrutiny; I think it is important to be modest. That leads into another point. If we respond directly to your question about having some financial reality with these proposals, the other one that Dr Harris Rimmer made about Australia not taking on this burden by itself, in a sense, but exploiting some resources that are already available. The one that Dr Harris Rimmer pointed to was the Commonwealth. The Commonwealth has a human rights initiative. In working with governments on the ground they have managed to achieve quite a lot that the UN has found difficult and indeed, on a bilateral basis, it has been quite difficult to achieve.

We have at our centre at the ANU somebody who went forward and worked with the Commonwealth Secretariat for a number of years. His accounts, for example, of working with the Maldives were that they were initially very resistant to becoming party to the core human rights covenants—the civil and political covenants and the economic, social and cultural rights covenant—but coming in with a Commonwealth mantle rather than an Australian mantle actually enabled quite a lot of progress to be made in that particular area. Again, these are strategies that we suggest that do not have huge cost implications. They are actually calling on existing networks and perhaps not taking this on as solely an Australian burden, but working more strategically with organisations in the region.

Dr Harris Rimmer—I would like to continue to answer your question because I think there is one important point to make. You are right in that it is a very bad climate to be making claims for new money, but on the other hand, if you look at RAMSI, our deployment in East Timor and our deployments in Bougainville over the years, they are vastly expensive. The deployment of the Australian Federal Police, the IDU, is incredibly expensive and we have had to do that more and more often—in Fiji as well—when human rights issues or civil unrest get out of control, so I think there is a strong argument to say that we spend a lot of money on various interventions after there has been some sort of crisis. Perhaps a better way to think about it is that we could be spending modest amounts of money in a preventative way to get some early warning indicators and to get some sort of basic skills in the civil society groups in these countries to raise these issues at the international level before armed intervention or peace keeping becomes necessary. That is one argument that I have heard raised consistently by the Australian Council for International Development, that this is an investment in Australia’s long-term economic security.

Mr RUDDOCK—I was going to question you in relation to that because I have a different perspective of RAMSI and Timor to what I thought you were suggesting, but maybe your comments have started to put that in place. I just wonder why we are not getting from an organisation like yours, which perhaps has more expertise than any other organisation in Australia, a critique about how you might be able to reform the UN human rights institutions and treaty bodies, which are enormously expensive, which involve very significant duplication and, as you have picked up from my earlier comments, are a significant impediment to countries with little budgetary provision to be prepared to sign up.

I do not hear a great deal about UN treaty body reform, but in the context of where we are going and the budgetary situation that we are in, I am very pleased about what you have had to say of the Commonwealth, because my experience as a Commonwealth observer in 1994 at the South African first democratic elections was that the Commonwealth did it on a shoe string and the UN spent an absolute fortune. The Commonwealth had more prestigious delegates, including the former governors general, judges and so on, amongst its team on the ground and the UN was employing a whole lot of kids, but that is not to say they might not have had a lot of ability. I do think the Commonwealth and even Commonwealth law ministers that meet together from time to time could pursue some of these issues, so that is a very useful suggestion.

As you will probably gather, I will take a fairly critical view of some of these measures in the context of priorities, which brings me to the Timor and RAMSI operations. I thought RAMSI was not just the Australian Federal Police. I am in a conflict of interest because my daughter was in fact a public defender as part of the RAMSI operation for a short period of time. It just suggested to me that RAMSI, which was Australia with the Pacific countries, in fact had far greater awareness of what we would regard as human rights issues than the one that was supervised, in fact, by the UN. Australia had very little capacity to influence what was happening in East Timor, notwithstanding our contribution, because essentially it was a UN operation. One would have thought that a UN operation would have had full regard to UN instruments, how they might operate and how they might be able to play a role, but it seemed more important to have them talk Portuguese than anything else.

Prof. Charlesworth—I would like to respond to the first part of your question. You mentioned a critique of the UN treaty body system. As you know well, there has been a huge—one could say—industry in critiquing the UN human rights system generally and certainly the treaty bodies. There has been work over the years to try to streamline the work of the treaty bodies and to some extent there has been success. Instead of making every country, for example, report separately on every treaty, there is now a common core document. But the problems do remain. In a way I was not certain that this inquiry was necessarily interested in those issues because we were more focused on our region, but I take the point that if one is suggesting that Australia encourage more countries to sign on to the system, then one should be looking at the system itself.

It seems to me that in the last few years there have been some interesting developments from the UN itself in trying to streamline reporting and trying to limit the size, for example, of reports because they used to be as large as the document that we are about to leave with you and more. Certainly, there is a whole range of issues that one can find that have been quite unsatisfactory in the reporting system. In saying all of that I definitely support Australia's continued pushing for reform of the system. However, I understand, for example, the remuneration of committee

members has been dropped. It was a modest sum, but I understand now that the sum that they are paid is in US dollars per annum for their labour, so no doubt there are still reforms that could be made, but there have certainly been significant cost cuttings there, too. I think the secretariats in Geneva of the various committees are under pressure and under staffed. There have been proposals around since Philip Alston, the well-known Australian human rights lawyer, who proposed back in the nineties that there be one human rights treaty body, a super body that sat full time and that dealt with all of the human rights treaties. There have been revivals of the Alston proposal, if I can call it that, over the years.

Short of that, I think we should really be working towards streamlining and so on, but until we get to that utopia we have to think about encouraging the countries in our region to become party to the UN treaties, partly because it provides albeit an imperfect accountability mechanism, but also because it brings those countries into this global network of countries that subscribe to the same norms and then there can be a certain amount of technology transfer about better forms of human rights protection through that means, and also in providing support.

I was actually involved two years ago with an AusAID funded endeavour in Vanuatu, which also involved Imrana Jalal, who of course this committee has already met with. Vanuatu had just become a party to the convention on the elimination of discrimination against women and AusAID organised a mock committee meeting to test the Vanuatu government and also to put the non-government delegation through their paces. That was actually filmed by the Pacific Islands Forum and used as a training tool. It struck me that it was a very valuable thing, because it really was encouraging the government delegates and also the local NGOs in training them in preparation of reports and the things to focus on. A number of major issues about weaknesses in Vanuatu law came to the forefront through that exercise, so I think Australia could do more in that area. I will leave the second part of Mr Ruddock's question to my colleague.

Dr Harris Rimmer—For that you have earned yourself a second gift copy of my doctoral thesis. I take your point absolutely that the UN had significant issues in dealing with its own human rights compliance obligations in its operations in Timor-Leste. That is partly because of the special representative of the Secretary General system that they had, so that all the power is then resided in the person of the special representative. That is a very executive style model. It was also due to the incredibly difficult circumstances that Sergio de Mello found himself in.

Having said that, various human rights officers did some very good work in Timor, so that constitution reflects a commitment to human rights. They have ratified most of the significant human rights treaties and they are also trying to operationalise them. We have had the first shadow reports with significant involvement of some very sophisticated human rights organisations within Timor, like La'o Hamutuk and the Judicial System Monitoring Program, which are probably better NGOs than I am afraid Australia boasts in terms of their sophistication in using the UN system.

What you have to remember about East Timor is that Timor was very good at using the UN system in order to make its claims for self-determination. People like Jose Ramos-Horta were already very familiar with the UN system, and they have continued to use that sophistication in using the UN instruments and the UN system in their independent phase.

One of the advantages the UN system offers countries like the Solomon Islands, Tuvalu, Kiribati or any of those other very small places is that it means they can engage in an international forum. It means that when climate change has an adverse effect on very small countries like those, those issues can be represented to the globe in an effective way. It is very hard for a country like Nui to raise issues in the international forum and not be overlooked. That is one of the advantages of the system. The Universal Periodic Review made people in the Human Rights Council think about Tuvalu in a way that I do not think they have ever thought about Tuvalu before.

Even though I agree there are some extreme costs and burdens, that is something Australia should help with. We should be making our mission available. New Zealand does that regularly. Their representative in Geneva and in New York helps Pacific island NGOs and Pacific island leaders use the UN system. There are lots of very cheap ways we can use our amazing diplomatic resources to help our regional neighbours, and there are benefits. There are costs, but there are also benefits; that is, putting the human rights issues that do not have scale. If you want to talk about violence against women, people are going to naturally think about Afghanistan and Pakistan, which we spoke about this morning. It is very hard for a smaller country like Samoa to raise issues like that in the international system and to get international media interest when the scale is so small. There are some advantages to the Pacific, particularly around the climate change issue.

Senator FORSHAW—I cannot resist the opportunity to make a short comment. I will try to frame it in the form of a question so you can comment. It is in relation to the issues that Mr Ruddock has raised. I certainly do not agree that you can draw a straight parallel, if you like, between RAMSI, Solomon Islands, and what happened in Timor. You mentioned the issue about Timor's longstanding role within the UN structure through people like Jose Ramos-Horta, but that points to the fact that the issues that were raised in Timor were also at the bilateral relationship level between say Australia and Indonesia; it did not come about because of an outbreak of civil unrest as happened in the Solomons internally. The terrible events that occurred after the vote on independence were, in many cases, predicted and there were calls for the need for peace keeping forces in Timor prior to that plebiscite, or a delay in that plebiscite. That is another argument, but to my mind it was a totally different set of circumstances.

It does raise the issue which is, when you are trying to work on promoting human rights recognition, adherence, signing up to treaties and all that sort of thing in our region, do the bilateral or government-to-government relations get in the way at times? It seems to me that they may do so. I know that is a strange comment, but the personality politics, if you like, that have long existed within ASEAN and our relations with those countries and these issues of countries feeling like Australian governments of whatever political persuasion are lecturing to them; that has long been an issue with PNG.

I wanted to throw into the discussion that we can be trying to operate through the South Pacific Forum or through the government-to-government relationships and dialogues that occur such as ASEAN, ASEAN +4 and all these sorts of regional bodies where politicians are involved, but I am wondering if you find that sometimes that does not assist the work that is being done on the ground by NGO or UN agencies that are trying to promote human rights? They are rambling thoughts, I am sorry, but it is all about how we are perceived. I think some of

our NGOs and our aid efforts are very highly regarded around the region, but often the criticism is about the politics and the politicians.

Prof. Charlesworth—I will try to answer that last point. One thing that is striking, for example in Bougainville or in the Solomons, is that there is quite a distinction drawn between Australia and New Zealand. As an Australian you look at your New Zealand colleagues and think that we are not that different, but it seems that over the years New Zealand has succeeded in managing to bring local people with it more. This is perhaps a rather crude distinction, but Australia would be seen as much more coming from outside, jetting in saying ‘better pull up your socks guys’, whereas the New Zealanders are seen as perhaps more sensitive to local cultures and the way to approach things. I think that is certainly true in Bougainville where there are some differences in the way that they are perceived. New Zealanders have somehow achieved an international image, or an image in our region, that is seen to be more productive. I am not quite sure of the reasons for that, but it would be interesting to identify them.

Senator FORSHAW—It might have something to do with the *Rainbow Warrior*, but I am not sure.

Prof. Charlesworth—You mean perhaps New Zealand is a victim?

Senator FORSHAW—No. I am conscious of an inquiry that is going on in another committee that is looking at some of these issues. The issue of New Zealand’s reputation in the region has been raised vis-a-vis Australia. It has been put that they are smaller and have been a little bit more independent over recent years on a whole range of issues, whether it is nuclear or whether it is their role in the Pacific, with their international alliances. Therefore, it has been more appealing, if you like, to some of these countries to gravitate towards New Zealand.

Prof. Charlesworth—New Zealand is perhaps being seen as more—

Senator FORSHAW—We are the big brother, they are the little brother and then there are the other little brothers.

Prof. Charlesworth—It may well be that. It is certainly very interesting in the way it works out in foreign policy. I would agree that is one of the reasons. That would be my observation. It is not everywhere. I would not want to overplay this point, because the benefits of Australia’s aid program are far reaching. Also, I can say proudly from the ANU that there is respect. I know when I have travelled in the region people will know of the work that many of my colleagues—anthropologists, historians and so on—who know the region exceptionally well have done. That has helped Australia’s reputation. That is, perhaps, the reason why there are some reservations about Australia’s role in being too much of a big brother in this context.

Senator FORSHAW—One classic example was pointed out to us recently in another inquiry concerning what happened to Sir Michael Somare when he visited Australia; he had to take his shoes off to go through customs. Some people might have laughed it off, but it was a huge issue in PNG and other parts of the region.

Prof. Charlesworth—I only saw that in the media, but New Zealand has a different policy for heads of state. There was some issue. I do not know enough about the details of that. That is,

perhaps, all the more reason why supporting and working through, as we were saying with Mr Ruddock, institutions such as the Commonwealth have extra weight because that has been very nimble, effective and so on. One very concrete thing we could do is to give them the support. Of course, there are many eminent Australians who have worked for that body, but given that they come in under the umbrella of the Commonwealth, perhaps they would be more effective.

Dr Harris Rimmer—I totally agree with you. Human rights is often about politics and there are all those political elements that impact on human rights issues, but that is why it is so important to make sure that civil society, the media and all the various elements of society, has its role and place. Opening up that space as much as possible is very important. Parliament-to-parliament initiatives are really important. I have seen amazing things happen in this building during my previous life in working in the parliament with regional delegations and delegations from the Pacific coming in. There are endless streams of visitors looking at the way we work and how valuable that is to people, which is important. Intergovernmental, Pacific Island Forum, South-Pacific Forum, ASEAN and APEC are all important forums. All the meetings of law officers, immigration ministers and women's ministers are important. The point is that they are not sufficient and often they are not as transparent as we would like them to be. It is true when you hear people like Ms Jalal saying, 'We're the place where human rights rubber hits the road in Fiji.' So those people and organisations deserve as much support as possible. The trick is how to do that effectively.

Senator FORSHAW—Having just had that discussion it is also interesting to note the other side of the coin. The previous Prime Minister of New Zealand, Helen Clarke, took a very strong view about the situation in the Solomons in terms of the overthrow of the elected government. The other point I wanted to quickly raise is the evidence that countries such as Taiwan and China are seeking to increase their influence in the region, including through direct aid, financial support or what might be called other names.

Dr Harris Rimmer—You see it everywhere.

Senator FORSHAW—Does that raise any issues in terms of getting human rights on the agenda or further up the priority ladder when we have some geopolitical interests or other nations' interests seeking to get involved in the region where traditionally they were not involved?

Prof. Charlesworth—Dr Harris Rimmer has already referred to global warming and the environment. One of the big issues is the Chinese and Taiwanese interests in, say, the Solomon Islands with logging and so on, which has immediate effects on the environment. I would say, without being an expert on the Chinese in the Pacific at all, that if one supported the growth of local human rights cultures, then on quite a range of issues that provides an international network that those countries can tap into, against other pressures that may be brought on to them. Certainly, in the Solomons and other places one can see the extraordinary destruction of massive forests and so on, going off in commercial ventures which are seemingly unchecked because there is an immediate financial imperative. Of course, there is this very complex politics with recognition of China or Taiwan and so on with diplomatic relationships, but it seems that what you point out is all the more reason to encourage engagement at the international level with the human rights system.

Dr Harris Rimmer—It is a very real phenomenon. You would see countries like Nauru change every now and then, depending on the highest bidder. I suppose one of the attractions is that really the country could ask for what it wanted and it would get it. East Timor asked for specific assistance to help its fisheries fleet and got it from the Chinese embassy very fast and with very little fuss. That is good in many ways. I encourage Chinese humanitarian efforts wherever possible, but a lot of it was about the then-politics of the Human Rights Commission. You also see it in extreme ways with Japan and the International Whaling Commission.

I think Australia always assumes that we are going to be the most important player in this region. I do not think that is an assumption that Australia should continue to make in many ways. It also means that we just assume that the Pacific countries when they vote in the General Assembly on things that we think are important will also line up with us; that is not always going to be the case. It is about giving our neighbours respect, respecting that they will make decisions in their national interest as well and making sure that Australia is a positive part of their future. I am not sure that we are always very good at that.

Senator FORSHAW—The large dilemma is that increasingly the concerns are over their economic and environmental future, which means that human rights issues may be harder to get into the discussion, given that some of these countries are really facing serious economic problems.

Dr Harris Rimmer—It is also the fact that many of the leaderships of these countries will make those decision perhaps not necessarily with the interest of the entire population at heart, like the logging in the Solomon Islands and things like that.

Prof. Charlesworth—There may also be restrictions on what the press can report, so all the more reason to have basic protections for freedom of the media. It is a fact that there can be various mechanisms used to silence too much reporting of issues such as this that might rouse up public opinion. I think they are very connected.

Dr Harris Rimmer—The work of the Commonwealth human rights initiative most recently in the Pacific has been about the right to information, focusing on press freedom in Fiji in particular, but also in other areas of the Pacific. That is their current campaign because they see it as very important.

CHAIR—Unfortunately we are running over time. I am conscious that people have other commitments and need to go, so we do have to end it there. That was a very informative discussion and, on top of the submission, it actually enabled us to expand and clarify some of the points that you raise and certainly consider some others. Thank you very much for your time and coming here to give evidence. Also, there is that beautiful report as well as perhaps some other documents and information that you would like to follow up as a result of our discussion that you could pass on to the secretariat. We will all await those papers with bated breath. I can see that report will be a useful tool; rather than something that we just sit down and read, it will be great reference material.

[3.21 pm]

FERNANDES, Dr Clinton, Senior Lecturer, University of New South Wales, Australian Defence Force Academy

CHAIR—Firstly, welcome and thank you for coming. We do appreciate the submission that you have given to us, but also taking the time to come and talk to us face to face about your ideas and views and to provide advice on how the committee can move forward with this particular inquiry. Although the subcommittee prefers that all evidence be given in public, should you at any stage wish to give evidence in private you may ask to do so and the subcommittee will consider your request. Also, this committee does not require you to give evidence on oath, but you should be aware that these hearings are considered legal proceedings of the parliament and, as a result, have the same standing as proceedings of the chambers themselves. Now that I have issued those formal words I will invite you to give us some introductory remarks and then we will be able to ask questions and have a further discussion.

Dr Fernandes—Thank you for the opportunity to appear before you. I am a lecturer at the University of New South Wales Australian Defence Force Academy campus. Before that I spent about 13 years as an officer in the Australian Regular Army. My core proposition is that the most relevant regional human rights mechanism is an international tribunal for the war crimes and crimes against humanity perpetrated by the Indonesian military against the people of East Timor. Without an international tribunal for East Timor, any other discussion of regional human rights may be seen as a pretty hollow exercise. As a historical event the holocaust stands out on its own as an unparalleled crime, yet it may be said with confidence and accuracy that the East Timorese people suffered one of the largest death tolls relative to total population since the holocaust. My submission sets out the evidence for the death tolls in East Timor.

For those East Timorese men and women who survived, but especially the women, the crimes were immense. My submission sets out this horrendous record of crimes: rape, torture, enslavement, arbitrary arrests, destruction of property and forcible relocation. My submission explains how women and children suffered specific crimes and were particularly vulnerable.

On the weekend some newspapers like the *Age* and the *Sydney Morning Herald* reported that many Catholic churches around Australia had a one-minute silence and prayer for the faithful on the tenth anniversary of the massacre in a church in Timor. Churches in East Timor had similar ceremonies and just yesterday East Timor's national parliament also had a one-minute silence.

These crimes were perpetrated against a people who sheltered and protected our Australian commandoes during World War II. They died for our commandoes. These crimes occurred on our doorstep and our government was a strong supporter of the Indonesian dictatorship during this period. The perpetrators of these crimes have not faced justice. They have not been held accountable.

Despite Australia's intervention in 1999 and subsequent assistance, our government has remained silent about the crucial issues of justice. As for the government of East Timor, its situation is akin to that of a bullied child in a school yard. Without allies willing to stick up for it,

it is forced to make peace with its tormentor. I would argue that, just as the newly formed state of Israel did not have to prosecute Nazi defendants at Nuremberg, so also the newly formed state of East Timor should not have to carry the burden of justice on its own. Without an international tribunal we would only strengthen the politics of impunity. A human rights mechanism, without an international tribunal for East Timor, would be as if Shakespeare wrote about the Prince of Denmark without mentioning Hamlet.

Prosecutions are the most effective guarantee against future crimes against humanity. An international tribunal requires political will, but so have other tribunals. Other tribunals have also had their prospects dismissed and then come into existence, first unrealistic and then inevitable. For example, New York University's Professor of Law, Theodor Meron, once wrote in *Foreign Affairs* magazine that a Yugoslavia tribunal would not be very effective. Less than a decade later he was president of that tribunal. The Security Council resolution establishing the tribunal for Rwanda had only one dissenting vote, that of the government of Rwanda, which at one point even threatened to prevent tribunal officials from entering its territory. Yet that tribunal also began functioning and indeed some of its jurisprudence has made its way into the High Court of Australia.

Our government has remained silent about justice and we might well ask why. Policy makers put great weight on relations with Indonesia, especially with the Indonesian military. These links are highly valued and we can see that in the signing of a statement of military cooperation between the chiefs of the defence forces of Australia and Indonesia in 2009. Our special forces the Special Air Service Regiment have had a close relationship with some of the worst abusers in the Indonesian special forces. Vested interests have represented their interests as the national interest, yet what is required is an international tribunal for those Indonesian military personnel who committed war crimes and crimes against humanity in East Timor. This, I submit, would be the most meaningful human rights mechanism in the Asia-Pacific region. Thank you.

CHAIR—Thank you for a very succinct outline of what is quite a detailed submission. I appreciate you raising these issues with the committee in the inquiry. Obviously, we are dealing with a whole range of issues in terms of the Asia-Pacific region. That does not mean to say that we cannot learn a lot and get extra value by understanding and appreciating the situation within specific countries. My question to you is about the existing human rights mechanisms. I understand your call for a tribunal. I also understand comments that were made from the previous witnesses before us and the discussion that skewed specifically around East Timor. The comment has already been made by Senator Forshaw that, in fact, the independence movement within Timor-Leste used UN mechanisms and legal arguments very effectively in their case for independence. I am wondering if you could also comment on whether you think the existing mechanisms that the UN has are effective or whether you think there are other ways—not just the tribunal—in which this region can deal with human rights issues that may be a new idea rather than simply improving existing ones?

Dr Fernandes—The UN Commission on Human Rights conducted an investigation in September 1999. It called for an international tribunal. There were three thematic special rapporteurs who visited Timor in November 1999. They also called for an international tribunal. The UN established a Serious Crimes Unit. The Serious Crimes Unit issued indictments but, unlike the prosecution against people like Milosevic or other offenders, it was located in the Dili District Court when 80 per cent of the infrastructure had been burnt down. It was not serious.

The UN Secretary General sent a three-person commission of experts in order to assess the justice processes. The commission's report is available on the web. What it showed, quite clearly, was that the Timorese government said it would support a tribunal, but it could not be burdened with the responsibility on its own. That commission of experts assessed all the processes and once again called for an international tribunal. The problem is political will.

Mr RUDDOCK—Where?

Dr Fernandes—I would say that primarily it is here. The Timorese civil society groups, including the church, have called for a tribunal. In discussions with the UN commission of experts the Prime Minister at the time, Mari Alkatiri, as well as the President, Xanana Gusmao, and the Foreign Minister, Dr Jose Ramos-Horta, all stated to the UN commission of experts that they could not be the only people who could be burdened with this responsibility. You have a democratising movement within Indonesia. There are 22 human rights groups in Indonesia. They cannot agree on very much—you know what activist politics are like—but they all agree that there should be a tribunal for East Timor. They have formed a Koalisi Keadilan untuk Timor-Leste, which is the justice coalition for East Timor.

Mr RUDDOCK—Are they in Indonesia?

Dr Fernandes—Yes. All 22 civil society groups that campaign on things like the environment, human rights or women's issues are all in this justice coalition for East Timor. I am aware of this because I attended their meeting in Jakarta in January or February 2008.

Mr RUDDOCK—Do you know whether the Human Rights Institution is involved in that?

Dr Fernandes—The National Commission on Human Rights has repeatedly called for a tribunal. Here is what they stated. This is their investigation just as the Indonesian forces were leaving East Timor. They called for:

... all crimes against humanity to be investigated and punished, whoever is the perpetrator, in a free and independent manner without any interference whatsoever.

They found:

... crimes of universal jurisdiction, including systematic and mass murder, extensive destruction, enslavement, forced deportations and displacements—

and they bemoan the fact that many of these abusers have not faced justice. One of the abusers is General Prabowo who was Suharto's son-in-law, chief of Indonesia's special forces and responsible for the Kraras massacre in 1983 and for a lot of militia terror in the nineties. He is now running for president. The Indonesian civil society groups, with whom I would suggest we should be aligning ourselves in a democratising Indonesia are calling for justice, but there are vested interests here that try to put forward realism over human rights. I would suggest that realism even fails on its own terms, not just on moral grounds.

Mr RUDDOCK—You said ‘Australia’ when I put the question to you. Who else besides the groups that you have identified in Indonesia and Timor are pressing this issue? I am talking about governments. Is it the Portuguese and the United States?

Dr Fernandes—I do not have the reference right in front of me, but the United States Ambassador stated that amnesties are not acceptable and that there will be justice one day when the political winds change. I can give you the exact reference. Also, the United Nations refused to participate in the so-called Truth and Friendship Commission.

Mr RUDDOCK—The United Nations?

Dr Fernandes—Yes, the United Nations. Both the former Secretary General and the current Secretary General have refused to allow the United Nations or any of its officials or employees to participate in the so-called Truth and Friendship Commission because that commission could recommend amnesties. They stated that there would be no UN support for amnesties; there must be justice. But they realise it takes time and of course the UN is no more than the sum of its members.

Mr RUDDOCK—You are an advocate in relation to these matters and I hear the comments you have made, but where is the international pressure? Australia, in a sense, is neighbour to both, has relationships with Indonesia, has played an active role in relation to Timor and has played an active role in bringing about the situation in relation to East Timor. I suspect if we press this issue it would have quite dire implications for the bilateral relationship, so I look to myself as to who else in the world is out there pushing these matters to try to get the UN and the broader international community engaged?

Dr Fernandes—I can provide you with a supplementary submission of all the important people and bodies that have called for a tribunal.

Mr RUDDOCK—Governments?

Dr Fernandes—Yes.

Mr RUDDOCK—Which governments?

Dr Fernandes—The government of Portugal has called, for one.

Mr RUDDOCK—I thought they might.

Dr Fernandes—In terms of government, do you mean the elected persons or people in the bureaucracy?

Mr RUDDOCK—I imagine you would start off in the Security Council. Is there anybody in the Security Council that has been pressing for this?

Dr Fernandes—I do not know who is in the Security Council at the moment. I know that we are trying to get in.

Mr RUDDOCK—You know the permanent members.

Dr Fernandes—Right. There is no pressure from governments; governments come last. It is up to civil society groups and parliamentarians to put pressure on governments or to advocate and lobby in order for governments to do the right thing. This has been seen with things like climate change where there was simply no governmental support. It was up to parliamentarians and civil society groups to advocate, lobby, educate and make determinations which then changed government policy.

Mr RUDDOCK—I would be interested in the further work that you may have done in identifying where that pressure is likely to come from.

Dr Fernandes—I hope it would come from at least a recommendation from your committee.

Mr RUDDOCK—Good luck!

CHAIR—Are there any other questions?

Senator HANSON-YOUNG—It is not in direct relation to your recommendations or your particular submission, but I have been waiting all day for somebody to bring up the issue of human rights in West Papua, and no-one has. In terms of their proximity to Timor-Leste and obviously the sensitive relationships with Indonesia, I was just wondering if you had any observations about the state of human rights in West Papua and perhaps what we could be learning from the previous experience in East Timor to address some of those?

Dr Fernandes—The Indonesian military certainly has learnt from the Timor-Leste experience and has decided to make it impossible for human rights monitors or independent journalists to visit West Papua, but they have posted some of their worst abusers from Timor to West Papua. For example, Brigadier General Mahidin Simbolon, who was one of the architects of the terror campaign in 1999, was promoted to Major General immediately after the Indonesian forces withdrew from East Timor and placed in charge of West Papua. The police chief of Dili, Timbul Silaen, was promoted and made the Inspector General of Police for West Papua.

On 12 April this year it is the tenth anniversary of the massacre in Cailaco in the western districts of Timor. The lieutenant colonel who committed that massacre—this is all documented in the serious crimes unit—is Burhanuddin Siagian. He was promoted and put in charge of one of the districts in West Papua. The worst aspects of the Indonesian military remain in West Papua. One of the problems has been that they have enjoyed political cover, if you like, from the close relations that they have had with the Australian Defence Force as well as with members of the Australian Defence bureaucracy and elsewhere. We are all familiar with former Senator Gareth Evans's image of clinking champagne glasses with Ali Alatas over the Timor Gap. The Keating government awarded Ali Alatas the Order of Australia.

There was another metaphor that was explained to me in July or August 1999. I was told, 'Imagine if Indonesian special forces officers went to Jakarta along with Australian Special Air Service regiment officers, visited brothels and walked out without paying', except that is not just a metaphor. It was told to me personally by one of the participants, Major Jim Truscott, the executive officer of the SASR. That is how we conceptualise the bilateral relations. Given that

system, I think you will understand why crimes against humanity can be perpetrated with impunity in West Papua.

Senator FORSHAW—I apologise. I had to duck out for a moment to take an urgent phone call. I am not sure if you dealt with this while I was out of the room. The international tribunal that CAVR has called for—you would no doubt like us to support the recommendation—has to be established by the Security Council. Would this be identical to the tribunal that exists in regards to the former Yugoslavia?

Dr Fernandes—The mechanisms, right.

Senator FORSHAW—Not the International Criminal Court?

Dr Fernandes—No. The International Criminal Court's jurisdiction began in 2002. There are two ways in which tribunals have been established and can be established. One is by a referral from the Security Council. The other one is with a treaty between the United Nations and a state. The special court for Sierra Leone, which is considered an international tribunal, was not established by a Security Council recommendation, it was established by treaty between the United Nations and the government of Sierra Leone.

Senator FORSHAW—The Yugoslavian one was.

Dr Fernandes—Yes, the Yugoslavian one was.

Senator FORSHAW—That was because certain countries would not agree.

Dr Fernandes—Definitely. For a large part of the time the International Criminal Tribunal for the former Yugoslavia was given no assistance at all, not from the governments and not even from the NATO-led forces operating in the former Yugoslavia. The French forces, on occasion, tipped off some of the defendants or suspects.

Senator FORSHAW—I do not want to get into a debate about that. The mechanism would most likely have to be a Security Council resolution.

Dr Fernandes—Yes, or a treaty.

Senator FORSHAW—Or a treaty with Indonesia?

Dr Fernandes—Yes. This is not inconceivable in a few years' time because if we look at the way the Indonesian President has handled his appointments, he has sidelined some of these abusers. General Mahidin Simbolon was not promoted after that. Once Susilo Bambang Yudhoyono came in in 2004 he was not promoted. Instead, he put people from his class, from the military academy of the Indonesian army, into key positions. He put a close relative as chief of the national police. He put somebody else as chief of the defence force in Indonesia. He has established an anticorruption commission which is going after some pretty big fish in Indonesia. So Susilo Bambang Yudhoyono, as the President of Indonesia, is doing the right thing and is working alongside a democratising Indonesia to sideline some of these more atavistic elements in Indonesia.

What I was hoping and what I still hope is that strong statements about the need for justice will give comfort to those who want justice, as well as to the victims, and will continue to marginalise those who are perpetrators and have not been published. Another thing that could be done on the road to a tribunal is simply to deny visas to those suspected of human rights violations. The United States has banned Prabowo from entering the territory of the United States. This is the person who is now running for president, so he has a big problem. What we can do is simply ban people from entering Australia.

Senator FORSHAW—You have made that point.

Dr Fernandes—And announce it publicly.

Senator FORSHAW—Thank you. I just wanted to clarify that.

CHAIR—Unfortunately, we are going to have to call a halt there. I would like to thank you for taking the time to present your submission and also to come and have this discussion face to face. Clearly, we understand that it is a very significant issue for many people within your country.

Dr Fernandes—My country?

CHAIR—Within Timor-Leste.

Dr Fernandes—No. I am not—

CHAIR—Yes, I corrected myself. It is a significant issue for people within Timor-Leste, as well as yourself and many others. Certainly, your submission will be considered very carefully by the committee, along with all of the others that we have received with regards to this inquiry. On that point I thank you for coming. If there is other information as a result of this discussion that people have requested, could you please pass that on to the secretariat.

Dr Fernandes—Thank you.

Resolved (on motion by **Mr Ruddock**):

That this committee authorises publication, including publication on the parliamentary database, of the transcript of the evidence given before it at public hearing this day.

Committee adjourned at 3.45 pm