
The Parliament of the Commonwealth of Australia

Human rights in the Asia-Pacific

Challenges and opportunities

Joint Standing Committee on Foreign Affairs, Defence and Trade

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Canberra

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Foreword

This Report is the Human Rights Sub-Committee's response to Foreign Minister Stephen Smith's invitation on 3 September 2008 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.

The Sub-Committee consulted with a wide variety of regional stakeholders and non-government organisations with a recognised and established interest in human rights based both in Australia and internationally.

For the purposes of the inquiry, the areas considered were South East Asia, South and South West Asia and the Pacific. Unlike other regions, the Asia-Pacific region does not have broad based regional human rights mechanisms for preventing and redressing human rights violations.

The Sub-Committee noted that evidence received indicated it would be premature to propose possible models for an Asia-Pacific regional human rights mechanism.

The Sub-Committee found that there is a clear need to enhance mechanisms for protecting human rights, and for monitoring and redressing human rights violations. However moves towards a subregional unified mechanism must originate and be driven by the countries of the region themselves. To this end the Sub Committee noted the interest expressed by some Pacific Nations to explore some form of meaningful regional human rights mechanism.

One way the Sub-Committee sees progress being possible is through the bilateral dialogues particularly through regular briefings to Parliament by government on dialogue outcomes.

Other recommendations in the Report were for AusAID to adopt a human rights based approach to guide the planning and implementation of development aid projects; support for regional ratification of existing UN and other treaties and for meeting other human rights obligations; Australian scholarship and educational support for non-government organisations and other civil society organisations in the region; and the appointment of an Australian special envoy on human rights to conduct high level consultations on regional human rights cooperation.

I would like to thank all who have participated in this inquiry, particularly those who have written submissions or given evidence at public hearings.

Ms Kerry Rea MP
Human Rights Sub-Committee Chair



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Chair Senator M Forshaw

Deputy Chair The Hon D Hawker MP

Members

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Senator A Bartlett (till 30/06/08)	Mr M Coulton MP (from 22/2/10)
Senator M Bishop	Mr M Danby MP
Senator M Cormann (till 23/09/08)	Ms A Ellis MP
Senator A Eggleston (till 19/03/08)	The Hon J Fitzgibbon MP (from 15/06/09)
Senator the Hon A Ferguson (from 01/07/08)	Mr S W Gibbons MP
Senator M Fifield	Ms S Grierson MP
Senator M Furner (from 16/03/09)	Mr D Hale MP
Senator S Hanson-Young (from 04/12/08)	The Hon I Macfarlane MP (till 3/02/10)
Senator the Hon D Johnston (from 23/09/08)	Mrs L Markus MP (from 25/09/08)
Senator L J Kirk (till 30/06/08)	Ms S Mirabella MP (till 11/03/09)
Senator S Ludlam (from 26/11/08)	The Hon J Murphy MP (from 20/03/09)
Senator the Hon J A L (Sandy) Macdonald (till 30/06/08)	Mr R Oakeshott MP (from 20/03/09)
Senator C M Moore	Ms M Parke MP
Senator K O'Brien (from 01/07/08)	Ms K Rea MP
Senator M Payne (from 19/03/08)	Mr B Ripoll MP
Senator N Stott Despoja (till 30/06/08)	The Hon A Robb AO MP (till 25/09/08)
Senator R Trood	Mr S Robert MP
Senator R S Webber (till 30/06/08)	The Hon P Ruddock MP
The Hon B Baldwin MP	Ms J Saffin MP
The Hon A Bevis MP	The Hon B Scott MP
	Mr K Thomson MP (till 15/06/09)
	Mr W Truss (from 3/02/10 till 22/2/10)
	Ms M Vamvakinou MP

Secretary Dr M Kerley

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Terms of reference

On 3 September 2008, the Minister for Foreign Affairs, The Hon Stephen Smith MP, asked the Committee 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



List of abbreviations

ACHPR	African Commission on Human and Peoples' Rights
ACFID	Australian Council for International Development
ACTU	Australian Council of Trade Unions
AHRB	ASEAN Human Rights Body
AHRC	Australian Human Rights Centre
AICHR	ASEAN Intergovernmental Commission on Human Rights
AIPMC	ASEAN Inter-Parliamentary Myanmar Caucus
APc	Asia-Pacific community
APF	Asia-Pacific Forum of National Human Rights Organisations
APPF	Asian Pacific Parliamentary Forum
ARF	ASEAN Regional Forum
ASEAN	Association of South East Asian Nations
AU	African Union
BCA	Burma Campaign Australia
CAT	Convention against Torture, and other Cruel, Inhuman or Degrading Treatment or Punishment
CCF	Citizen's Constitutional Forum

CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CHRI	Commonwealth Human Rights Initiative
CIGJ	Centre for International Governance and Justice
CRC	Convention on the Rights of the Child
CRPD	Convention on the Rights of Persons with Disabilities
DFAT	Department of Foreign Affairs and Trade
ESCAP	Economic and Social Commission for Asia and the Pacific
FWCC	Fiji Women's Crisis Centre
FWRM	Fiji Women's Rights Movement
HRC	Human Rights Council
HRLC	Human Rights Law Resource Centre
HRTC	Human Rights Technical Cooperation Program
IACHR	Inter-American Commission on Human Rights
ICC	International Criminal Court
ICCPR	International Covenant on Civil and Political Rights
ICERD	Convention on the Elimination of All Forms of Racial Discrimination
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICJ	International Court of Justice
ICPMW	Convention on the Protection of the Rights of All Migrant Workers and Members of their Families
ISF	International Stabilisation Force
JSCFADT	Joint Standing Committee on Foreign Affairs, Defence and Trade
NGO	Non Government Organisation

NHRI	National Human Rights Institution
NCYLC	National Children's and Youth Law Centre
OAS	Organization of American States
OHCHR	Office of the High Commissioner on Human Rights
PICTs	Pacific Island Countries and Territories
RRRT	Pacific Regional Rights Resource Team
SCIL	Sydney Centre for International Law
UN	United Nations
UNIFEM	United Nations Development Fund for Women
UPR	Universal Periodic Review



List of recommendations

6 Australia's role

Recommendation 1

The Committee recommends that:

- the Australian delegations to its bilateral human rights dialogues with China and Vietnam include parliamentary representation from the Human Rights Sub-Committee of the Joint Committee on Foreign Affairs, Defence and Trade; and that
- the Department of Foreign Affairs and Trade provide the Human Rights Sub-Committee with an annual briefing on the outcomes of these dialogues, and on any other bilateral human rights dialogues that may later be established with countries in the Asia-Pacific.

Recommendation 2

The Committee recommends that AusAID adopt a human rights-based approach to guide the planning and implementation of development aid projects.

Recommendation 3

The Committee recommends that in responding to the need to make progress in the region on embracing and implementing the universal human rights principles contained in the core human rights treaties, the Australian Government should review its current strategies, consult closely with key regional stakeholders, and consider work already being undertaken on this issue. This should include consideration of:

- human rights education to enhance understanding in the region of the content, benefits and practical local application of these treaties; and
- ongoing support for countries to meet reporting and other participation obligations in the United Nations human rights system.

Recommendation 4

The Committee recommends that the Australian Government establish a scholarship fund to enable individuals from non-government organisations and civil society groups in Asia and the Pacific, who work in human rights or relevant fields, to attend approved human rights courses in Australia.

Recommendation 5

The Committee recommends that the Australian Government appoint a special envoy for Asia-Pacific regional cooperation on human rights, to undertake consultations with countries in Asia and the Pacific, and report to the Government within 12 months. The special envoy should engage in discussion in the region on how Australia can best support regional approaches to the protection and promotion of human rights, and the redress for human rights violations in the Asia-Pacific. The special envoy's responsibilities should be determined by the Minister for Foreign Affairs, but could include:

- undertaking high-level political consultations about the establishment of a Pacific subregional human rights mechanism and a wider Asia-Pacific regional mechanism; and
- consulting with government officials and key regional non-government stakeholders.

Introduction

The inquiry

- 1.1 On 3 September 2008, the Australian Minister for Foreign Affairs, the Hon. Stephen Smith MP, asked the Joint Standing Committee on Foreign Affairs, Defence and Trade (the Committee) 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. The United Nations human rights system, regional mechanisms and roles for parliaments were to be particular foci for the inquiry.
- 1.2 The Chair of the Committee's Human Rights Sub-Committee, Ms Kerry Rea MP, issued a media release announcing the commencement of the inquiry on 18 September 2008. The inquiry was subsequently advertised in *The Australian* and promoted through various human rights networks. The Committee invited an array of regional stakeholders, and groups and individuals with established interest in human rights to submit to the inquiry, including relevant Australian federal and state ministers and agencies, high commissions of various nations in the region,¹ non-government organisations and civil society groups in Australia and the region.

¹ Including Brunei Darussalam, Cambodia, People's Republic of China, Republic of the Fiji Islands, Republic of Indonesia, Japan, Republic of Kiribati, Republic of Korea, Lao People's Democratic Republic, Malaysia, Union of Myanmar, Republic of Nauru, New Zealand, Papua New Guinea, The Philippines, Samoa, Republic of Singapore, Solomon Islands, Democratic Socialist Republic of Sri Lanka, Kingdom of Thailand, Democratic Republic of Timor-Leste, Kingdom of Tonga, Tuvalu, Republic of Vanuatu, Socialist Republic of Vietnam. No evidence was received from these High Commissions.

- 1.3 The Committee received 35 submissions and 19 exhibits from a range of groups and individuals within Australia and the region. The Committee also took evidence from 21 organisations and individuals at five public hearings held in Canberra, Sydney and Melbourne over the course of the inquiry.²

The Asia-Pacific region

- 1.4 The Committee appreciates that the concept of the Asia-Pacific³ region is a politically constructed rather than geographically determined entity. It understands that definitions of the region and constituent sub-regions may sometimes vary depending on the parties involved and the underlying purpose for which it is being examined.⁴
- 1.5 Figure 1.1 United Nations operations in Asia and the Pacific⁵



- 1.6 In determining its regional focus, the Committee was guided by the Office of the High Commissioner on Human Rights' sphere of operations in the region, which consists of three subregions: the Pacific, South-East Asia,

2 See Appendices A, B and C.

3 Throughout the report "Asia-Pacific" is used to refer to the region, however, quotes accurately reflect the term used by groups that have not opted to hyphenate the term.

4 Parliamentary Library, *Exhibit 19*, p. 1.

5 United Nations, Office of the High Commissioner for Human Rights (OHCHR) website: <http://www.ohchr.org/EN/Countries/AsiaRegion/Pages/AsiaRegionIndex.aspx>, viewed 6 July 2009.

and South and West Asia.⁶ The United Nations Economic and Social Commission for Asia and the Pacific's (ESCAP) division of its operations into five subregions,⁷ and the membership of the Asia-Pacific Forum⁸ (APF) were also considered.

- 1.7 For the purposes of this inquiry, the areas considered were South East Asia, South and South West Asia, and the Pacific.⁹ North and Central Asian states,¹⁰ and most East and North-East Asian states,¹¹ excluding China,¹² were not considered by the Committee during the course of the inquiry. Also, although Afghanistan, Iran and Jordan may be included in some groupings, they were not considered for the purposes of this report.
- 1.8 Unlike other regions of the world, the Asia-Pacific region does not have strong, broad-based regional human rights mechanisms for preventing and redressing human rights violations.¹³ This fact, coupled with the Committee's long-standing interest in human rights in the region,¹⁴ lends Asia and the Pacific as natural areas of focus for an inquiry into human rights mechanisms.

6 Ibid.

7 UN ESCAP website: <http://www.unescap.org/about/subregional-offices.asp>, viewed 6 July 2009.

8 APF website: <http://www.asiapacificforum.net/members>, viewed 22 September 2009.

9 South-East Asia can be seen to include: Brunei Darussalam, Cambodia, Indonesia, Lao People's Democratic Republic, Malaysia, Myanmar, the Philippines, Singapore, Thailand, Timor-Leste and Vietnam. South and South-West Asia can be seen to include: Bangladesh, Bhutan, India, the Islamic Republic of Iran, Maldives, Nepal, Pakistan and Sri Lanka. The Pacific can be seen to include: Fiji, Kiribati, Marshall Islands, the Federated States of Micronesia, Nauru, New Zealand, Niue, Palau, Papua New Guinea, Samoa, Solomon Islands, Tonga, Tuvalu and Vanuatu.

10 These can include Armenia, Azerbaijan, Georgia, Kazakhstan, Kyrgyzstan, the Russian Federation, Tajikistan, Turkmenistan and Uzbekistan.

11 These can include Democratic People's Republic of Korea, Japan, Mongolia, the Republic of Korea and the Russian Federation.

12 The People's Republic of China is an influential player in the region and is considered in the context of its potential to impact on the future human rights landscape of the Asia-Pacific.

13 The Committee does acknowledge that the Arab Charter of Human Rights and the recently established ASEAN Intergovernmental Commission on Human Rights does cover some of the countries of the region.

14 In addition to receiving briefings on a variety of human rights issues, the Committee has conducted a number of inquiries related to human rights in the region, including *Human rights and progress towards democracy in Burma* (1995), *Improving but... Australia's regional dialogue on human rights* (1998), *Human rights and good governance education in the Asia-Pacific region* (2004), *Australia's response to the Indian Ocean Tsunami* (2006) and *Australia's aid program in the Pacific* (2007).

- 1.9 This focus on the Asia-Pacific is consistent with the 1993 *Vienna Declaration and Programme of Action*, which recognised that regional arrangements play a fundamental role in promoting and protecting human rights, and emphasised ‘...the need to consider the possibility of establishing regional and subregional arrangements for the promotion and protection of human rights where they do not already exist’.¹⁵

Structure of the report

- 1.10 The Committee’s report focuses around the inquiry terms of reference. This introductory chapter outlined the inquiry scope and process and the concept of the Asia-Pacific as a region. Chapter 2 discusses human rights challenges facing the Asia-Pacific and includes a sampling of evidence received by the Committee to indicate the range of human rights issues affecting the region. Chapters 3 and 4 outline international, regional and national human rights mechanisms currently in operation and their application in the Asia-Pacific region. Chapter 5 is a discussion of possible future approaches for addressing human rights concerns in the region, including considering the feasibility of a regional human rights mechanism. Chapters 6 and 7 examine the roles that Australia and parliaments, respectively, can play in enhancing the promotion and protection of human rights in the region.

15 United Nations OHCHR website:
[http://www.unhcr.ch/huridocda/huridoca.nsf/\(Symbol\)/A.CONF.157.23.En](http://www.unhcr.ch/huridocda/huridoca.nsf/(Symbol)/A.CONF.157.23.En), viewed 6 July 2009.

Human rights issues in the Asia-Pacific

- 2.1 The Asia-Pacific is a diverse and complex region faced with a mosaic of human rights challenges. The Committee notes that there have been improvements in recent years, evident in the progress towards democracy and the realisation of economic and social rights in some nations.¹ However, evidence to the Committee indicated that there are many human rights issues that the region must tackle.
- 2.2 This chapter examines the key challenges distinct to the region that are often regarded as stumbling blocks when addressing human rights concerns, including: geographic and resource constraints; the lack of cohesive regional identity; limited engagement with human rights concepts; and perceived tensions with culture. The Committee also discusses a number of the thematic and country specific issues raised during the course of its inquiry as an indication of the range of human rights matters in need of attention.

Challenges facing the region

Geographical and resource constraints

- 2.3 In the Pacific, the geographical spread, small size and limited resources of its nation states, in expertise and economically, represent major obstacles to developing capacity and dealing with human rights matters.²

1 DFAT, *Transcript*, 13 August 2009, p. 2.

2 Australian Human Rights Commission, *Submission no. 19*, p. 4.

- 2.4 The resource constraints on many of the Pacific nations can hinder their capacity to develop and participate in existing human rights mechanisms at the national, regional and international levels. Indeed, it was argued that there is a perception in the Pacific that the associated cost of administering the numerous human rights treaties is prohibitive for a government facing many competing resource demands.³
- 2.5 The Department of Foreign Affairs and Trade (DFAT) noted that it was very difficult for small countries to meet reporting obligations, stating:
- ...there is no doubt that it is very difficult for small countries to meet those burdens. I can give you one example. The Universal Periodic Review...is a valuable process, but it is also an intensive process because states are required to submit a national self-assessment as part of that. Experience has shown that generally [the states would travel] to Geneva, often at ministerial level, for their appearance. There are no Pacific countries represented in Geneva. The Australian government is quite conscious of the burden this imposes on Pacific countries.⁴
- 2.6 In their joint submission Fijian non-government organisations – the Fiji Women's Rights Movement (FWRM), the Fiji Women's Crisis Centre (FWCC) and the Citizen's Constitutional Forum (CCF) – observed that even in cases where there is support for human rights principles and the establishment of an National Human Rights Institution (NHRI), lack of resources and expertise made the prospect of viable NHRIs unlikely.⁵
- 2.7 The Pacific Regional Rights Resource Team (RRRT), the Human Rights Law Resource Centre (HRLRC), the Australian Human Rights Commission (the Commission), and the United Nations Office of the High Commissioner for Human Rights (OHCHR) all noted the constraints on resources and funding available in the Pacific region.⁶
- 2.8 However, the Castan Centre for Human Rights Law (Castan Centre) was of the view that that economic, social and cultural rights were not prohibitive for Australia's developing neighbours, stating:

3 HRLRC, *Submission no. 15*, p. 9.

4 DFAT, *Transcript*, 13 August 2009, p. 6.

5 FWRM, FWCC and CCF, *Submission no. 33*, p. 4. See also RRRT, *Submission no. 13*, p. 3.

6 RRRT, *Submission no. 13*, p.21; HRLRC, *Submission no. 15*, p. 11; Australian Human Rights Commission, *Submission no. 19*, p. 21; UN OHCHR, *Ratification of International Human Rights Treaties: Added Value for the Pacific Region*, p. 9.

Such rights are economically relative, and thus a State's level of economic prosperity is taken into account in the determination of a State's obligations.⁷

Regional identity

- 2.9 The lack of shared identity, particularly when considering the Asia-Pacific as a single regional entity, is a considerable obstacle for nations and organisations in the region to overcome when seeking to work cooperatively on any issue, be it national security, trade, climate change or human rights. This is an issue that the Committee found it necessary to explore in greater detail in its discussion of the feasibility of establishing regional or sub-regional human rights mechanisms.⁸
- 2.10 The Australian Human Rights Centre commented that the region:
- ...does not reflect the commonalities of history, politics and culture that lead to a shared conception of rights and their methods of implementation. There is recognition of this fact within the Asia-Pacific.⁹
- 2.11 The Sydney Centre for International Law (SCIL) was of the opinion that:
- Many states fear that their individual cultural and political identity would be jeopardised by a human rights mechanism due to a perceived conflict between human rights and regional customs and practices.¹⁰
- 2.12 The HRLRC also identified that there '...was a fear that unique national cultural identity would be in danger if a Human Rights Charter came into operation'.¹¹
- 2.13 The prevailing trend to emerge in evidence to the Committee was that efforts should focus on the subregional level rather than treating Asia and the Pacific as a single entity. For example, the Commission encouraged dealing with the Pacific and Asian regions separately:
- ...as these regions face quite distinct issues in relation to the protection of human rights. Similarly, each region is internally

7 Castan Centre, *Submission no. 10*, p. 4.

8 See Chapter 5.

9 AHRC, *Submission no. 4*, p. 3.

10 SCIL, *Submission no. 5*, p. 4.

11 HRLRC, *Submission no. 15*, p. 24.

very diverse. The broad categorisation of each region is used with some caution.¹²

2.14 DFAT agreed that the subregions themselves are:

...characterised by differences in the nature of their human rights challenges, the degree of willingness and capacity of governments to deal with them, and the mechanism at their disposal to do so.¹³

2.15 The Australian Council for International Development (ACFID) identified that a lack of regional identity explained why there was little cross-regional collaboration, stating:

...the absence of a shared sense of regional identity helps to explain why there remains no momentum from across the whole group to form a regional consultative or deliberating group at government level. It is notable too that civil society collaboration across the four main regions identified has been weak until now. Despite their engagement in global civil society activities, civil society leaders from each of the four regions have yet to initiate substantive cross-region collaboration.¹⁴

Human rights concepts

2.16 In addition to size and resource constraints, the Commission adds to the list of challenges facing the Pacific, the lack of knowledge and understanding about human rights and negative perceptions about human rights.¹⁵ These have implications for not only dealing with current concerns but, as later discussion considers, the development of a future set of shared human rights standards or mechanism.

2.17 The Commission referred to outcomes of the 2005 Pacific Islands Forum¹⁶ (PIF) regional workshop when it observed that:

There is a significant lack of knowledge and understanding about the meaning and relevance of human rights in the Pacific region.

12 Australian Human Rights Commission, *Submission no. 19*, p. 4.

13 DFAT, *Transcript*, 13 August 2009, p. 3.

14 ACFID, *Submission no. 9*, p. 1.

15 Australian Human Rights Commission, *Submission no. 19*, p. 16.

16 The Pacific Islands Forum, formerly the South Pacific Forum until a name change in October 2000, was founded in August 1971 and comprises 16 independent and self-governing states in the Pacific including Australia. The Forum is the region's premier political and economic policy organisation. Forum Leaders meet annually to develop collective responses to regional issues.

Although human rights are constitutionally protected in many Pacific Island States, many people know little about their constitution and international human rights law. Consequently, there is limited 'ownership' of human rights by both governments and communities.¹⁷

- 2.18 The Castan Centre agreed that there was a lack of understanding about the meaning of human rights, stating that:

A lot of people do not understand that most human rights can be qualified; that freedom of speech does not mean the freedom to say whatever you want, whenever you want, in any circumstance. Given that that misconception can prevail in Australia, it almost certainly can prevail in other countries...¹⁸

- 2.19 Evidence to the Committee suggested that in the Asian region, there are diverse regimes and the line of argument that there is a perception of human rights principles as an impost of 'western' values, as distinct from the 'Asian' values of the region. In the Pacific, there may be a perception of human rights as in conflict with customary law and practices.¹⁹

- 2.20 ACFID saw raising awareness and education as essential in getting to the root of the lack of understanding and misperceptions about human rights.²⁰ The HRLRC was also of the view that education was essential and noted comments made by Joy Liddicoat, Commissioner of the New Zealand Human Rights Commission:

If a regional human rights mechanism is to be effective, human rights must have meaning and relevance to people of the region. Measures to promote human rights, including human rights education, must continue to be a priority in order to build knowledge and awareness at village and island as well as local, national and political levels. Human rights education should foster a stronger civil society which, together with governments, sees meaning and purpose in regional mechanisms for promotion and protection of human rights.²¹

17 Australian Human Rights Commission, *Submission no. 19*, p. 20.

18 Castan Centre, *Transcript*, 15 April 2009, p. 9.

19 See for example, FORUM-ASIA, *Submission no. 12*, p. 3; AHRC, *Submission no. 4*, p. 7; RRRT, *Submission no. 13*, p. 9; and SCIL, *Submission no. 5*, p. 8.

20 ACFID, *Submission no. 9*, p. 4.

21 HRLRC, *Submission no. 15*, p. 34.

2.21 The Australian Council of Trade Unions (ACTU) felt that:

For too long, inter-governmental structures and initiatives in the Asia-Pacific [have] focused on strategic, political and economic concerns and have not given sufficient regard to cooperation on human rights issues.²²

Issues raised

2.22 The Asia-Pacific Forum provided the Committee with this snapshot of human rights concerns in the region:

The Asia-Pacific region – home to 60 percent of the world’s 6.6 billion inhabitants – is confronted with a diverse range of human rights challenges. Long-standing conflicts continue in several parts of the region. Post-conflict transitions in other States remain constrained by insecurity and political uncertainty. Several countries are undergoing important processes of democratic, legal and institutional reform, but democracy has been set back in others through the reassertion of military authority. Many countries continue to enjoy rapid economic development, but this in turn creates pressures on marginalized and disadvantaged groups. At the same time poverty, gender inequality and patterns of discrimination remain deeply entrenched. High levels of internal and external migration within and outside the region pose particular protection challenges, as well as attendant problems such as human trafficking and exploitation of migrant workers. While many countries have well established legal frameworks and the elements of a national human rights protection system, serious gaps in capacity and political will undermine implementation and enforcement.²³

2.23 DFAT also provided the Committee with its assessment of the Pacific region:

In terms of individual rights, our assessment is that Pacific women fare worse than men across a range of indices – including health, education and economic achievement – and that the region has some of the highest rates of domestic violence in the world. In addition, these countries often lack the resources to facilitate

22 ACTU, *Submission no. 16*, p. 1.

23 APF, *Submission no. 21*, p. 16.

effective engagement with the international human rights system. These regional differences, in our view, present significant practical challenges to the possible development and operation of a regional human rights mechanism in the Pacific.²⁴

- 2.24 Many submitters shared their concerns with the Committee about human rights issues across Asia and the Pacific. While it is important for the Committee to be aware of the range of human rights challenges facing the region, it was not the purpose of this inquiry to examine and report on specific issues or situations in great detail.

Thematic

- 2.25 The Castan Centre suggested that human rights dialogues in the region should be on specifics rather than on general cultural or human rights concepts.²⁵ Groups raised a number of issues on which they felt cooperation could foster stronger relationships in the region in addition to making inroads on these matters. A sampling of matters brought to the Committee's attention is outlined below. In dealing with a specific issue – especially ones in which Australia has a legitimate interest – there is a much better chance that it will be seen as a case of cooperating to address a shared problem.

Child rights

- 2.26 The Committee received evidence from the National Children's and Youth Law Centre (NCYLC) on child rights issues in the Asia-Pacific. It talked about the:
- ...egregious human rights violations to children that have occurred in the region (referred to in many of the submissions) including commercial exploitation, use of child soldiers, forced labour and enslavement and institutional and unconscionable violence and abuse of children.²⁶
- 2.27 The NCYLC wanted to make explicit the link between the support and development of child rights programmes, and work underway in the region on removing or better navigating hurdles to developing protection of human rights.²⁷

24 DFAT, *Transcript*, 13 August 2009, p. 3.

25 Castan Centre, *Transcript*, 15 April 2009, p. 9.

26 NCYLC, *Submission no. 25*, p. 5.

27 NCYLC, *Submission no. 25*, p. 5.

2.28 The UN Convention on the Rights of the Child (CRC) is the most widely accepted instrument, with almost all countries in the Asia-Pacific having ratified it.²⁸ The NCYLC has suggested that the protection of child rights is one that would have comparatively wide support in the region, and could be a good starting point for tackling human rights thematically. Relevant work already being undertaken in the region includes:

- the development of youth justice, child protection, education and health systems and programs;
- programs to reduce exploitation through child labour, child trafficking, sexual exploitation; and
- building the capacity for children's participation in civil society.²⁹

Climate change and the environment

2.29 Climate change and environmental concerns are challenges which will only increase in severity in the future. The United Nations Development Fund for Women (UNIFEM) informed the Committee that:

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... 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.³⁰

2.30 As the Uniting Church observed, the 'impact of rising sea levels represents a fundamental challenge to the human rights of people' likely to be affected. For example, some Tuvaluans are anticipating the need to relocate in the near future.³¹

2.31 In its 2008 report, *Tracking development and governance in the Pacific*, AusAID identified a number of environmental threats facing Pacific Island countries:

Pacific Island countries will be disproportionately affected by the impact of climate change, with rising sea levels and more frequent

28 DFAT, *Submission no. 35*, p. 4.

29 NCYLC, *Submission no. 25*, pp. 6-7.

30 UNIFEM, *Transcript*, 7 April 2009 p. 4.

31 Uniting Church, *Submission no. 20*, p. 9.

extreme weather events. Access to water and sanitation is a key issue. The lack of clean water is the largest single cause of child mortality due to diarrhoea and is causing many others to grow up sick or undernourished. The pollution of groundwater, rivers and other water sources with faeces further heightens the risk of contaminated drinking water. While Samoa and Tuvalu are tracking well on water and sanitation, other countries, such as Fiji, Palau, PNG and Micronesia, are off-track.

Commercially accessible forestry resources in Solomon Islands are expected to be logged out within only a few years. Logging levels in PNG are also considered to be unsustainable.

Reductions in catch levels for high-value tuna stocks are urgently required to prevent long term damage to these fisheries.³²

- 2.32 The Centre for International Governance and Justice Regulatory Institutions Network (RegNet); the AHRC; the Castan Centre; the RRRT; the HRLRC; the ACTU; World Vision; and the FWRM, the FWCC and CCF all considered climate change to be a very significant issue affecting the Pacific.³³

Gender discrimination and violence

- 2.33 UNIFEM identified gender discrimination as among the most serious human rights issues facing the region. In particular, that violence against women across East and South-East Asia and the Pacific is at pandemic levels. It argued that:

Throughout East and South-East Asia and the Pacific, widespread and pervasive human rights violations are witnessed. Many of these abuses are due to a lack of gender equality in this region...

Violence against women is not only a violation of human rights for its victims and survivors, but is a serious obstacle to women participating in and benefiting from community life and social and economic development processes and opportunities.³⁴

- 2.34 This disenfranchisement of women appears to continue despite the fact that in the Asian region, all Association of Southeast Asian Nations (ASEAN) states have ratified the two international conventions relating to

32 AusAid, *Tracking development and governance in the Pacific*, August 2008, p. 9.

33 RegNet, *Submission no. 3*, p. 2; AHRC, *Submission no. 4*, p. 8; Castan Centre, *Submission no. 10*, p. 3; RRRT, *Submission no. 13*, p. 3; HRLRC, *Submission no. 15*, p. 22; ACTU, *Submission no. 16*, p. 11; World Vision, *Submission no. 29*, p. 10; FWRM, FWCC and CCF, *Submission no. 33*, p. 5.

34 UNIFEM, *Submission no. 1*, pp. 1-2.

women and children: the Convention on All Forms of Discrimination against Women (CEDAW) and the Convention on the Rights of the Child (CRC).³⁵ Even in the Pacific, with its overall low ratification rate, CEDAW and CRC are the main treaties that nearly all the Pacific Island states have ratified.³⁶

2.35 The Australian Bahá'í Community agreed that special consideration should be given to protecting the human rights of women. It argued that:

The systems which have traditionally oppressed women in our region remain largely intact, and this injustice undermines the success of all other efforts in human rights and development. The full and confident participation of women in legal, political, economic, academic, social and artistic arenas is a prerequisite for a more just and peaceful society in which the human rights of all are protected.³⁷

2.36 UNIFEM made the point that in the Pacific, only two per cent of women are elected leaders in local, provincial and national positions – the lowest percentage in the world. It suggested that this lack of representation means that issues of relevance to women are less likely to be tackled. For example, it noted that the Pacific is one of the regions not on track to meet Millennium Development Goals (MDGs) in the areas of the education of girls and maternal health.³⁸

2.37 World Vision highlighted that their research had revealed a link between abuse in the home and inequalities experienced by women when it came to their participation in public life. While it did not suggest that this was due to customary practices, it remarked that there may be aspects of culture involved.³⁹ It is therefore important to work at the local level and in cooperation with culture to show that violence against its most vulnerable members is 'not the Pacific way'.⁴⁰

2.38 The Committee noted FORUM-ASIA's advice that ASEAN had been focusing on women and children's concerns – although not explicitly 'rights' – since the 1980s, and have adopted various declarations in support of their efforts in these areas.⁴¹

35 Forum-Asia, *Submission no. 12*, Attachment 1, p. 2; DFAT, *Submission no. 35*, p. 4.

36 RRRT, *Submission no. 13*, Annex D.

37 Australian Bahá'í Community, *Submission no. 14*, p. 6.

38 UNIFEM, *Transcript*, 7 April 2009 pp. 2-4.

39 World Vision, *Transcript*, 7 April 2009 p. 27.

40 UNIFEM, *Transcript*, 7 April 2009 p. 7.

41 FORUM-ASIA, *Submission no. 12*, Attachment 1, p. 2.

- 2.39 The Committee noted the argument that emerged, that tackling specific issues such as domestic violence has a higher likelihood of success. The high ratification of CEDAW and CRC and the early signs of success of projects underway may mean that women and children's issues are ones that the region is more comfortable tackling. While these issues are themselves significant, they may also be an important step towards addressing the wider span of human rights issues in the region.

Human trafficking

- 2.40 A United Nations publication⁴² indicated that human trafficking has now reached 'epidemic proportions'. The act of trafficking in persons is defined as:
- the action of recruitment, transportation, transfer, harbouring, or receipt of persons;
 - by means of the threat or use of force, coercion, abduction, fraud, deception, abuse of power or vulnerability, or payments or benefits to achieve the consent of a person; and
 - for the purposes of exploitation.
- 2.41 Human trafficking is essentially a crime against the individual, denying basic individual freedoms. However, as well as having severe physical and psychological effects on those trafficked, there are also wider economic, social and political impacts on the societies affected.
- 2.42 During the course of this inquiry, a number of organisations identified human trafficking as a major human rights concern including: RegNet; AHRC; SCIL; World Vision; ACTU; DFAT; Uniting Church; APF; National Children's and Youth Law Centre; Amnesty; and the Vietnam Committee on Human Rights.⁴³
- 2.43 The Coordinated Mekong Ministerial Initiative against Trafficking (COMMIT) is an example of cooperation at a subregional level to combat human trafficking and labour exploitation in the region.⁴⁴ The COMMIT

42 Source: UN Office on Drugs and Crime, 2009, *Trafficking in persons*: <http://www.unodc.org/documents/human-trafficking/HTleafletA5EnglishupdatedAugust09.pdf>, viewed 18 September 2009.

43 RegNet, *Submission no. 3*, p. 4; AHRC, *Submission no. 4*, p. 12; SCIL, *Submission no. 5*, p. 2; World Vision, *Submission no. 7*, p. 4; ACTU, *Submission no. 16*, p. 5; DFAT, *Submission no. 17*, p. 1; Uniting Church, *Submission no. 20*, p. 2; APF, *Submission no. 21*, p. 16; National Children's and Youth Law Centre, *Submission no. 25*, p. 6; Amnesty International Australia, *Submission no. 26*, p. 5; Vietnam Committee on Human Rights, *Submission no. 32*, p. 3.

44 World Vision Australia, *Submission no. 7*, p. 2.

Memorandum of Understanding was signed in 2004 by the six countries⁴⁵ of the Greater Mekong Subregion. Indications are that this is a promising initiative.⁴⁶

2.44 The Uniting Church commended the steps taken by the Australian Government to address people trafficking in Asia, noting that:

...on 15 September 2006 the Government announced \$21 million over five years to help combat human trafficking in Asia, which was directed to assist [in] stopping human trafficking in Thailand, Cambodia, Laos and Burma. The funding was targeted to assist the national law enforcement capacity in each of the countries through providing training and advice to specialist anti-trafficking units.⁴⁷

2.45 The Uniting Church also noted that in 2007 the Australian Government allocated \$38.3 million over four years to be spent on anti-trafficking measures.⁴⁸ In the 2009-10 Budget, the Australian Government announced that it would provide \$9.7 million over two years to enhance the Department of Foreign Affairs and Trade's contribution to combat people smuggling.⁴⁹

2.46 In its submission, World Vision noted that:

There are emerging signs that as anti trafficking initiatives in South East Asia take effect, those involved (including in the commercial sexual exploitation of children) are seeking new territories in which to work, including the Pacific. Trafficking and sexual exploitation are already present to some degree in Melanesia.⁵⁰

2.47 Further, World Vision pointed out that Australia could take a lead role in addressing human trafficking, stating:

Australia has a particular legitimacy in responding to trafficking due to its involvement as a destination of trafficked persons. Australia's leadership and diplomatic support in terms of financial contribution and technical assistance to foster or strengthen

45 Cambodia, Lao People's Democratic Republic, Myanmar, Thailand, Vietnam and the Yunnan Province and Guangxi Zhuang Autonomous Region of the People's Republic of China.

46 World Vision Australia, (Supplementary) *Submission no. 29*, p. 6.

47 Uniting Church, *Submission no. 20*, p. 26.

48 Uniting Church, *Submission no. 20*, p. 26.

49 Australian Government Budget 2009-10 website: http://www.budget.gov.au/2009-10/content/bp2/html/bp2_expense-15.htm, viewed 18 September 2009.

50 World Vision Australia, *Submission no. 7*, p. 4, footnote 2.

regional mechanisms like COMMIT, SAARC [South Asian Association for Regional Cooperation] and its own initiative, the Bali Process would further strengthen Australia's position as a leader on the issue and in the region and contribute to substantively addressing the issue.⁵¹

- 2.48 World Vision recommended that the Australian Government facilitate the 'expansion of human rights based human trafficking initiatives through the expansion of COMMIT or its replication in south Asia'.⁵²
- 2.49 At a public hearing, DFAT highlighted that currently the Australian Government addresses both people smuggling and people trafficking in cooperation with the region as part of the Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Crime (the Bali Process).⁵³
- 2.50 According to the DFAT website, Australia, along with the United States, New Zealand and Japan, funds the Bali Process. The Bali Process is a regional, multilateral process designed to boost bilateral and regional cooperative efforts against people smuggling and trafficking through technical workshops and increased cooperation between interested countries, the Office of the United Nations High Commissioner for Refugees (UNHCR) and the International Organization for Migration (IOM).⁵⁴
- 2.51 Overall direction and coordination of the Bali Process has been provided through an officials' level Steering Group comprising Indonesia and Australia as the two co-chairs, New Zealand and Thailand as the coordinators and the UNHCR and the IOM as partner agencies. The IOM also administers the process.⁵⁵

Millennium Development Goals

- 2.52 At the Millennium Summit in 2000, Australia and 188 United Nations' member states adopted the United Nations Millennium Declaration that aimed to respond to the world's main development challenges. The following eight MDGs were developed out of that declaration:
- Eradicate extreme poverty and hunger;

51 World Vision Australia, *Submission no. 7*, p. 3.

52 World Vision Australia, *Submission no. 7*, p. 4.

53 DFAT, *Transcript*, 13 August 2009, p. 7.

54 DFAT website: http://www.dfat.gov.au/illegal_immigration/, viewed 18 September 2009.

55 DFAT website: http://www.dfat.gov.au/illegal_immigration/, viewed 18 September 2009.

- Achieve universal primary education;
- Promote gender equality and empower women;
- Reduce child mortality;
- Improve maternal health;
- Combat HIV/AIDS, malaria and other diseases;
- Ensure environmental sustainability; and
- Develop a Global Partnership for Development.⁵⁶

2.53 The United Nations *Millennium Development Goals Report* for 2009 highlights that Oceania (the Pacific) and Sub-Saharan Africa are the regions least likely to achieve the MDGs.⁵⁷ Similarly, AusAID found that the Pacific appears to be 'seriously off track' to achieving the MDGs by the 2015 deadline.⁵⁸ UNIFEM agreed that the Pacific region would not meet the MDGs for gender equality and maternal health.⁵⁹

2.54 The Commission, in its submission, noted that the OHCHR '...emphasised that a human rights framework can directly contribute to achieving the Millennium Development Goals and the objectives of the Pacific Plan'.⁶⁰

2.55 World Vision saw the MDGs as a 'vital pathway' to the achievement of rights, particularly economic, social and cultural rights. It stated that:

Consistent and concerted promotion of the MDGs through the aid program will be a vital channel for the realisation of human rights for the people of the Pacific.⁶¹

2.56 DFAT was also of the opinion that the MDGs '...are among the most important commitments to human rights that the international community has made'.⁶² It added that:

[Australia's] aid program's focus on the MDGs and on reaching the most marginalised people means that we are targeting those whose human rights are not being met. Australia's approach to good development practice – which includes using participative

56 United Nations Development Programme website: <http://www.undp.org/mdg/basics.shtml>, viewed 22 September 2009.

57 United Nations, *Millennium Development Goals Report 2009*.

58 AusAID, *Tracking development and governance in the Pacific*, August 2009, p. 1.

59 UNIFEM Australia, *Transcript*, 7 April 2009, p. 4.

60 Australian Human Rights Commission, *Submission no. 19*, p. 18.

61 World Vision, *Submission no. 29*, p. 10.

62 DFAT, *Submission no. 35*, p. 11.

approaches to aid design and delivery, targeting the most vulnerable, and building the capacity of civil society and government institutions – advances human rights.⁶³

Other issues

2.57 Other human rights issues raised, in evidence to the Committee, as having potential for regional cooperation included:

- capital punishment;⁶⁴
- the development of health systems and programmes – particularly those that address infant mortality, the impact of HIV/AIDS and of preventable diseases;⁶⁵
- good governance and participation in decision-making;⁶⁶
- restrictions on freedom of expression and information;⁶⁷ and
- landmines.⁶⁸

Country specific

2.58 The Committee received evidence concerning alleged human rights violations in particular countries. However, that is not to say human rights violations do not occur in other countries in the region, nor that the evidence received is exhaustive of the human rights issues in a given country.

Burma / Myanmar

2.59 RegNet noted that Burma had a particularly poor record in ratifying key human rights instruments having only ratified two and, as of March 2008, had no female representatives in parliament.⁶⁹

63 DFAT, *Submission no. 35*, p. 11.

64 Amnesty, *Transcript*, 7 April 2009, p. 16; Uniting Church, *Submission no. 20*, p. 32; Vietnam Committee on Human Rights, *Submission no. 32*, p. 4.

65 NCYLC, *Submission no. 25*, p. 6; Australia West Papua Association (Sydney), *Submission no. 24*, p. 1; Australia West Papua Association SA (inc), *Submission no. 23*, p. 2; APF, *Submission no. 21*, p. 25; Australian Human Rights Commission, *Submission no. 19*, p. 16.

66 Australian Human Rights Commission, *Submission no. 19*, p. 16; World Vision, *Submission no. 7*, p. 5; ACFID, *Submission no. 9*, p. 5; HRLRC, *Submission no. 15*, p. 7.

67 Australian Human Rights Commission, *Submission no. 19*, p. 16; Professor Andrew Byrnes, *Submission no. 6*, p. 4; Castan Centre, *Submission no. 10*, p. 4; Vietnam Committee on Human Rights, *Submission no. 32*, p. 3.

68 Uniting Church, *Submission no. 20*, p. 3.

69 RegNet, *Submission no. 3*, pp. 3 and 5.

2.60 ACFID advised the Committee that Burma's Government, as an authoritarian regime, has been particularly hard to influence on any human rights issues, stating:

A key factor is the spoiling role of authoritarian regimes, especially in South East Asia and North Asia...In South East Asia, the consistently ineffectual ASEAN political engagement in influencing Burma's government since 1987 highlights how little can be achieved where there is no shared concept of human rights or, indeed, of the role of external parties commenting on the internal affairs of one of the group.⁷⁰

2.61 ACFID was also of the opinion that the government in Burma '...would not support the promotion of any human rights mechanisms that had the potential to cause them discomfort over time'.⁷¹

2.62 The ACTU asserted that the use of forced labour in Burma is widespread, and called for:

...a policy of economic and financial sanctions against Burma/Myanmar in order to apply maximum economic and diplomatic pressure on the junta to respect human rights and restore democracy and peace.⁷²

2.63 In its submission, Burma Campaign Australia (BCA) was of the view that the human rights situation in Burma remains grave. BCA also identified the following human rights issues:

- There is no democracy, political freedom and there exists a culture of fear.
- Today there remain over 2,100 political prisoners with at least 39 requiring urgent and proper medical treatment.
- Aung San Suu Kyi remains under house arrest where she has been detained for 13 of the last 19 years.
- Poverty and destitution have led to widespread human insecurity and internal and cross-border displacement.
- Decades-long conflict and militarisation have led to widespread human insecurity and internal and cross-border displacement.
- Child soldiers continue to be recruited into the Burmese armed forces – the Tatmadaw.

70 ACFID, *Submission no. 9*, p. 2.

71 ACFID, *Submission no. 9*, p. 2.

72 ACTU, *Submission no. 16*, pp. 5-6.

- Other major forms of human rights violations include forced labour, land confiscation, forced portering, forced relocation and arbitrary taxation.⁷³

2.64 BCA was supportive of the promotion of regional human rights mechanisms, but argued that:

Until there is political change in Burma...the development of these human rights enabling capacities, institutions and environments cannot emerge.⁷⁴

2.65 The AHRC was, however, of the opinion that the work of ASEAN, and particularly Indonesia, Malaysia, Thailand and the Philippines, was influential, stating:

I think their impact in relation to Burma is very important. As you probably know, they work in quite a conciliatory fashion. They work by example. They bring together a whole cross-section of society from all those different states that are members of ASEAN, and I think their influence in trying to persuade Burma and other countries towards that sort of initiative has been important both internationally and regionally.⁷⁵

East Timor / Timor-Leste

2.66 Evidence to the Committee suggested that there are human rights challenges facing Timor-Leste arising both from past and present actions.

2.67 Dr Clinton Fernandes, a Senior Lecturer in strategic studies argued that human rights violations committed against the people of East Timor from 1975 to 1999, during the Indonesian occupation, are a human rights challenge for the country that still needs to be addressed. The UN Transitional Authority in East Timor, in 2001, established the independent Commission for Reception, Truth and Reconciliation to 'inquire into human rights abuses committed by all sides between April 1974 and October 1999'. He noted that the resultant report, *Chega!*, '...found widespread evidence of the following "crimes against humanity" [during that period]: sexual violence, torture, enslavement, deportation or forcible transfer, arbitrary imprisonment, murder and extermination'.⁷⁶

73 BCA, *Submission no. 18*, p. 4.

74 BCA, *Transcript*, 15 April 2009, p. 44.

75 AHRC, *Transcript*, 18 February 2009, p. 10.

76 Dr Clinton Fernandes, *Submission no. 2*, pp. 1-2.

- 2.68 The Australia-East Timor Friendship Association (SA) Inc (AETFSA) also referred to *Chegal*, and agreed that there had been widespread human rights violations in East Timor during the occupation.⁷⁷
- 2.69 In addition to calls for addressing past violations, UNIFEM raised the issues of violence against women as a current human rights challenge, noting that domestic violence against women has risen in countries like East Timor.⁷⁸ It did point out though that some human rights advances have been made, noting:
- 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.⁷⁹
- 2.70 DFAT also noted that East Timor was establishing a national human rights institution.⁸⁰
- 2.71 A few organisations were of the view that, as Australia currently contributes personnel to the UN Integrated Mission in Timor-Leste and other multilateral peace operations such as the International Stabilisation Force (ISF),⁸¹ it would be an appropriate country for Australia to engage with if a human rights mechanism were to be created.⁸²
- 2.72 However, Timorese NGO La’o Hamutuk did raise some concerns about the peacekeeping arrangements in Timor-Leste, in particular, Australia’s role in the ISF.⁸³ Given the ability of international peacekeeping forces to strengthen human rights by ensuring security and stability, La’o Hamutuk saw the importance of having effective operations. La’o Hamutuk made a number of recommendations that the Committee urge the government to take action to improve the training of ISF personnel in local culture, history and language; integrate Australia’s military into the UN

77 Australia-East Timor Friendship Association (SA) Inc, *Submission no. 22*, p. 2.

78 UNIFEM, *Transcript*, 7 April 2009. p. 8.

79 UNIFEM, *Transcript*, 7 April 2009. p. 6.

80 DFAT, *Submission no. 17*, p. 1.

81 Information on its operations is available on the DFAT website:
<http://www.dfat.gov.au/facts/peacekeeping.html>.

82 Castan Centre, *Submission no. 10*, pp. 8-9; RegNet, *Submission no. 3*, p. 1; NCYLC, *Submission no. 25*, p. 9.

83 The ISF consists of Australian-led Navy, Army and Air Force (Australian and New Zealand) personnel, operating in East Timor at the invitation of the Government of East Timor, working in support of – but not under – the UN Mission in Timor-Leste.

peacekeeping forces; improve transparency of processes for managing complaints against military and other security personnel; and maintain the civil-military separation.⁸⁴

Fiji

2.73 In its submission to the inquiry, the RRRT noted estimates that 40 per cent of Fiji's population has fallen into poverty.⁸⁵ The Uniting Church indicated that human rights abuses in Fiji were against journalists, church members and those critical of the current military government in Fiji.⁸⁶ The Uniting Church added that 'Fiji faces the prospect of continuing military rule with the present interim government remaining in power for some time'.⁸⁷

2.74 It was noted that Fiji's constitution contains a few economic, social and cultural rights, and that Fiji was the only Pacific Island country that has a dedicated national human rights institution.⁸⁸ However, the Fiji Human Rights Commission is no longer recognised as complying with the Paris Principles (as set out in paragraph 4.106).⁸⁹

2.75 The FWRM, the FWCC and CCF noted that:

...the Ombudsman's office in Fiji was abolished with the purported abrogation of the Constitution and that the Fiji Human Rights Commission now has substantially restricted powers under the Human Rights Commission Decree 2009.⁹⁰

2.76 These groups were also of the view that Fiji needed an independent human rights agency stating:

This episode in Fiji's recent history points to the need for an agency with sufficient independence from government to operate as a defender of human rights. Ideally, a national commission would take the lead in this respect. However, the Fiji experience highlights the difficulty that Pacific Island states may face in establishing a tradition of operational independence from

84 La'o Hamutuk, *Submission no. 11*, p. 5.

85 RRRT, *Submission no. 13*, p. 2.

86 Uniting Church, *Submission no. 20*, p. 2.

87 Uniting Church, *Submission no. 20*, p. 9.

88 Australian Human Rights Commission, *Submission no. 19*, p. 19.

89 DFAT, *Submission no. 17*, p. 1. The principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles) require that a national human rights institution has: a clearly defined and broad-based mandate; independence guaranteed by legislation; autonomy from government; pluralism; adequate powers of investigation; and sufficient resources.

90 FWRM, FWCC and CCF, *Submission no. 33*, p. 3.

government within a national commission. The challenges posed by small populations and close personal ties between those in government and in other public institutions are evident in Fiji; they will be even greater in the less populous Pacific Island states.⁹¹

2.77 The National Native Title Council was of the view that an Asia-Pacific regional mechanism could be strengthened by calling for the United Nations Human Rights Office in Fiji to be enhanced and made more relevant to, and effective in, the region.⁹²

2.78 On 1 September 2009 Fiji was suspended from membership of the Commonwealth.⁹³ The Committee would like to highlight that the above evidence was received prior to Fiji's suspension and therefore circumstances may have changed significantly.

India

2.79 The Uniting Church advised the Committee that religious minorities in some parts of India remain vulnerable to persecution and attack, which has included murders, rapes and large scale destruction of property and the failure of state authorities to investigate such abuses and bring the perpetrators to justice.⁹⁴ UNIFEM advised that acid attacks against women and girls in India are continuing.⁹⁵

2.80 Amnesty indicated that the rapid economic growth of India has had a negative effect by expanding the gap between the rich and the poor and exacerbating entrenched patterns of discrimination.⁹⁶ It added that:

The challenge to match economic development with an increase in economic, social and cultural rights for the region's poor remains unmet, and this challenge will increase as economic growth slows.⁹⁷

91 FWRM, FWCC and CCF, *Submission no. 33*, p. 3.

92 NNTC, *Submission no. 8*, p. 2.

93 The Commonwealth website:
<http://www.thecommonwealth.org/news/213088/010909fijisuspended.htm>, viewed 18 September 2009.

94 Uniting Church, *Submission no. 20*, p. 2.

95 UNIFEM, *Transcript*, 7 April 2009. p. 8.

96 Amnesty, *Submission no. 26*, p. 2.

97 Amnesty, *Submission no. 26*, p. 2.

- 2.81 The Castan Centre was, however, of the opinion that India was a world leader in the judicial protection of economic, social and cultural rights.⁹⁸

Indonesia

- 2.82 The Uniting Church highlighted that most of the population in Indonesia lives in poverty, stating that:
- ...over 50% of the population still live on less than US\$2 per day, 27% live below the national poverty line, over 50 million Indonesians lack access to clean water, 30,000 people die annually from malaria and Indonesia has the highest maternal mortality rate in South East Asia. Indonesia is off-track to achieve the MDG targets for reducing hunger, gender equity, water and sanitation.⁹⁹
- 2.83 The Castan Centre held the view that Australian programs played a role in helping influence Indonesia, noting that:
- ...programs, such as the Indonesia-Australia Specialised Training Program (orchestrated through AUSAID), probably played a role in prompting Indonesia to ratify both international Covenants recently.¹⁰⁰
- 2.84 Amnesty advised that economic development in countries such as Indonesia has resulted in the '...development of a fairly strong human rights culture within parts of civil society, within parliament and within government structures'.¹⁰¹
- 2.85 The Commission was of the view that Australia could expand and extend technical cooperation programs, similar to the bilateral human rights program between Australia and China, to other countries such as Indonesia.¹⁰² The Uniting Church agreed that Indonesia could benefit from more development assistance from Australia.¹⁰³

98 Castan Centre, *Submission no. 10*, p. 4.

99 Uniting Church, *Submission no. 20*, p. 29.

100 Castan Centre, *Submission no. 10*, p. 6.

101 Amnesty, *Transcript*, 7 April 2009, p. 11.

102 Australian Human Rights Commission, *Submission no. 19*, p. 29.

103 Uniting Church, *Submission no. 20*, p. 29.

Vietnam

- 2.86 The Vietnam Committee on Human Rights argued that Vietnam is a country ‘where international obligations and domestic laws and practices are in fierce contradiction’.¹⁰⁴
- 2.87 Vietnam is a state party to seven core UN human rights treaties, including the *International Convention on Civil and Political Rights* and the *International Covenant on Economic, Social and Cultural Rights*. However, the Vietnam Committee on Human Rights commented that:
- As a state party to major human rights instruments, Vietnam has obligations to incorporate human rights guarantees into its domestic legal system, comply with reporting requirements and extend invitations to UN Special Rapporteurs. In fact, Vietnam [lags] behind on all three counts. It has not received any visits from Special Rapporteurs since 1998, when the Special Rapporteur on Religious Intolerance published a critical report on his visit. Vietnam then announced that it would “never accept any individuals or organizations coming to investigate religious freedom or human rights”. Since 2002, five Special Procedures have asked to visit Vietnam, without any answer.¹⁰⁵
- 2.88 The Vietnam Committee also argued that:
- ...whereas the Constitution formally guarantees human rights such as freedom of expression, religion, assembly and association, it restricts their exercise by conditioning them on compliance with State policies and interests.¹⁰⁶
- 2.89 In evidence to the Committee, members of Viet Tan highlighted four key areas of human rights concerns in Vietnam: arbitrary arrest and detention; freedom of speech and expression; religious freedom; and workers’ rights.¹⁰⁷
- 2.90 The Vietnam Committee on Human Rights also saw workers rights as an area of human rights concern, stating:
- Since Vietnam opened its economy to the free-market system under the policy of “doi moi” (renovation) in the late 1980s, economic liberalization and competition to provide cheap labour has led to serious abuses of worker rights. There are no free trade
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104 Vietnam Committee on Human Rights, *Submission no. 32*, p. 1.

105 Vietnam Committee on Human Rights, *Submission no. 32*, p. 2.

106 Vietnam Committee on Human Rights, *Submission no. 32*, p. 1.

107 Viet Tan, *Transcript*, 19 March 2009, pp. 4-6.

unions in Vietnam. All unions come under the umbrella of the “Vietnam Confederation of Labour” controlled by the Communist Party. The Labour Code restricts the right to strike in 54 sectors, and during the recent economic crisis, Vietnam introduced regulations obliging workers staging wild-cat strikes to pay 3 months wages in compensation to their employers...The ACTU and other regional trade union mechanisms could press Vietnam to improve labour rights and adhere to ILO Conventions and standards.¹⁰⁸

2.91 In the absence of an NHRI or similar mechanism, the Vietnam Committee on Human Rights felt there was potential for the following frameworks to have a positive impact on human rights in Vietnam:

- UN human rights system;
- ASEAN Human Rights Body;
- Australia-Vietnam Human Rights Dialogue; and
- human rights clauses in bilateral cooperation agreements.¹⁰⁹

West Papua

2.92 The Australia West Papua Association of South Australia and Australia-East Timor Friendship Association (SA) were both of the opinion that Indonesian military officers who committed crimes against humanity in East Timor have since gone on to commit further atrocities elsewhere, such as in West Papua.¹¹⁰

2.93 The Uniting Church also identified numerous reports of human rights violations in West Papua, stating:

Reports concerning arbitrary detention, torture, harassment through surveillance, interference with the freedom of movement, interference with human rights defenders’ efforts to monitor and investigate human rights violations and the excessive use of force on civilian populations by the security apparatus are all common in Papua.¹¹¹

108 Vietnam Committee on Human Rights, *Submission no. 32*, p. 4.

109 Vietnam Committee on Human Rights, *Submission no. 32*, p. 2.

110 Australia West Papua Association SA (inc), *Submission no. 23*, p. 3; Australia-East Timor Friendship Association (SA) Inc, *Submission no. 22*, p. 3.

111 Uniting Church, *Submission no. 20*, p. 10.

2.94 In addition, the Uniting Church noted the health concerns raised by the medical coordinator of Medecins du Monde Papua, R van de Pas, in March 2008:

Public health indicators, although incomplete, suggest that the general health of Papuans is very poor. Malaria, upper respiratory tract infections and dysentery are major causes of childhood morbidity, with infant mortality ranging from 70 to 200 per 1,000 live births a year. More than 50% of children under the age of five are undernourished and immunization rates are low. Maternal mortality is three times the rate of women in other parts of Indonesia. A generalized HIV/AIDS epidemic is unfolding in the province. The cumulative AIDS case rate in Papua of 60.9 per 100,000 inhabitants is 15.4 times higher than the national average. Prevalence of HIV among ethnic Papuans is almost twice as high as the prevalence among non-ethnic Papuans – 2.8% compared with 1.5%.¹¹²

2.95 Both the Australia West Papua Associations of Sydney and South Australia agreed that an HIV/AIDS epidemic is unfolding.¹¹³ The former added:

Papuans living in this region are amongst the poorest, least educated and suffer some of the worst health conditions in Indonesia. Papua has the highest level of HIV/AIDS and it is now endemic in the population. In the central highlands there are often no teachers, no health workers and large numbers of people die of easily treatable diseases such as Cholera.¹¹⁴

2.96 The Associations made a number of recommendations including:

- strengthening law enforcement in West Papua;
- establishing a working group on the human rights situation in West Papua at future Australia-Indonesia Ministerial Forums;
- that human rights defenders working in human rights organisations in West Papua be funded to attend human rights courses in Australia; and

112 Uniting Church, *Submission no. 20*, p. 13.

113 Australia West Papua Association (Sydney), *Submission no. 24*, p. 1; Australia West Papua Association SA (inc), *Submission no. 23*, p. 2.

114 Australia West Papua Association SA (inc), *Submission no. 23*, p. 2.

- the Australian Government provide additional aid-funding to support health programs and medical organisations (local and international) working on the ground in West Papua and in the long term to support the training of the West Papuan people themselves as health professionals.¹¹⁵

115 Australia West Papua Association (Sydney), *Submission no. 24*, pp. 2-3.

International human rights mechanisms and the Asia-Pacific

United Nations human rights system

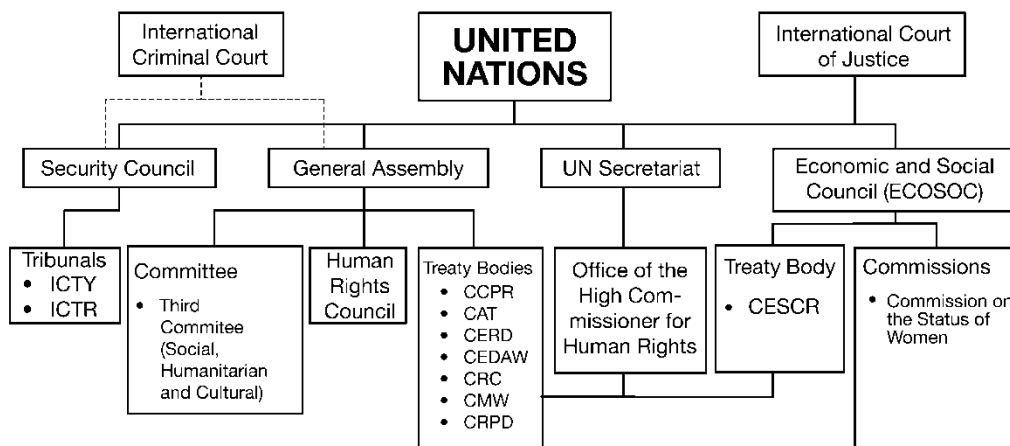


Figure 3.1 Human rights architecture at the United Nations

Source *United Nations Non-Governmental Liaison Services (NGLS), The United Nations Human Rights Systems: How To Make It Work For You, August 2008, p. 21.*¹

1 Key: CAT = Committee Against Torture; CCPR = Human Rights Committee; CEDAW = Committee on the Elimination of Discrimination Against Women; CERD = Committee on the Elimination of Racial Discrimination; CESCR = Committee on Economic, Social and Cultural Rights; CMW = Committee on Migrant Workers; CRC = Committee on the Rights of the Child; CRPD = Committee on the Rights of Persons with Disabilities; ICTR = International Criminal Tribunal for Rwanda; ICTY = International Criminal Tribunal for the Former Yugoslavia; Note: The International Criminal Court is independent of, but can work in cooperation with, the UN human rights system.

- 3.1 At the outset of this inquiry, the Committee noted that the need for reform of elements of the United Nations (UN) system has long been discussed. For example, this Committee has previously examined aspects of proposed UN reform in its 2001 report entitled *Australia's Role in United Nations Reform* and its 2005 report that looked at *Reform of the United Nations Commission on Human Rights*. In its evidence to the Committee, RegNet supported further reform of the UN system.²
- 3.2 In its discussion of the United Nations human rights system, it is not constructive for the Committee to reproduce in great detail the background and functions of the various components of the system. There are many publications that outline and evaluate – in varying degrees of detail – its machinery and operations.³ In this chapter, a brief outline of the principal organs of the UN human rights system is provided, and their application in the Asia-Pacific region discussed.
- 3.3 The establishment of the United Nations in 1945 was a significant development that followed the end of World War II. Fifty-one⁴ nations joined together to commit:
- to save succeeding generations from the scourge of war, which twice in our lifetime has brought untold sorrow to mankind;
 - to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small;
 - to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained; and
 - to promote social progress and better standards of life in larger freedom.⁵
- 3.4 Three years later saw the adoption and proclamation of the *Universal Declaration of Human Rights* (UDHR) by the UN General Assembly, on 10 December 1948. This declaration recognised that the 'inherent dignity and ...the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world'. It set out 30

2 CIGJ, *Transcript*, 7 April 2009, pp. 57-58.

3 For example, United Nations Non-Governmental Liaison Services (NGLS), *The United Nations Human Rights Systems: How To Make It Work For You*, August 2008; and Steiner HJ, Alston P and Goodman R, *International Human Rights in Context: Law, Politics, Morals*, 3rd Edition, 2008. There is an extensive range of resources examining, critiquing and seeking to reform the United Nations.

4 There are now 192 Member States.

5 UN website: <http://www.un.org/en/documents/charter/preamble.shtml/>, viewed 6 July 2009.

articles, to serve as a 'common standard of achievement' by which Member States and their peoples are to be guided:⁶

The human rights set out in the Universal Declaration represent common values drawn from the world's diverse religious, humanist, political and cultural beliefs.⁷

3.5 This was followed, in 1966, by the adoption of the *International Covenant on Economic, Social and Cultural Rights* (ICESCR) and the *International Covenant on Civil and Political Rights* (ICCPR) and the corresponding Optional Protocol. The Second Optional Protocol to the ICCPR was adopted in 1989, and focuses on abolishing the death penalty. These, in concert with the UDHR, are known informally as the International Bill of Human Rights.⁸

3.6 Despite turning 60 in December 2008, the UDHR remains at the cornerstone of the international human rights system which has emerged.⁹ When considering the potential future application of the UDHR, the Australian Bahá'í Community was optimistic that:

While there is clearly a long way to go before the commitments inherent in the Declaration and related instruments are translated into universal respect for human rights...the maturing consciousness of a global community, the development of mechanisms for implementation and monitoring of human rights and the rise of a vibrant civil society in support of these rights, holds promise that a global order capable of upholding the dignity and nobility of the individual will be realised.¹⁰

3.7 The values and standards set out in the UDHR have application in the Asia-Pacific. The Australian Bahá'í Community observed that:

All states in the Asia-Pacific region, regardless of their political, economic and cultural systems, have the duty to promote and protect all the rights and freedoms articulated in the Declaration.¹¹

6 UN website: <http://www.un.org/en/documents/udhr/>, viewed 6 July 2009.

7 APF, *Submission no. 21*, p. 4.

8 UN website: <http://www2.ohchr.org/english/law/>, viewed 6 July 2009.

9 See for example, APF, *Submission no. 21*, p. 4. The Committee marked this anniversary with a public forum, the transcript of which is available at: <http://www.apf.gov.au/house/committee/jfact/udhr/index.htm>.

10 Australian Bahá'í Community, *Submission no. 14*, p. 2.

11 Australian Bahá'í Community, *Submission no. 14*, p. 2.

3.8 The Australian Bahá'í Community is one group that have found the UN international mechanisms effective when dealing with specific human rights abuse cases affecting their community, and believes its organs are essential means for the promotion and protection of human rights and should be fully utilised for addressing human rights violations in the Asia-Pacific.¹²

3.9 In its evidence, the HRLRC referred to comments by Ms Jalal from the Pacific Regional Rights Resource Team, that:

...while it is not widely acknowledged or even understood, 'the human rights framework and the international human rights system has already brought considerable benefits to the Pacific Island countries and its citizens.' Jalal argues that Pacific Islanders who understand the implications of not having human rights to protect them 'would be loath to abdicate them, given a choice.' Even those who resist the role of human rights in the Pacific would agree that certain rights already maintain an important place in the Pacific, such as the right to a fair trial.¹³

3.10 Further, it noted Ms Jalal's summary of the gains of the international human rights framework for the Pacific as including:

- providing a framework for democracy and elections, constitutions and membership in the UN;
- providing a legal framework of good governance for Pacific Island countries;
- enabling the majority of Pacific Island countries to be perceived globally as functioning democracies and generally respecting of human rights;
- enabling and promoting the establishment of an independent judiciary;
- facilitating the allocation of considerable overseas aid where Pacific Island countries are able to demonstrate elected leadership and good governance;
- providing protection against the arbitrary use of power by the state in terms of the rights to free movement, speech, fair trial, freedom from discrimination, free and fair elections and protection against torture; and

12 Australian Bahá'í Community, *Transcript*, 19 March 2009, p. 1.

13 HRLRC, *Submission no. 15*, p. 6.

- ratification of certain international human rights treaties has driven positive legislative development.¹⁴

3.11 However, SCIL was less confident about the effectiveness of UN human rights mechanisms in the Asia-Pacific. It saw these mechanisms as performing two main roles: a political role in developing awareness of human rights and enhancing human rights protections through political dialogue and negotiating human rights instruments; and a judicial role in monitoring and seeking to enforce human rights standards. SCIL observed that:

In terms of this second role, it should be noted that the ability of the relevant bodies to perform this function in relation to the Asia-Pacific region is limited by the fact that the region has a poor record of commitment to the relevant human rights treaties, with less than a quarter of countries in the region having ratified all major instruments. Thus while the international human rights framework may be a useful complement to national human rights initiatives, there is still room for enhancing the protection and monitoring of human rights at the regional level.¹⁵

3.12 In the Pacific, the RRRT saw geography as a constraining factor on access to UN mechanisms. It commented that:

...the location of most offices of the UN in Europe have made it very difficult for Pacific people to identify with them. Even UN offices located in the Pacific are regarded as inaccessible.¹⁶

3.13 Lack of resources was also highlighted as a constraining factor. The Committee noted DFAT's advice that:

Small island countries in the Pacific region often lack the resources to ensure effective participation in important human rights and other discussions at the various United Nations (UN) bodies. Participation of Pacific Island Countries at the United Nations in New York is assisted by the Joint Office for Commonwealth Permanent Missions to the United Nations and the Alliance of Small Island States (AOSIS).¹⁷

14 HRLRC, *Submission no. 15*, pp. 6-7.

15 SCIL, *Submission no. 5*, p. 3.

16 RRRT, *Submission no. 13*, p. 14.

17 DFAT, *Submission no. 17*, p. 1.

3.14 RegNet agreed that there are 'some extreme costs and burdens' associated with accessing the UN systems, but argued that:

...[this] is something Australia should help with... 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... 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.¹⁸

United Nations human rights treaties and special procedures

3.15 The United Nations human rights system comprises two main types of mechanisms for monitoring human rights; treaty based (conventional) mechanisms, and independent and ad hoc (non-conventional) mechanisms separate to the treaty system.

Conventional mechanisms

3.16 Nine treaties are at the core of the UN's human rights treaty system:

- *International Covenant on Civil and Political Rights (ICCPR)*;
- *International Covenant on Economic, Social and Cultural Rights (ICESCR)*;
- *Convention on the Elimination of All Forms of Racial Discrimination (ICERD)*;
- *Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)*;
- *Convention against Torture, and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)*;
- *Convention on the Rights of the Child (CRC)*;
- *Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (ICPMW)*;
- *Convention on the Rights of Persons with Disabilities (CRPD)*; and

18 RegNet, *Transcript*, 7 April 2009, p. 58.

- *International Convention for the Protection of All Persons from Enforced Disappearance*.¹⁹
- 3.17 Treaty bodies are in place to support the mandate of each of the first eight treaties. Each comprises a committee of independent experts to monitor the implementation of the treaty under which it was established. The current treaty-based bodies are:
- Human Rights Committee;²⁰
 - Committee on Economic, Social and Cultural Rights;
 - Committee on the Elimination of Racial Discrimination;
 - Committee on the Elimination of Discrimination against Women;
 - Committee against Torture;
 - Committee on the Rights of the Child;
 - Committee on Migrant Workers; and
 - Committee on the Rights of Persons with Disabilities.²¹
- 3.18 Every UN Member is a party to one or more of these treaties.²² States enter into treaties on a voluntary basis, in keeping with the principle of state sovereignty that is intrinsic to international systems. However, the practical reality for many nation states is that they are facing many external and internal influences when considering whether or not to ratify a given treaty. The UN undertakes campaigns to promote and encourage ratification of its human rights treaties, regional bodies such as the European Union and the Commonwealth encourage the ratification of certain treaties (human rights and other) by their membership, and other key organisations, including NGOs, raise awareness and conduct monitoring activities on human rights.²³
- 3.19 Once a treaty is ratified the state assumes the legal obligation to implement the underlying rights of that treaty. The monitoring arrangements require nations that are party to a given treaty to produce, first an initial, and then periodic reports (every two to five years,

19 The OHCHR's Fact Sheet no. 30 provides a detailed grounding in the UN's core treaties and treaty bodies: <http://www2.ohchr.org/english/bodies/docs/OHCHR-FactSheet30.pdf>. For details of these treaties, see: <http://www2.ohchr.org/english/law/index.htm>.

20 Supporting the ICCPR and its two optional protocols.

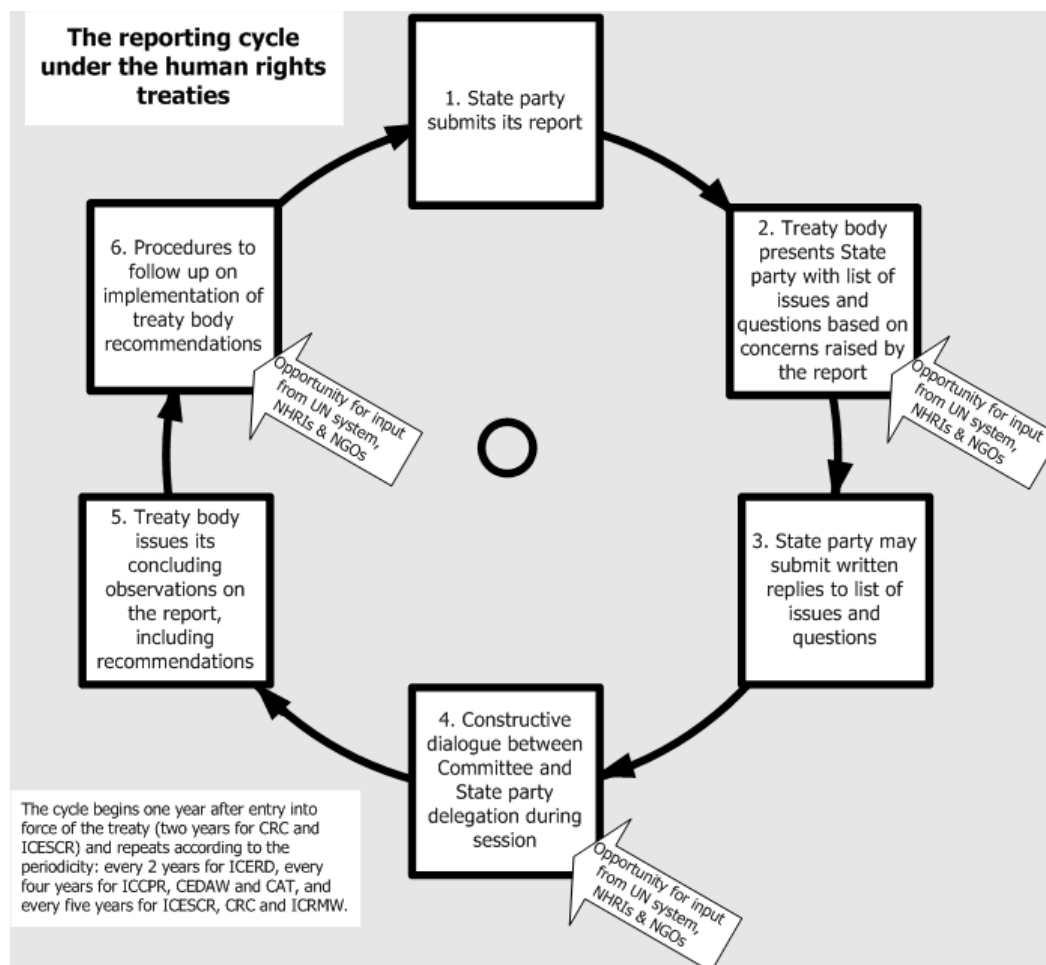
21 DFAT, *Submission no. 17*, p. 4.

22 APF, *Submission no. 21*, p. 5.

23 Parliamentary Library, Client Memorandum, *Role of UN in encouraging states to sign up to treaties*, 10 February 2010.

depending on the treaty) on the country's progress on the implementation of those rights. These reports are examined by the relevant treaty body, which makes comments or recommendations in the form of Concluding Observations in response to human rights concerns that may have emerged.²⁴

Figure 3.2 Treaty reporting cycle



Source OHCHR website²⁵

3.20 States are encouraged to publicise and use treaty body reports to guide domestic progress on meeting their treaty obligations. While the treaties bodies do not have the power to enforce their recommendations, Concluding Observations are generally taken seriously by its UN Member States.²⁶ Some of the treaty bodies are also empowered to undertake

24 DFAT, *Submission no. 17*, p. 5.

25 Source: <http://www2.ohchr.org/english/bodies/docs/ReportingCycle.gif>, viewed 6 July 2009.

26 OHCHR, *The United Nations Human Rights Treaty System*, Fact Sheet No. 30, p. 32.

inquiries, examine complaints between states, and to examine individual complaints.²⁷

- 3.21 The Castan Centre stressed the important role that the core treaties play. It observed that:

Finding a common standard of human rights is a difficult process. The UDHR and its implementing treaties, the ICCPR and ICESCR, provide the best example of universal agreement of what human rights are.²⁸

- 3.22 In a joint Office of the High Commissioner on Human Rights Pacific Regional Office and Pacific Island Forum Secretariat discussion paper, it was argued that:

Ratification and implementation of those treaties is widely recognized as a basic requirement for promoting and protecting human rights on the national level. The treaties oblige State Parties to take measures to ensure that their domestic legislation and policies conform to international standards.²⁹

- 3.23 The HRLRC contended that the ongoing review and reporting obligation under the treaty system is:

...a really important process for...[educating] countries about how human rights matter within their countries. It gives governments the opportunity to report on human rights and it gives NGOs the opportunity to respond, and then there is created a body of knowledge about how human rights are relevant in particular countries.³⁰

The low ratification rate of treaties in the Pacific

- 3.24 If it is the case that the ratification of these core international treaties are an important step in a nation's human rights development, the Committee is concerned to see the low rate of ratification of core treaties by Pacific nations.

27 OHCHR website: <http://www2.ohchr.org/english/bodies/petitions/index.htm>, viewed 6 July 2009.

28 Castan Centre, *Submission no. 10*, p. 5.

29 OHCHR Regional Office for the Pacific and the Pacific Islands Forum Secretariat, *Ratification of International Human Rights Treaties: Added value for the Pacific region*, Discussion Paper, July 2009, p. vii.

30 HRLRC, *Transcript*, 15 April 2009, p. 25.

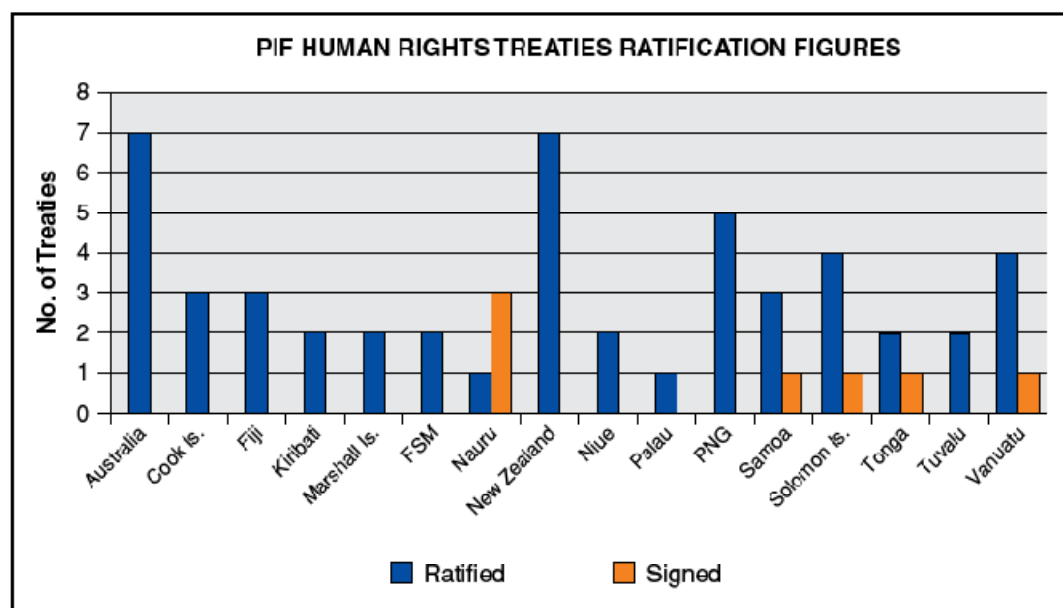


Figure 3.3 Treaty ratification in the Pacific

Source OHCHR Pacific Regional Office and PIF Secretariat, *Ratification of international human rights treaties: Added value for the Pacific region, Discussion Paper, July 2009, p. viii.*

3.25 DFAT provided the Committee with a table of the breakdown of ratifications of the major treaties by nation and treaty. With the exception of the *Convention on the Elimination of All Forms of Discrimination against Women* and the *Convention on the Rights of the Child*, the rate of ratification of treaties is very low across the Pacific.³¹

3.26 RegNet made the point that the low level of ratification of human rights treaties:

...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 [that] 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.³²

3.27 States enter into a given treaty voluntarily. There is no requirement in the United Nations or any other international system compelling states to ratify the core human rights treaties. A number of external and internal considerations will influence a nation state's decision on whether to ratify.

31 DFAT, (Supplementary) *Submission no. 35*, p. 4.

32 RegNet, *Transcript*, 7 April 2009, pp. 53-54.

The United Nations, international organisations, NGOs, internal stakeholders and other countries all have the power to encourage – and where appropriate provide support for – the ratification of core human rights treaties.

- 3.28 The Committee noted that encouraging the ratification and implementation of international human rights treaties is one of the governance initiatives under the Pacific Plan. Amnesty noted that:

The Pacific Plan requires a 6 monthly report by the Forum Secretariat on the implementation by the member countries. It has seen a number of key collaborations on human rights - the New Zealand Law Reform Commission, the New Zealand Human Rights Commission and the Forum Secretariat - to examine the cultural relativist argument and to determine how human rights are relevant and fundamental for everyone in the Pacific.³³

- 3.29 Some groups argued that the low ratification rate was indicative of governments simply directing (limited) resources to other priorities.³⁴ Others contended there could be other concerns, such as cultural objections, at the root of the low level of treaty ratification. The Castan Centre suggested that:

...if there are genuine political or cultural objections to certain elements, we should find out what precisely they are...Country by country, treaty by treaty.³⁵

- 3.30 There are implications of ratifying a treaty that also need to be considered. A number of groups were of the view that while it is a simple enough task to sign on to these treaties, once ratified, meeting obligations, such as ongoing review and reporting requirements, is a resource intensive activity.³⁶

- 3.31 Of the Pacific nations that have ratified core treaties, it appears that there are some cases of reporting obligations not being met. For example, with initial reports for CEDAW still outstanding from the Federated States of Micronesia, Kiribati, Marshall Islands, Solomon Islands; and CRC initial reports outstanding from the Cook Islands, Nauru, Niue, Tonga and Tuvalu. A number of nations also seem to have fallen behind on

33 Amnesty, *Submission no. 26*, p. 8.

34 Castan Centre, *Transcript*, 15 April 2009, p. 13.

35 Castan Centre, *Transcript*, 15 April 2009, p. 13.

36 HRLRC, *Transcript*, 15 April 2009, p. 26.

subsequently reports for other treaties, for example Papua New Guinea and Solomon Islands on their reporting on CERD.³⁷

- 3.32 The Uniting Church made the point that even in some cases where states have signed on to a convention or agreement, the impact on those who are party to them may be questionable. It raised the case of Bangladesh, who, as a full party to the convention on banning anti-personnel landmines, have not conceded any of their mines since signing on, instead retaining 13,000 for 'training purposes'. The Uniting Church representative stated:

We have raised concerns with them but they say: 'Hang on. All our neighbours haven't even signed on to this treaty yet, so we're a lot further down the path than they are. It's a little rich, you raising concerns about our stockpile of mines and expecting us to deal with it.' These are some of the practical difficulties.³⁸

- 3.33 In seeking to assist nations with treaty ratification and implementation of obligations, the Uniting Church suggest the use of templates as:

...one mechanism worth exploring...Australia has offered templates that could be implemented, with some local modification, by countries in the Pacific region to become party to certain treaties. That is a mechanism that appears to have had some success, so that is certainly a possibility.

Other bodies have promoted those templates as well. The International Committee of the Red Cross, for example, has also offered template legislation that can be modified to a local context and then further technical assistance down the track to implement all the provisions of a treaty.³⁹

- 3.34 There are clearly a number of factors to be considered in addressing the low ratification rate of treaties by nations in the Pacific, and evidence to the Committee has raised a number of ways that the international community and its regional neighbours can assist.

Non-conventional mechanisms

- 3.35 The special procedures mechanisms are the more flexible companion to the formal treaty based system. Under this arrangement, special rapporteurs (independent experts or working groups) are given a special country or theme mandate. DFAT commented that:

37 DFAT, (Supplementary) *Submission no. 35*, p. 4.

38 Uniting Church, *Transcript*, 15 April 2009, p. 32.

39 Uniting Church, *Transcript*, 15 April 2009, p. 402.

They are sometimes the only mechanism that will alert the international community to certain human rights issues.⁴⁰

3.36 The Uniting Church observed that:

UN Special Rapporteurs offer an independent and potentially effective way of putting pressure on governments to improve their respect for human rights.⁴¹

3.37 There are currently 30 thematic and eight country mandates. The former ranging from adequate housing to contemporary forms of slavery, and the country mandates covering the human rights situations in Burundi, Cambodia, the Democratic People's Republic of Korea, Haiti, Myanmar, the occupied Palestinian territories, Somalia and the Sudan.⁴² Special rapporteurs are typically independent experts, prominent in their field, who work on a voluntary basis.⁴³ The special procedures system operates through the UN Human Rights Council.

Human Rights Council

3.38 The Human Rights Council (HRC) is the main international UN body specifically addressing human rights issues. It was established by the General Assembly on 15 March 2006, replacing the UN Commission on Human Rights.

3.39 The HRC's main elements are the:

- Universal Periodic Review (UPR), a cooperative mechanism, based on interactive dialogue, to assess the human rights situations of the 192 UN Member States on a four-year rotation basis;⁴⁴
- special procedures system, involving the appointment of country and thematic mandate holders to investigate human rights situations;
- the Advisory Committee, comprised of 18 experts serving as a think-tank for the Council; and
- complaint procedures to address consistent patterns of gross and reliably attested violations of human rights and fundamental freedoms.

40 DFAT, *Submission no. 17*, p. 4.

41 Uniting Church, *Submission no. 20*, p. 3.

42 OHCHR website: <http://www2.ohchr.org/english/bodies/chr/special/index.htm>, viewed 26 August 2009.

43 DFAT, *Submission no. 17*, p. 4.

44 A calendar for the first period of review (2008-2011) is available at: <http://www.ohchr.org/EN/HRBodies/UPR/Documents/uprlist.pdf>.

3.40 DFAT noted that the HRC is 'empowered to prevent abuses, inequity and discrimination, protect the most vulnerable, and expose perpetrators'.⁴⁵

3.41 However, concerns about the effectiveness of the new body have been raised. For example, Amnesty commented that the HRC:

...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.⁴⁶

3.42 Amnesty did observe though that the HRC was still a 'work in progress' and that:

...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.⁴⁷

Universal Periodic Review

3.43 DFAT commented that:

A significant development in the Human Rights Council's work is the universal periodic review, which we regard as providing a positive and value-adding process because it allows for peer review of states' human rights records. It also enables the engagement of civil society and national human rights institutions in the work.⁴⁸

3.44 The Australian Bahá'í Community submitted that:

The new mechanism of Universal Periodic Review (UPR) has had a good start and is encouraging constructive dialogue and evaluation of the fulfilment of human rights obligations of all member states in a transparent and impartial manner. UPR should prove of value in the prevention and redress of human rights violations in the Asia-Pacific region.⁴⁹

45 DFAT, *Submission no. 17*, p. 3.

46 Amnesty, *Transcript*, 7 April 2009, p. 17.

47 Amnesty, *Transcript*, 7 April 2009, p. 10.

48 DFAT, *Transcript*, 13 August 2009, p. 4.

49 Australian Bahá'í Community, *Submission no. 14*, p. 3.

3.45 RegNet agreed that:

One of the advantages the UN system offers countries like the Solomon Islands, Tuvalu, Kiribati or any of those other very small places...[is the opportunity to] 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...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.⁵⁰

3.46 Amnesty was more restrained in its appraisal of the UPR, stating:

Time will tell whether new Council mechanisms, notably the Universal Periodic Review, will facilitate robust international scrutiny and response when members fail to honour such commitments, and make a real difference to the day-to-day lives of the people of the Asia-Pacific region.⁵¹

3.47 The Vietnam Committee on Human Rights felt that, in the case of Vietnam:

The Universal Periodic Review (UPR) could be a useful mechanism, providing that certain reforms are made to make it more effective. Vietnam's first UPR review in May 2009 showed the strengths and weaknesses of this process.⁵²

3.48 The Vietnam Committee perceived three key weaknesses in the UPR process as it applies to Vietnam:

Firstly, UPR preparation is supposedly based on consultation with civil society. In Vietnam, where there is no independent civil society, it was prepared with para-governmental bodies or "mass organisations" controlled by the CPV, thus giving a biased view of human rights practices and realities. Secondly, Vietnam lobbied its regional partners and other members of the "Axis of Sovereignty" (formerly the "Like Minded Group") to restrict their comments to "complimentary speeches". Last but not least, although some 15 countries made very specific and positive recommendations to genuinely advance human rights, the Vietnamese delegation rejected them all. Australia, for example, urged Vietnam to consider strengthening press freedom and ensure that its Penal

50 RegNet, *Transcript*, 7 April 2009, p. 58.

51 Amnesty, *Submission no. 26*, p. 3.

52 Vietnam Committee on Human Rights, *Submission no. 32*, p. 2.

Code and Criminal Procedures Code are consistent with its international treaty commitments...

Unfortunately, since only proposals accepted by the state under review are retained in the final report... Vietnam will escape with very few obligations to fulfil before its next review in 2013. This is a major obstacle in the UPR process which needs serious reconsideration by Australia and its UN partners.⁵³

Special Procedures

3.49 DFAT noted that there are three country mandate holders in the Asia-Pacific, the Special Rapporteurs on the human rights situations in Burma and the Democratic People's Republic of Korea, and the Special Representative of the Secretary-General for human rights in Cambodia.⁵⁴

3.50 The Special Rapporteur on the situation of human rights in Myanmar was established in 1992 and the mandate was last extended in 2008. The Special Rapporteur, Mr Tomás Ojea Quintana, visited Myanmar from 14 to 19 February 2009. In a previous report to the HRC, the Special Rapporteur recommended that the Government of Myanmar complete four core human rights actions:

- conduct a review of national legislation in accordance with the new Constitution and international obligations;
- progressive release of prisoners of conscience;
- a number of measures to be adopted by the military and policy in order to improve the human rights situation in the country; and
- a series of measures to be taken to address the lack of independence and impartiality of the judiciary.⁵⁵

3.51 During the Special Rapporteur's visit, the Government of Myanmar indicated its readiness to implement these four core elements, but the results are yet to be seen. The report concluded that the situation of human rights in Myanmar 'remains challenging', but stated that:

In less than one year, the new Special Rapporteur has already travelled twice to Myanmar. A very small number of prisoners of

53 Vietnam Committee on Human Rights, *Submission no. 32*, pp. 2-3.

54 DFAT, *Submission no. 17*, p. 4.

55 Human Rights Council, A/HRC/10/19, Human Rights Situations that require the Council's attention: Report of the Special Rapporteur on the situation of human rights in Myanmar, Tomás Ojea Quintana, 11 March 2009, pp. 18-21.

conscience were released during that period, which the Special Rapporteur hopes is the beginning of the progressive release of more than 2,100 others. The Special Rapporteur engaged in constructive dialogue with the authorities in Myanmar with a view to achieving the minimum requirements to ensure that the elections in 2010 and its aftermath will comply with the international standards of a democratic society and the expectations of the international community.⁵⁶

- 3.52 The mandate for the Special Rapporteur on the situation of human rights in the Democratic People's Republic of Korea (DPRK) was established in 2004 and has since been renewed annually. In the most recent report of February 2009, the Special Rapporteur concluded that:

The predicament ensuing from the broad range of systematic and widespread human rights violations in the Democratic People's Republic of Korea requires urgent attention at all levels, from national to international. Of particular concern are the pervasive transgressions in relation to food and other basic necessities, personal security, freedoms, asylum and migration, and specific groups, such as women and children.⁵⁷

- 3.53 The Special Rapporteur found it regrettable that 'the authorities of the country in question have declined to cooperate with this mandate, despite efforts... to engage with the country in a constructive manner'. He also noted that in 2008, the Government of the DPRK had failed to reply to the following communications:

- A joint communication with other theme relevant special rapporteurs,⁵⁸ concerning the alleged public executions of 15 nationals. Thirteen women and two men were reportedly accused of planning to cross into a neighbouring country to receive economic assistance with the help of relatives living abroad.
- A request for clarification on the whereabouts and safety of 22 nationals. The group, comprising 14 women and eight men, including three teenagers, were returned to the Democratic People's Republic of

56 Human Rights Council, A/HRC/10/19, Human Rights Situations that require the Council's attention: Report of the Special Rapporteur on the situation of human rights in Myanmar, Tomás Ojea Quintana, 11 March 2009, p. 18.

57 OHCHR website, <http://www.ohchr.org/EN/countries/AsiaRegion/Pages/KPIndex.aspx>, viewed 21 September 2009.

58 Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, the Special Rapporteur on extrajudicial, summary or arbitrary executions and the Special Rapporteur on the right to food.

Korea after they reportedly drifted by accident to southern waters in the western sea near Yongpyong Island.⁵⁹

- 3.54 The position of Special Representative of the Secretary-General on the situation of human rights in Cambodia was established in 1993 and was last renewed in 2008. The Special Representative's fourth mission to Cambodia was from 1 to 10 December 2007, focusing on the rule of law framework, including access to justice. The Special Representative concluded that:

Year after year, the Special Representative's predecessors and others have addressed the problems of the legal and judicial system in Cambodia and made numerous recommendations, to no avail. The Government has no incentives for reform, as the international community continues to make large financial contributions regardless of widespread violations of human rights.⁶⁰

- 3.55 The Australian Bahá'í Community asserted that:

It is evident that the Special Procedures themselves require more adequate budgetary and administrative support if they are to operate more effectively in the Asia-Pacific region. It is also clear that human rights violations would be more effectively prevented and redressed if Government cooperation with Special Procedures was not limited to access, but included full implementation of recommendations made.⁶¹

- 3.56 Further, it suggested that the:

...OHCHR should be encouraged to take steps to bolster interactive dialogue with the Special Procedures and ensure that dialogues include Member States' reports on the status of implementation of the Special Procedures' recommendations.⁶²

59 Human Rights Council, A/HRC/10/18, Human Rights Situations that require the Council's attention: Report of the Special Rapporteur on the situation of human rights in the Democratic People's Republic of Korea, Vitit Muntarbhorn, 29 February 2009, pp. 4 and 16.

60 Human Rights Council, A/HRC/7/42, Technical Assistance and Capacity-Building: Report of the Special Representative of the Secretary-General for human rights in Cambodia, Yash Ghai, 29 February 2008, p. 22.

61 Australian Bahá'í Community, *Submission no. 14*, p. 4.

62 Australian Bahá'í Community, *Submission no. 14*, p. 4.

The Social, Humanitarian and Cultural Affairs Committee

3.57 The Social, Humanitarian and Cultural Affairs Committee, known as the 'Third Committee', is one of the United Nations General Assembly's six main committees that cover special theme areas. The Third Committee's agenda covers a range of social, humanitarian affairs and human rights issues that affect the world's population. Its examination of human rights issues, include the reports of the special procedures of the Human Rights Council.

Office of the United Nations High Commissioner for Human Rights

3.58 The OHCHR mandate is:

...to work for the protection of all human rights for all people, to help empower people to realise their rights, and to assist those responsible for upholding such rights in ensuring that they are implemented. The OHCHR's method of work focuses on three dimensions: human rights standard setting, monitoring and implementation on the ground.⁶³

3.59 OHCHR's work is guided by the UN Charter, the UDHR and subsequent human rights instruments, the 1993 Vienna Declaration and Programme of Action, and the 2005 World Summit Outcome document. Support for the constructive role played by the OHCHR was reflected in evidence to the Committee.⁶⁴

3.60 In addition to headquarters in New York and Geneva, OHCHR operates worldwide. The OHCHR has operations covering South East Asia and the Pacific, with offices in Bangkok, Thailand and Suva, Fiji. It also has country offices in Cambodia and Nepal, and provides human rights advice and support to Timor-Leste, Indonesia, Papua New Guinea and Sri Lanka.⁶⁵ An office to cover South and West Asia is proposed.⁶⁶

3.61 A major priority for the OHCHR South East Asia regional office, since 2006, has been to assist ASEAN to establish a human rights mechanism. DFAT noted that the office's other priorities include:

- implementing recommendations of international treaty body mechanisms and special procedures;

63 DFAT, *Submission no. 17*, p. 2.

64 See, for example, Amnesty, *Transcript*, 7 April 2009, p. 10.

65 ACFID, (Supplementary) *Submission no. 30*, p. 4.

66 OHCHR website: <http://www.ohchr.org/EN/Countries/Pages/HumanRightsintheWorld.aspx>, viewed 22 September 2009.

- launching capacity-building programs in the administration of justice, legislative reform and human rights education in Indonesia, Lao People's Democratic Republic, Malaysia, the Philippines, Thailand and Vietnam;
- preparing the region for the UN Human Rights Council's Universal Periodic Review (UPR) process; and
- building the capacity of the UN system to promote and protect human rights in Burma.⁶⁷

3.62 DFAT observed that the OHCHR Pacific regional office had made progress on addressing pressing human rights issues, including violence against women and children, lack of judicial independence, ill-treatment in detention, social instability, weak justice systems and racial discrimination:

...by raising awareness about and encouraging the use of international human rights norms, standards and mechanisms; and supporting regional initiatives aimed at reinforcing national protection systems, including through the Pacific Islands Forum and the Asia-Pacific Forum of National Human Rights Institutions (APF).⁶⁸

3.63 Pacific regional office priorities for 2009 included:

...expanding its cooperation with regional organisations and institutions, such as the Pacific Islands Forum Secretariat (PIFS) and the Pacific Islands Chiefs of Police, to establish regional judicial structures; build national or regional human rights institutions; improve detention conditions; and work with other human rights mechanisms to improve coordination across the region.⁶⁹

3.64 The OHCHR has also worked closely with the APF in seeking to address human rights issues in the region:

The OHCHR has consistently supported the development of the APF and emphasised its role in the promotion of regional co-operation in the Asia-Pacific. The OHCHR's close partnership with the APF, and with individual institutions in the region, emphasises a shared interest in ensuring that individual NHRIs are compliant with the Paris Principles and have the capacity to

67 DFAT, *Submission no. 17*, p. 3.

68 Ibid.

69 Ibid.

effectively investigate and seek redress for human rights violations. For the OHCHR, which has significantly expanded its regional presence and country engagement, strengthening regional institutions to protect human rights is also a priority focus...The OHCHR has in recent times directed particular effort to encouraging greater participation by Pacific nations in the UN human rights mechanisms, including by encouraging Pacific nations to establish NHRIs and accede to international human rights instruments.⁷⁰

3.65 The Committee noted the Australian Bahá'í Community's suggestion that:

...the more presence there is of the Office of the High Commissioner for Human Rights Pacific Region, the more opportunities there are for people to have their rights defended, for people to understand the human rights system and for general human rights education and promotion to take place.⁷¹

International criminal tribunals and special courts

3.66 As evident in Figure 3.1 illustrating the UN's human rights architecture, the International Criminal Tribunal for the former Yugoslavia (ICTY) and International Criminal Tribunal for Rwanda (ICTR) are the major international tribunals developed to deal with the serious cases for which they are named. These tribunals aim to provide justice for victims and deter the perpetration of such atrocities in the future. They report directly to the UN Security Council.

3.67 In May 1993, the UN Security Council established the ICTY to address the occurrence of ethnic cleansing, genocide and other serious crimes during the war in Bosnia in the early 1990s. By August 2009, the ICTY had indicted 161 persons, concluded proceedings against 120, leaving 41 cases ongoing. It estimates that the major remaining trials will be covered over the next couple of years, with only a few small cases to continue into 2013.⁷²

3.68 The ICTR was established in 1994 for the prosecution of persons responsible for genocide and other serious violations committed in the territory of Rwanda during that year. UN General Assembly appointed independent judges sit between the three Trial Chambers in Arusha, Tanzania and the Appeals Chamber in The Hague. Since the first trial in

70 APF, *Submission no. 21*, p. 14.

71 Australian Bahá'í Community, *Transcript*, 19 March 2009, p. 1.

72 ICTY website: <http://www.icty.org/>, viewed 18 August 2009.

1997, as of 4 May 2009, the ICTR has handed down 38 judgements involving 47 accused, including Ministers, parliamentarians, military officers and others holding leadership positions. It is anticipated that this process will be completed in 2010.⁷³

3.69 There are also the Special Court of Sierra Leone, Special Tribunal for Lebanon and Special Tribunal for Cambodia. They were established with the involvement of the United Nations and the governments of those countries to, respectively:

- Try those who bear the greatest responsibility for serious violations of international humanitarian law and Sierra Leonean law committed in the Sierra Leone since 30 November 1996.⁷⁴
- Try all those who are alleged to be responsible for the attack of 14 February 2005 in Beirut that killed the former Lebanese Prime Minister Rafiq Hariri and 22 others.⁷⁵
- Try former senior leaders of the Khmer Rouge, whose regime lasted from 1975 to 1979 in Cambodia. It is estimated that up to three million people perished during this period of 3 years, 8 months and 20 days. The end of Khmer Rouge period was followed by a civil war. That war finally ended in 1998, when the Khmer Rouge political and military structures were dismantled.⁷⁶

International Court of Justice

3.70 The International Court of Justice (ICJ), established under the UN Charter, is the highest judicial body in the UN system. It deals with contentious international legal disputes submitted to it by the participating States⁷⁷ and requests for advisory opinions on legal questions referred by a UN body. The UN General Assembly and Security Council elect 15 judges to serve nine-year terms on the ICJ. It has helped to settle international disputes over territory, non-interference in domestic state affairs, diplomatic relations, hostage-taking, rights of asylum and economic rights.⁷⁸

73 ICTR website: <http://www.ictr.org/>, viewed 17 September 2009.

74 Source: <http://www.sc-sl.org/>, viewed 18 September 2009.

75 Source: <http://www.stl-tsl.org/action/home>, viewed 18 September 2009.

76 Source: http://www.eccc.gov.kh/english/about_eccc.aspx, viewed 18 September 2009.

77 States must be a UN member or have 'accepted' the ICJ's jurisdiction. Source: <http://www.icj-cij.org/court/index.php?p1=1&p2=6>, viewed 23 September 2009.

78 Source: <http://www.icj-cij.org/homepage/index.php?lang=en>, viewed 23 September 2009.

- 3.71 Since it commenced its work in April 1946, few of the cases brought before the ICJ have involved countries in the Asia-Pacific region.⁷⁹

The International Criminal Court

- 3.72 In 2003, the International Criminal Court (ICC) was established by treaty, under the Rome Statute,⁸⁰ as an independent permanent court to try cases of those accused of the ‘most serious crimes of international concern, namely genocide, crimes against humanity and war crimes’. While the UN international criminal tribunals played a part in spurring the formation of the ICC, it is an independent international organisation, which operates outside of – but in cooperation with – the UN system.⁸¹
- 3.73 The ICC Prosecutor may initiate an investigation on (a) referral from a state party, (b) referral from the UN Security Council or (c) *proprio motu*, on the basis of ‘communications’ received from individuals or organisations on crimes within the jurisdiction of the Court. Since its creation, the ICC has received – and has opened investigations into – three referrals from State parties on the situations in Uganda, the Congo and the Central African Republic, and a Security Council referral on the situation in Darfur in the Sudan.⁸² The ICC is significant for providing a permanent body for bringing perpetrators of serious human rights violations to justice. Australia can play a role in encouraging countries in the region to sign on and ratify the treaty.

79 Source: <http://www.icj-cij.org/docket/index.php?p1=3&p2=3>, viewed 23 September 2009.

80 The Rome Statute is available at: <http://www.icc-cpi.int/Menus/ICC/Legal+Texts+and+Tools/Official+Journal/Rome+Statute.htm>.

81 Information on the ICC is available on its website at: <http://www.icc-cpi.int/Menus/ICC/About+the+Court/>.

82 ICC website: <http://www.icc-cpi.int/Menus/ICC/Situations+and+Cases/>, viewed 18 September 2009.

Regional and national human rights mechanisms and the Asia-Pacific

Regional mechanisms

- 4.1 The Australian Human Rights Centre provided a useful definition of a regional convention in the following terms:

A regional convention is an indication that fundamental commonalities bind a group of states. Because of these commonalities, states are prepared to subscribe to a joint articulation of human rights and are prepared to be held accountable by a regional monitoring body for violations of those rights.¹

- 4.2 There is typically broad support for the idea of having a regional mechanism in place to uphold the promotion and safeguarding of fundamental human rights in a way that is appropriate to the distinctive conditions of a given region. They are an important complement to international and national human rights systems.

- 4.3 In essence, a regional mechanism is a forum for reviewing a human rights situation and, when needed, putting pressure on its regional members to observe the human rights standards that the region itself has determined as important. Regional mechanisms may comprise an establishing charter, an executive body or commission, and a form of judicial body or court.²

1 AHRC, *Submission no. 4*, p. 2.

2 SCIL, *Submission no. 5*, p. 5.

4.4 The Committee noted the comment from the RRRT that:

The UN encourages the establishment of regional human rights mechanisms because the experience from other regions with such mechanisms is that they are better able to take account of regional conditions and peculiarities.³

4.5 The AHRC observed that:

Europe, the Americas and Africa have established regional treaties stipulating key norms and setting up machinery or mechanisms which range from regional human rights commissions to regional human rights courts. The common feature of these regimes is that they review the human rights situation in states within the region and apply pressure to achieve accountability. They afford remedies in the absence of national remedies or where the national mechanisms are inadequate or do not provide the necessary redress.⁴

4.6 SCIL informed the Committee that regional frameworks can deliver the following benefits:

- implementing international human rights standards and enhancing their relevance and legitimacy in the region;
- providing an effective medium through which specific regional issues and concerns could be cooperatively targeted and addressed;
- facilitating the development of complementary human rights norms that are of regional concern and filling the lacunae in the reach and influence of international human rights institutions;
- helping to build awareness of, respect for, and a continuing dialogue on human rights;
- providing support for regional governments with less established national human rights mechanisms; and
- strengthening the independence and institutional capacity of national human rights institutions.⁵

4.7 Along similar lines, the HRLRC supported the development of regional mechanisms for the following reasons:

- regional arrangements allow for norms, institutions and processes to be designed to fit the distinctive characteristics of

3 RRRT, *Submission no. 13*, p. 13.

4 AHRC, *Submission no. 4*, p. 3.

5 SCIL, *Submission no. 5*, pp. 3-4.

the region and can provide specialised resources and promote the development of valuable region-specific expertise;

- the localised knowledge and legitimacy of such institutions means that regional mechanisms are uniquely placed to identify and respond to human rights abuses;
- a regional mechanism could support national engagement in the international human rights system by providing resources and know-how that are currently not available to many Pacific Island countries due to financial constraints;
- if properly funded, a regional human rights mechanism could facilitate human rights education programs which are currently not financially viable; and
- regional mechanisms provide a forum independent of government in which the implementation of human rights objectives may be pursued in a transparent environment less susceptible to political interference than national human rights bodies.⁶

4.8 However, it was also argued that there is an underlying tension between being able to fully subscribe to universal human rights standards while also addressing regional variations and concerns. Submitters stressed that regionalism ‘must not be promoted in such a way as to undermine universalism’.⁷

4.9 This concern about the potential ‘watering down’ of human rights standards to accommodate regional conditions have been, and will continue to be, a thorny agenda item for discussions on regional (or sub regional) mechanisms for the Asia-Pacific.

4.10 Prior to recent movements on the development of the ASEAN Intergovernmental Commission on Human Rights – the ASEAN human rights body – the Asia-Pacific was the only region not covered by any regional human rights mechanism.

Africa

4.11 The foundation document for the African human rights mechanism is the *African Charter on Human and Peoples’ Rights* (ACHPR). The ACHPR was adopted in June 1981, by the then Organisation of African Unity – which became the Africa Union in 2001 – and came into force on 21 October 1986. The preamble reaffirmed its members’ commitment to:

6 HRLRC, *Submission no. 15*, p. 35.

7 Castan Centre, *Submission no. 10*, p. 6.

...coordinate and intensify their cooperation and efforts to achieve a better life for the peoples of Africa and to promote international cooperation having due regard to the Charter of the United Nations and the Universal Declaration of Human Rights.⁸

4.12 Each state party to the Charter must report, biennially, on the legislative or other measures taken, with a view to giving effect to the rights and freedoms recognised and guaranteed in the ACHPR. The Charter provided for the establishment of the African Commission on Human and Peoples' Rights to promote human and peoples' rights and ensure their protection in Africa. Its major functions are the:

- protection of human and peoples' rights;
- promotion of human and peoples' rights; and
- interpretation of the African Charter.⁹

The Asia-Pacific Forum noted that the African Commission's role also involves considering individual complaints of violations of the Charter.¹⁰

4.13 A protocol under the African Charter makes provision for the establishment of an African Court on Human and Peoples' Rights. The African Commission will play a role in the preparation of cases for submission to the Court. The APF observed that the court would be integrated with the African Court of Justice:

The Court of Justice of the African Union is intended to be the "principal judicial organ of the Union", to take over the duties of the African Commission on Human and Peoples' Rights, as well as act as the supreme court of the African Union, interpreting all necessary laws and treaties. The Protocol establishing the African Court on Human and Peoples' Rights entered into force in January 2004 but its merging with the Court of Justice has delayed its establishment.¹¹

4.14 In contrast to the European and inter-American human rights systems, whose judicial bodies were more integral to their development, the African Court is a belated development that is yet to commence operation.

8 Source: http://www.achpr.org/english/info/charter_en.html, viewed 25 June 2009. A comparison of the rights contained in the African Charter and those under the UDHR, ICCPR and the ICESCR are available at: http://www.diplomacy.edu/africancharter/acharter_relation.asp, viewed 25 June 2009.

9 DFAT, *Submission no. 17*, p. 8.

10 APF, *Submission no. 21*, p. 6.

11 APF, *Submission no. 21*, p. 6.

- 4.15 Existing courts in the international system specifically to address African matters are the International Criminal Tribunal for Rwanda and the Special Court for Sierra Leone – a joint project of the United Nations and the Government of Sierra Leone.

The Americas

- 4.16 The inter-American human rights system comprises its main instruments in the *American Declaration of the Rights and Duties of Man* (1948) and the *American Convention on Human Rights* (1969), other supporting instruments,¹² the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights.¹³
- 4.17 The inter-American human rights system coexists with the UN human rights mechanisms. The Inter-American Commission on Human Rights (IACHR), established in 1959, is an autonomous organ of the Organisation of American States (OAS) and is responsible for the promotion of the observance and defence of human rights in the region. The following are the key features and functions of the IACHR:
- representing all 35 OAS members and seven members who act independently;
 - a permanent body that meets in ordinary and special sessions several times a year;
 - investigating individual petitions which allege human rights violations;
 - observing the general human rights situation in the member States and publishing special reports regarding the situation in a specific State, when it considers it appropriate;
 - recommending to the member States of the OAS the adoption of measures which would contribute to human rights protection; and
 - submitting cases to the Inter-American Court of Human Rights and appears before the Court in the litigation of cases.¹⁴
- 4.18 The Inter-American Court of Human Rights, established in 1979, is made up of jurists – elected and serving in an individual capacity – with recognised expertise in human rights. The Court is responsible for:

12 Including the *Inter-American Convention on Forced Disappearance* (1994), *Inter-American Convention to Prevent and Punish Torture* (1985), and the *Convention on the Prevention, Punishment and Eradication of Violence against Women* (1994).

13 RRRT, *Submission no. 13*, Annex C.

14 DFAT, *Submission no. 17*, p. 8.

...enforcing and interpreting the provisions of the American Convention on Human Rights. It hears and rules on specific cases of human rights violations referred to it and it issues opinions on matters of legal interpretation brought to its attention by other OAS bodies or member states.¹⁵

Arab states

- 4.19 An attempt was made to put in place a human rights charter for the Arab states with the adoption of a charter on 15 September 1994. However, no states ratified that charter, which was criticised for failing to meet international human rights standards.¹⁶
- 4.20 The original charter was revised and the current *Arab Charter on Human Rights* was adopted by the Council of the League of Arab States¹⁷ on 22 May 2004, paving the way for a regional human rights mechanism for the Arab states.¹⁸ The Arab Charter came into force in March 2008, with the states agreeing to 'place human rights human rights at the centre of the key national concerns of Arab States' and to 'entrench the principle that all human rights are universal, indivisible, interdependent and interrelated'.¹⁹
- 4.21 The APF observed that:
- The revised Charter is a substantial improvement on the original document, especially on issues such as state of emergency, fair trial, slavery, sexual violence, disability and trafficking. Some provisions in the new Charter, however, are still inconsistent with international human rights law, e.g. provisions for death penalties for minors; right to life derogated in states of emergency and no references to cruel, inhuman and degrading punishment, although torture is prohibited.²⁰
- 4.22 The Castan Centre similarly expressed concerns that too many of the rights contained in the Arab Charter were 'subject to lawful restrictions',

15 APF, *Submission no. 21*, p. 7.

16 APF, *Submission no. 21*, p. 8.

17 League of Arab States members are Algeria, Bahrain, Comoros, Djibouti, Egypt, Iraq, Jordan, Kuwait, Lebanon, Libya, Mauritania, Morocco, Oman, Palestine, Qatar Saudi Arabia, Somalia, Sudan, Syria, Tunisia, United Arab Emirates and Yemen.

18 APF, *Submission no. 21*, p. 8.

19 Castan Centre, *Exhibit no. 14*, p. 2.

20 APF, *Submission no. 21*, p. 8.

thus creating the potential that a given right need not be observed as long as legal provision was made to allow for this.²¹

4.23 The Arab Charter provides for the establishment of an Arab Human Rights Committee that would:

- consist of seven independent and impartial committee members of parties to the charter (elected by secret ballot);
- consider the triennial reports that member states are required to submit to the Council of the League's Secretary-General, on progress made in their state on giving effect to the rights and freedoms in the Charter;
- submit an annual report on its activities, with any comments and recommendations to the Secretary-General; and
- be provided with all the necessary financial and human resource and facilities that are required to discharge its functions effectively.²²

4.24 It is too early to tell what impact the Arab Charter will have on improving human rights in the region. Since it came into force, the first Arab Conference on Human Rights was held in Doha, Qatar in December 2008. Outcomes of the conference included:

- encouraging all Arab countries to ratify and comply with international human rights treaties, as well as the Arab Charter on Human Rights;
- participants calling for a regional human rights work plan involving the Arab League, national governments and civil society organisations;
- urging Arab governments to develop a supportive legal framework and to establish mechanisms for improved protection of human rights, including an Arab Tribunal for Human Rights; and
- recommending the establishment of an Arab Fund, under the umbrella of the Arab League, to promote human rights.²³

21 Castan Centre, *Transcript*, 15 April 2009, p. 11.

22 Castan Centre, *Exhibit no. 14*.

23 Source: <http://www.asiapacificforum.net/news/call-for-arab-countries-to-boost-human-rights-protection.html>, viewed 29 January 2009.

Europe

4.25 The Council of Europe, founded in 1949, is an international organisation working towards European integration. It works through convention and international treaties to set the common legal and human rights standards and the human rights code for its membership.²⁴

4.26 The *European Convention for the Protection of Human Rights and Fundamental Freedoms* (1950), the *European Social Charter* (1961)²⁵ and the European Court of Human Rights form the foundation of the European human rights system. Other instruments include *European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment* (1987) and the *Framework Convention on National Minorities* (1995).

4.27 The European Court of Human Rights 'supervises compliance with the Convention and thus functions as the highest European court for human rights and fundamental freedoms'. All Council of Europe member states have signed the European Convention and so come under the Court's jurisdiction.²⁶

4.28 In its submission, the RRRT reproduced the United Nations Development Program assessment that:

The European human rights system is by far the most developed of the regional systems. Distinguished by its preference for judicial approaches, it has gone the furthest in developing judicial processes. The European system also enjoys the highest rate of state compliance with its decisions.²⁷

4.29 Another organisation addressing human rights issues at the regional level in the Organisation for Security and Co-operation in Europe (OSCE). The OSCE is the largest regional security organisation in the world, working on early warning, conflict prevention, crisis management and post-conflict rehabilitation. It recognises that lasting security is not possible without respect for human rights and fundamental freedoms. OSCE institutions are, therefore, active in human rights protection:

The OSCE monitors and reports on the human rights situation in each of its 56 participating States, particularly in the areas of freedom of assembly and association, the right to liberty and to a fair trial, and the use of the death penalty. It provides training and

24 DFAT, *Submission no. 17*, p. 8.

25 Revised in 1996.

26 DFAT, *Submission no. 17*, p. 9.

27 RRRT, *Submission no. 13*, Annex C.

education across the field of human rights, including for government officials, law-enforcement officers, rights defenders and students.²⁸

The Asia-Pacific

4.30 In its submission to the Committee, the APF observed that:

Unlike Europe, the Americas and Africa, the Asia-Pacific does not have a regional inter-governmental human rights mechanism. Perhaps reflecting its immense size and diversity, neither [do] Asia and the Pacific have a pan-regional inter-governmental human rights machinery which parallels those established in other regions of the world.²⁹

Association of Southeast Asian Nations

4.31 Until recently, the Asian and Pacific regions did not have any formal regional human rights mechanism. However, ASEAN now has a subregional human rights body covering its member countries.

4.32 ASEAN was established in 1967 to: accelerate economic growth, social progress and cultural development in the region; and to promote regional peace and stability through abiding respect for justice and the rule of law in the relationship among countries in the region and adherence to the principles of the United Nations Charter. Its original membership – Indonesia, Malaysia, Philippines, Singapore, and Thailand – has since expanded to include Brunei Darussalam, Cambodia, the People's Democratic Republic of Laos, Myanmar and Vietnam.³⁰

4.33 On 20 July 2009, the terms of reference for an ASEAN human rights body were adopted at the 42nd ASEAN Ministerial Meeting of Foreign Ministers. It was agreed that the ASEAN Intergovernmental Commission on Human Rights (AICHR) would be formed. The formal establishment of the Commission took place at the 15th ASEAN Summit in Phuket, Thailand in October 2009.³¹

28 DFAT, *Submission no. 17*, p. 9.

29 APF, *Submission no. 21*, p. 16.

30 Source: <http://www.aseansec.org/>, viewed 22 September 2009.

31 Source: http://www.15thaseansummit-th.org/PDF/24-04_Declaration_on_the_Inauguration_of_the_AICHR.pdf, viewed 26 October 2009.

4.34 The AICHR will cover the ASEAN countries and it is anticipated that progress by the body on human rights issues will be incremental.³²

Its terms of reference outlines AICHR's purpose:

- to promote and protect human rights and fundamental freedoms of the peoples of ASEAN;
- to uphold the right of the peoples of ASEAN to live in peace, dignity and prosperity;
- to contribute to the realisation of the purposes of ASEAN as set out in the ASEAN Charter in order to promote stability and harmony in the region, friendship and cooperation among ASEAN Member States, as well as the well-being, livelihood, welfare and participation of ASEAN peoples in the ASEAN Community building process;
- to promote human rights within the regional context, bearing in mind national and regional particularities and mutual respect for different historical, cultural and religious backgrounds, and taking into account the balance between rights and responsibilities;
- to enhance regional cooperation with a view to complementing national and international efforts on the promotion and protection of human rights; and
- to uphold international human rights standards as prescribed by the Universal Declaration of Human Rights, the Vienna Declaration and Programme of Action, and international human rights instruments to which ASEAN Member States are parties.³³

4.35 Some are optimistic about having an ASEAN human rights body. For example, the APF noted that in her address at the 2007 Annual Workshop for Asia-Pacific regional cooperation on human rights, Ms Louise Arbour, the then UN High Commissioner for Human Rights, commented:

I believe than an ASEAN Human Rights Mechanism can articulate a common approach to a complex problem, an approach that will assist ASEAN Member States, from a position of shared regional values, to address shortcomings in their national frameworks...Finally, I believe that an ASEAN human rights mechanism will serve as the inspiration and model for further progress within the other sub-regions of this broad and diverse Asia-Pacific region.³⁴

32 Source: <http://www.aseansec.org/PR-Another-Step-Forward-for-Regional-HR-Cooperation.pdf>, viewed 1 September 2009.

33 Source: <http://www.asean.org/DOC-TOR-AHRB.pdf>, viewed 1 September 2009.

34 APF, *Submission no. 21*, pp. 21-22.

- 4.36 However, concern remains about the perceived limitations of the AICHR's mandate. During the development process, concerns were expressed about the limited scope of the mandate,³⁵ and that ASEAN countries would continue to observe the tradition of non-interference in members' domestic affairs, thus limiting the effectiveness of monitoring functions.³⁶
- 4.37 In welcoming remarks at the 8th Workshop on the ASEAN Regional Mechanism on Human Rights in July 2009, comments by the Chairperson of the Malaysian Working Group for an ASEAN Human Rights Mechanism, Data Param Cumaraswamy, appeared to confirm that the body's terms of reference would not meet many interest groups' expectations. He stated:
- At this juncture, it is really no secret that civil society, the Working Group included, and even some governments perhaps, would have preferred a much stronger, a much more balanced, human rights body than what the imminent one will most likely be. We would have preferred a [Terms of Reference] document more legal than political in nature.³⁷
- 4.38 The National Human Rights Institutions (NHRIs) of Indonesia, Malaysia, the Philippines and Thailand (the ASEAN NHRI forum) prepared a joint position paper – following formal discussions in Jakarta on 27 August 2009 – on the new AIHRC. The ASEAN NHRI forum congratulated ASEAN on the adoption of the terms of reference for the AIHRC and acknowledged the significance of this step, but also drew attention to what it identified as deficiencies in the AIHRC mandate, including: its lack of independence, its protection power severely circumscribed by the terms of reference, and its promotional functions dependent on the political will of member states. They suggested that the AICHR should establish a process for regular engagement with the region's NHRIs, and that AICHR should be supported by a separate, permanent and professional secretariat.³⁸

Background on the development of an ASEAN human rights body

- 4.39 In November 2007, the ASEAN Charter was signed by the 10 ASEAN nations. Article 14 of the Charter provided for the establishment of an

35 For example, see RegNet, *Submission no. 3*, pp. 4-5; SCIL, *Submission no. 5*, p. 5; and FORUM-ASIA, *Submission no. 12*, pp. 2-3.

36 For example, see ACTU, *Submission no. 16*, p. 8 and AHRC, *Submission no. 4*, pp. 4-5.

37 Source: <http://www.aseanhrmech.org/downloads/Dato%20Param%20Cumaraswamy.pdf>, viewed 22 September 2009.

38 APF website: <http://www.asiapacificforum.net/news/asean-nhris-call-for-engagement-with-regional-rights-body.html>, viewed 1 October 2009.

ASEAN human rights body (AHRB) 'in conformity with the purposes and principles of the ASEAN Charter [in] relation to the promotion and protection of human rights and fundamental freedoms'.³⁹

4.40 FORUM-ASIA noted that the ASEAN Charter contained a number of references to human rights:

- ASEAN will "[adhere] to the principles of democracy, the rule of law and good governance, respect for and protection of human rights and fundamental freedoms." (Preamble)
- The purpose of ASEAN is "to strengthen democracy enhance good governance and the rule of law, and to promote and protect human rights and fundamental freedoms, with due regard to the rights and responsibilities of the Member States of ASEAN." (Purpose)
- ASEAN and its member state shall act in accordance with the "respect for fundamental freedoms, the promotion and protection of human rights, and the promotion of social justice." (Principles)⁴⁰

4.41 The ASEAN Eminent Persons Group was set up to make practical recommendations on the creation of a human rights charter. At the outset, it commented that 'the establishment of an ASEAN human rights mechanism is a worthy idea that should be pursued'.⁴¹

4.42 During the development process the likely effectiveness of the emerging human rights body was questioned. Illustrative of this concern is the academic paper which queried whether the mechanism would have a 'tongue but no teeth'.⁴²

4.43 FORUM-ASIA felt that the development of an AHRB could be an important human rights milestone for the region. However, in its submission, FORUM-ASIA highlighted a number of its concerns coming out of its engagement with the process for the creation of the body:

- Although the ASEAN Charter recognises the importance of human rights in its Preamble and the Principles, there is however no specific mention of the Universal Declaration of Human Rights. It is therefore of utmost importance to ensure that the Term of Reference (TOR) of the AHRB will specifically recognise the Universal Declaration of Human Rights and international human rights laws as a source of guidance for its mandate and work on human rights.

39 APF, *Submission no. 21*, p. 21.

40 FORUM-ASIA, *Submission no. 12*, Annex 1, p. 3.

41 APF, *Submission no. 21*, p. 20.

42 Durbach, A., Renshaw C. and Byrnes, A., *Exhibit no. 1*.

- The TOR must take long term vision into account to include ensuring that the TOR is not drafted in finite terms that would obstruct its development in the future. We believe that the TOR should set out the plan or road map, commensurate with benchmarks for its development. Once the benchmarks are met, the gradual improvement of ASEAN human rights mechanism and system may be undertaken. Nevertheless, AHRB should start from their commitment which was made in 1993 on human rights.
- Ultimately, AHRB should develop a comprehensive human rights treaty or treaties reflecting the international human rights laws and standards. However, there had been a resistance stand point from civil society groups during the 2nd Regional Consultation on ASEAN and human rights in Jakarta from 4-7 August 2008 on having [an] ASEAN human rights convention. There is a fear that the ASEAN will compromise the international human rights standards with the so called “Asian values”, and ASEAN principles of non-interference.⁴³
- The ongoing process of establishing the ASEAN Commission on the promotion and protection for the rights of women and children (ACWC) should finally [be] subsumed within the AHRB to mainstream women’s rights and children’s rights in the main human rights organ of ASEAN. We also believe that AHRB shall be open for the creation of other sub-commissions, including sub-commission on migrant workers, indigenous peoples, ethnic minorities, people with disability and others.⁴⁴

4.44 The draft AHRB terms of reference emerged from the 8th Workshop on the ASEAN Regional Mechanism on Human Rights in July 2009. The summary of proceedings also contained a number of conclusions. In particular, the Committee noted the following:

- The Workshop recognizes that while member-states of ASEAN still have diverse records on human rights, it is encouraging that ASEAN itself, as a rules-based regional organization, has increasingly paid attention to human rights.
- The Workshop recognizes that a main challenge for ASEAN is to develop from an inter-executive association into an inter-peoples and people-oriented organization.
- The Workshop envisages a regional system on human rights which is progressively capable of effectively promoting and protecting human rights.

43 FORUM-ASIA, *Submission no. 12*, p. 2.

44 FORUM-ASIA, *Submission no. 12*, p. 3.

- The Workshop encourages civil society to continue to engage the AHRB and other ASEAN organs, and to make its opinions count in shaping the human rights architecture of ASEAN.
- The Workshop notes that while there appears to be an imbalance between the promotion and protection functions of the AHRB, there are openings in the ToR which can be taken advantage of, and forward-looking strategies may be adopted to advance human rights in the region.
- The Workshop reiterates that the AHRB has to be seen in the context of the ASEAN Charter. Although the AHRB is the main venue for asserting human rights, stakeholders should make use of all other platforms within ASEAN for the purpose of human rights promotion and protection.⁴⁵

4.45 Also coming out of the workshop was the recognition that:

...the AHRB will depend not only on a preset roadmap, but also on how ASEAN will evolve as a community.⁴⁶

De facto mechanisms

4.46 The new ASEAN human rights mechanism aside, the rest of the region still remains uncovered by any formal regional human rights mechanism. There are, however, what could be described as 'de facto' mechanisms currently operating at the regional and subregional levels.⁴⁷

The Commonwealth

4.47 The Commonwealth is a collection of 53 countries that have joined together to work cooperatively towards democratic and development goals. Its membership comprises some of the world's richest and poorest countries, and includes some Asian and South Pacific nations.⁴⁸

4.48 Promoting human rights is an important part of the Commonwealth's mandate. In particular, it is tackling human rights issues through the Commonwealth Human Rights Initiative (CHRI). The CHRI, formed in 1987, is:

...an independent, non-partisan, international non-governmental organisation, mandated to ensure the practical realisation of

45 Working Group for an ASEAN Human Rights Mechanism, Summary of Proceedings, p. 5. Available at: <http://www.aseanhrmech.org/news/participants-anticipates-more-engagements-with-human-rights.htm>, viewed 22 September 2009.

46 Ibid.

47 DFAT, *Submission no. 17*, p. 6.

48 Source: <http://www.thecommonwealth.org/>, viewed 6 July 2009.

human rights in Commonwealth countries. The CHRI's mandate is to promote awareness of and adherence to the Harare Principles, the Universal Declaration of Human Rights and other internationally recognised human rights instruments and declarations made by the Commonwealth Heads of Government as well as domestic instruments supporting human rights in the Commonwealth.⁴⁹

4.49 The CHRI works towards the practical realisation of human rights in the Commonwealth. In the Pacific, for example, the CHRI has been working to deepen and build its presence in the region, leading to the strengthening of its involvement and influence with governments, media, non-government organisations and civil society groups on human rights issues.⁵⁰ The CHRI's major program areas are the right to information, constitutions, and police and prison reforms.⁵¹

4.50 RegNet made the point that:

In working with governments on the ground [the CHRI] 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.⁵²

4.51 The Commonwealth also provides practical assistance to the region through the Commonwealth Joint Office.⁵³ The Joint Office in New York assists small nations, including Nauru, Samoa, Solomon Islands and Tuvalu, to participate in United Nations discussions by providing the office as a base for small nations to operate, when having permanent missions would be prohibitive.⁵⁴

Asia-Pacific Forum of National Human Rights Institutions

4.52 The APF is seen by many as a de facto mechanism, or at the least the closest thing to a human rights mechanism, covering the Asia-Pacific region. NHRIs, since 2006, have had formal rights to participate directly in

49 DFAT, *Submission no. 17*, p. 5.

50 CHRI, *Annual Report 2007-2008*, p. 40.

51 Source: <http://www.humanrightsinitiative.org/>, viewed 6 July 2009. Information about CHRI activities are available on its website and in its annual reports. It also produces a biennial report on a specific human rights issue of concern to the Commonwealth.

52 RegNet, *Transcript*, 7 April 2009, p. 55.

53 The Commonwealth Joint Office is funded by a number of Commonwealth countries including Australia, Canada and the United Kingdom.

54 DFAT, *Submission no. 17*, p. 1.

the work of the UN Human Rights Council and its subsidiary mechanisms (see figure 3.2).⁵⁵

4.53 The Asia-Pacific Forum, established in 1996, is a member-based organisation that supports the establishment and strengthening of national human rights institutions in the region. The APF's primary functions are:

- Strengthening the capacity of individual APF member institutions to enable them to more effectively undertake their national mandates.
- Assisting governments and non-government organisations to establish NHRIs in compliance with the Paris Principles.
- Promoting regional cooperation on human rights issues.⁵⁶

Table 4.1 Membership of the Asia-Pacific Forum

Full Members	Full Members	Associate Members ⁵⁷	Candidate Members
Afghanistan	New Zealand	Maldives	—
Australia	Palestinian (Independent Commission for Human Rights)	Sri Lanka	
India	Philippines		
Indonesia	Qatar		
Jordan	Republic of Korea		
Malaysia	Thailand		
Mongolia	Timor Leste		
Nepal			

Source APF website⁵⁸

4.54 As listed in Table 4.1, there are currently 15 Paris Principles compliant NHRIs that are members of the APF. Australia and New Zealand both have accredited NHRIs. Other regional members falling within the scope of this inquiry include Indonesia, Korea, Malaysia, the Philippines, Sri Lanka, Thailand and Timor-Leste. However, with the troubled case of the Fiji Human Rights Commission losing its compliance with Paris

55 APF, *Submission no. 21*, p. 10.

56 APF, *Submission no. 21*, p. 13.

57 Associate and Candidate APF membership apply to those that do not currently comply with the Paris Principles.

58 Source: <http://www.asiapacificforum.net/members>, viewed 2 September 2009. Note: Fiji resigned from the APF in 2007.

Principles, there are currently no accredited NHRIs in the Pacific.⁵⁹ The APF also anticipate being joined by Bahrain, Bangladesh, Pakistan, Papua New Guinea and Samoa, who have all made a commitment to establish an NHRI.⁶⁰

- 4.55 The APF is funded through a diversified base of donors, including UN agencies, governments, foundations, NGOs, individuals, and from membership fees. The Australian Government provides the APF with approximately 30 per cent of its funding. The Committee noted the APF's advice that:

The Australian Government has supported the work of the APF, both financially with the provision of regular financial support through AusAID and politically through Government statements in a variety of international fora, since its establishment in 1996.⁶¹

- 4.56 According to APF, it:

...advances human rights in the Asia-Pacific through its member institutions and, by facilitating the formation and growth of NHRIs through the provision of training, networking and resource sharing, plays a key role in developing regional and sub-regional human rights dialogues, networks and practical programmes of support...Its work also includes the development of jurisprudence for the Asia-Pacific through the APF's Advisory Council of Jurists.⁶²

- 4.57 It further commented that:

In the absence of a formal inter-governmental Asia-Pacific regional human rights mechanism, the APF, through its member NHRIs, is uniquely positioned to directly influence the development of human rights law and practice in the Asia-Pacific.⁶³

- 4.58 A number of submitters agreed that the APF is the closest thing that Asia and the Pacific had to a wider regional rights body. The Castan Centre observed that:

The APF is effectively operating as a surrogate 'regional body', in the absence of a more formal regional system. It is of course a very different 'body' to those that operate in more formal systems, such

59 Australian Human Rights Commission, *Submission no. 19*, p. 16.

60 APF, *Submission no. 21*, p. 12.

61 APF, *Submission no. 21*, p. 15.

62 APF, *Submission no. 21*, pp. 12-13.

63 APF, *Submission no. 21*, p. 13.

as the American or European Court of Human Rights. It operates in a more informal, grassroots manner. It also covers an idiosyncratic 'Asia-Pacific' area, including for example Afghanistan whilst currently excluding all Pacific islands. However, the formation of a mechanism on the basis of Paris-compliant NHRIs rather than strict geographic concerns is not illogical.⁶⁴

4.59 The APF informed the Committee that it 'already functions, in an informal sense, as the sole existing pan Asia-Pacific human rights mechanism', and is the only existing regional human rights body which includes an Asia-Pacific membership.⁶⁵

4.60 However, the Commission cautioned that while the APF was the only existing regional human rights body with Asia-Pacific membership, '...it is important to recognise that the APF is not a formal intergovernmental body like the regional human rights bodies in Europe, the Americas and Africa'.⁶⁶

4.61 The Castan Centre commented that:

...at the moment [the Asia-Pacific Forum] is very much an informal network of national human rights institutions. They are doing very good work in terms of engagement and fact-finding in investigation, and they are engaging in some very interesting research projects, but they do not really go any further than that. They are not an enforcement body. They are an advocacy body to some extent, but it is very much a federation of national institutions, and the national institutions themselves have very different mandates from one country to another. So it is extremely loose, and it is an extremely good start, but it is a long way short of the version that they have under the Council of Europe or something of that sort.⁶⁷

4.62 The AHRC is currently conducting a three-year study (2008-2010) into the work of the Asia-Pacific Forum, examining its impact on the capacity of NHRIs. Based on its research, the AHRC saw the Asia-Pacific NHRIs network as having made human rights contributions in the region through:

64 Castan Centre, *Submission no. 10*, p. 8.

65 APF, *Submission no. 21*, p. 4.

66 Australian Human Rights Commission, *Submission no. 19*, p. 16.

67 Castan Centre, *Transcript*, 15 April 2009, p. 14.

- increasing domestic civil society awareness and understanding of human rights via educational and training initiatives;
- increasing the investigation and reporting of complaints of human rights abuses, affording them visibility and the potential for regional and/or international condemnation;
- the development of innovative forms or models of redress appropriate to specific societal or state needs;
- assisting in the implementation of government policies, laws and programs consistent with international human rights treaties;
- the development of regional NHRI, or national human rights institution, networks, which facilitate important transnational collaboration on issues of human rights concern – for example, trafficking and migrant workers; and
- the incremental dissemination of human rights principles and standards into domestic jurisdictions where state governments might have otherwise resisted their reception if instigated by other sources, for example, a United Nations resolution.⁶⁸

4.63 The APF advised that it:

...is currently collaborating with the regional office of the UN Development Program (UNDP) to develop and trial a capacity needs assessment project to support NHRIs in the Asia-Pacific. The project aims to develop an approach that will see NHRIs and UNDP country teams undertake their own needs assessments and then share their ideas in order to identify achievable and sustainable steps to build the capacity of NHRIs. This joint project with the UNDP is seen as an important initiative that will provide a more solid basis for international support for NHRIs and for the institutions themselves to develop and work more effectively.⁶⁹

4.64 The APF indicated that:

...[it] will continue, within available capacity, to respond to requests for assistance and support from a variety of regional stakeholders as Pacific States lead and shape the issues and considerations which must be taken into account in the continuing debate around national and regional mechanisms. As with options

68 AHRC, *Transcript*, 18 February 2009, pp. 3-4.

69 APF, *Submission no. 21*, p. 14.

for national human rights mechanisms, regional mechanisms can take a variety of forms.⁷⁰

Pacific Islands Forum

4.65 The PIF, originally founded in 1971 as the South Pacific Forum, is a regional economic and political intergovernmental organisation for the Pacific. It is the focal point for cooperation on regional issues. Its membership includes Australia, the Cook Islands, Federated States of Micronesia, Fiji, Kiribati, Nauru, New Zealand, Niue, Palau, Papua New Guinea, Republic of Marshall Islands, Samoa, Solomon Islands, Tonga, Tuvalu and Vanuatu.

4.66 An Eminent Persons Group was appointed by PIF Leaders in 2003. They developed a vision – adopted by PIF the following year – for:

...a region of peace, harmony, security and economic prosperity...respected for the quality of its governance, the sustainable management of its resources, the full observance of democratic values and for its defence and promotion of human rights.⁷¹

4.67 The Pacific Plan, subsequently endorsed by the PIF leaders in 2005, and revised in 2007, was to give effect to this vision. It identified 15 strategic objectives to achieve the goals of economic growth, sustainable development, good governance, and security. It included a call for the strengthening of human rights mechanisms within the region. Some direct efforts have been made on fostering dialogue on this issue in the region. For example, a symposium entitled ‘Strategies for the Future: Protecting Human Rights in the Pacific’ was held in April 2008:

One key outcome of this was the garnering of support for the establishment of a Working Group to carry out further work on the development of a Pacific human rights charter and mechanism, within the scope of the Pacific Plan.⁷²

4.68 The Commission noted that the PIF secretariat and the APF have been working:

...towards establishing the position of a human rights adviser within the PIF structure. According to the APF, this new role will provide the PIF with much-needed human rights capacity and

70 APF, *Submission no. 21*, p. 29.

71 Quoted by the APF in *Submission no. 21*, p. 25.

72 DFAT, *Submission no. 17*, p. 6.

capability which will benefit member States across the Pacific region.⁷³

4.69 The Australia-West Papua Association (Sydney) suggested that:

As a PIF member Australia should be supporting the Forum financially to set up a mechanism to improve the human rights situation in the Pacific region.⁷⁴

Pacific Regional Rights Resource Team

4.70 The RRRT is guided by the Pacific Leaders' vision and the Pacific Plan, and strongly advocates for the establishment of a Pacific regional rights mechanism. It provides human rights training, technical support, and policy and advocacy services tailored specifically for the Pacific region; filling the gap when nations and NGO lack capacity in these areas.⁷⁵ It works primarily in the Cook Islands, Fiji, Kiribati, Samoa, Solomon Islands, Tonga, Tuvalu and Vanuatu.⁷⁶

4.71 It was originally established in 1995 as a United Kingdom Department of International Development project for women's legal literacy, but has since expanded to more general human rights work, and moved under the umbrella of the Secretariat of the Pacific Community in 2008. Its core support comes from New Zealand's International Aid and Development Agency (NZAID) and the Australian Agency for International Development (AusAID).

4.72 The RRRT described itself as:

...a regional indigenous human rights body, with a dedicated focus on the broad range of civil, political, economic, social and cultural rights, and covers many of the functions of a regional human rights mechanism. However, it does not monitor individual violations of rights nor receive and investigate complaints.⁷⁷

4.73 The RRRT commented that:

...[it] works with Members of Parliament, judges, magistrates, senior decision makers in government, institutions, civil society groups and NGOs. Evaluators of the RRRT project say that RRRT

73 Australian Human Rights Commission, *Submission no. 19*, p. 17.

74 Australia-West Papua Association (Sydney), *Submission no. 24*, p. 4.

75 RRRT, *Submission no. 13*, p. 8.

76 DFAT, *Submission no. 17*, pp. 7-8.

77 RRRT, *Submission no. 13*, p. 1.

uses a unique combination of persuasive and challenging techniques, and avoids the traditional 'naming, blaming and shaming' methods favoured by most human rights organizations, leading to innovative and successful partnerships with both Governments and NGOs.⁷⁸

Other organisations

4.74 There are also other organisations whose work influence human rights concerns in the Asia-Pacific region, including multilateral organisations, non government organisations (NGOs), churches, trade unions and civil society groups.

4.75 The Australian Bahá'í Community asserted that:

NGO capacity is an important consideration in considering human rights mechanisms in the Asia-Pacific region.⁷⁹

4.76 The HRLRC agreed that:

NGOs are in a position to witness and advocate for victims of abuses and are also best placed to discern where changes need to be made. If adequately resourced, NGOs can also provide training, convene fora and organise other activities designed to promote a continuing dialogue and developments around human rights.⁸⁰

4.77 The Department of Foreign Affairs and Trade, in its Human Rights Manual, stated:

Concern for human rights and fundamental freedoms is not the reserved domain of States...Given their independence, commitment and diversity, NGOs play a legitimate, well-established and respected role both domestically and internationally in the promotion and protection of human rights...The work of the Australian Government in the human rights field is reinforced by the ongoing relationship which exists between the government and human rights NGOs. While the views and methodologies of NGOs do not always coincide with those of Government, the input which NGOs bring to the domestic and international human rights debate is both legitimate and an important source of positive dialogue.⁸¹

78 RRRT, *Submission no. 13*, Annex A, p. 1.

79 Australian Bahá'í Community, *Submission no. 14*, p. 5.

80 HRLRC, *Submission no. 15*, p. 32.

81 Quoted by the Australian Bahá'í Community, *Submission no. 14*, p. 5.

4.78 The Australian Bahá'í Community commented that:

It should also be noted that with very limited resources, human rights NGOs, particularly those working on women's rights, have effectively operated at a regional level in the Asia-Pacific. Two prominent examples are Asia-Pacific Women's Watch and the Asia-Pacific Forum on Women, Law and Development. Increased support for these regional networks of NGOs would enable them to play a greater role.⁸²

4.79 The HRLRC noted that NGOs have played an increasingly important role within the UN human rights system, for example through the preparation of shadow reports for treaty bodies, and promoting dialogue between states and independent human rights experts.⁸³

4.80 The Australian Bahá'í Community suggested that:

The positive contribution of NGOs applies equally at national, regional and international levels. Additional measures to assist NGOs throughout the Asia-Pacific region to develop their strength and competence, such as training, funding and other forms of capacity building, should be considered in the context of this inquiry.⁸⁴

4.81 HRLRC reproduced and endorsed recommendations of the 1998 report, by the Joint Standing Committee on Foreign Affairs, Defence and Trade, *Improving But...Australia's Regional Dialogue on Human Rights*, including:⁸⁵

Recommendation 6:

The Australian Government should conduct an audit of NGOs doing human rights work in the Pacific and implement policies that strengthen and support these organisations. This may involve, among other things, building on existing programs such as AusAID's Human Rights Fund and the Human Rights Small Grants Scheme. Government policies aimed at promoting human rights in the region should be developed and implemented in partnership with these organisations.⁸⁶

82 Australian Bahá'í Community, *Submission no. 14*, p. 4.

83 HRLRC, *Submission no. 15*, p. 29.

84 Australian Bahá'í Community, *Submission no. 14*, pp. 5-6.

85 HRLRC, *Submission no. 15*, p. 3. A copy of the report is available on the Committee's website: <http://www.aph.gov.au/house/committee/jfadt/index.htm>.

86 HRLRC, *Submission no. 15*, p. 4.

4.82 However, just as with the smaller nations themselves, NGOs also face the challenge of limited funding. UNIFEM informed that Committee that it was working to help address this issue by:

...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.⁸⁷

4.83 The Uniting Church informed the Committee that:

Regionally there is the Christian Conference of Asia. It has a very strong focus on human rights and on gender empowerment. It is particularly looking at discrimination against women across the region and how churches both contribute to and can be a part of dealing with those issues. It also has a focus on environmental issues. As churches, we are active participants within that regional forum, the Christian Conference of Asia.⁸⁸

4.84 UNIFEM also noted that:

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.⁸⁹

4.85 In his experience of the region, the Uniting Church representative observed that:

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

87 UNIFEM, *Transcript*, 7 April 2009, pp. 3-4.

88 Uniting Church, *Transcript*, 15 April 2009, pp. 34-35.

89 UNIFEM, *Transcript*, 7 April 2009, p. 4.

Having said that, when you look at the church in the Pacific and in Asia, in terms of numbers and the direction in which the church is growing, it is becoming an Asian and a Pacific church. To a certain extent, we have a degree of decline here in Australia. Look at bodies like the Christian Conference of Asia and Pacific Conference of Churches: it is the Asian and the Pacific churches, particularly the Asian and the African churches, that are now dominating the world scene.⁹⁰

4.86 Amnesty commented that:

...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.⁹¹

4.87 Amnesty emphasised that any mechanism that may emerge in the region should be in cooperation with civil society.⁹² The NCYLC, similarly, recognised the importance of civil society groups and recommended that:

By ensuring programmes and initiatives include and are increasingly run by civil society (rather than exclusively by governments and development agencies) the benefits are entrenched and civil society is given legitimacy and made more sustainable.⁹³

4.88 Trade unions also have the potential to impact on human rights in the region, particularly in the area of workers' rights. The Australian Council of Trade Unions (ACTU) informed the Committee that it:

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

90 Uniting Church, *Transcript*, 15 April 2009, pp. 37-38.

91 Amnesty, *Transcript*, 7 April 2009, p. 14.

92 Amnesty, *Submission no. 26*, p. 4.

93 NCYLC, *Submission no. 25*, p. 10.

issues raised seriously as a part of government policy is very important.⁹⁴

- 4.89 In its evidence, the ACTU advised that trade unions had contributed to the development of the ASEAN Social Charter.⁹⁵ The ACTU is also involved in addressing wider human rights issues through Union Aid Aboard - Australian People for Health, Education and Development Abroad (APHEDA), which was created in 1984 as the ACTU's overseas aid agency. The ACTU indicated that APHEDA was also doing work on HIV education:

In many countries in the Pacific the cultural and, indeed, social awareness around HIV is limited or based on traditional concepts of transmission of HIV, so that has provided specific challenges, but in Papua New Guinea, for example, where it is a huge issue – and in a number of other countries where it is seen as an emerging issue – the ACTU, through its overseas aid and development agency, Union Aid Aboard-APHEDA, has been involved in workplace based education programs for many years.⁹⁶

- 4.90 When discussing the work of the International Labour Organisation, the ACTU contended that while the focus is:

...specifically about labour law and improvement of labour law or working conditions in those countries. But as a fundamental human rights issue, we see the capacity of the ILO's work across the region as a very clear mechanism to promote fundamental workers' rights. Indeed, to have the kind of social dialogue where non-government actors including trade unions can have input to the members of parliament and to government institutions and structures is something that we should not take for granted in the region. To ensure both the capacity of those organisations to address human rights issues as a structure but also to fund and resource those kinds of consultations is something that we would encourage, and encourage the Australian government to think about, in the relations with those countries at a government to government level.⁹⁷

94 ACTU, *Transcript*, 15 April 2009, p. 52.

95 ACTU, *Submission no. 16*, p. 3.

96 ACTU, *Transcript*, 15 April 2009, p. 55.

97 ACTU, *Transcript*, 15 April 2009, pp. 52-53.

4.91 The ACTU also highlighted the value of the NGO sector:

...for raising concerns that might not otherwise be understood in government circles or not necessarily engaged with at a government-to-government level. Through the ACTU, we engage in many NGO consultations, domestically and internationally. We do liaise with the Asia-Pacific Forum of Human Rights Institutions. We do not have a formal role, but we, and indeed other unions in the region, have input into those discussions.⁹⁸

National mechanisms

4.92 It is also important to have mechanisms for human rights to be upheld and issues addressed at the national level. The APF commented that:

It is the national framework/system for the promotion and protection of human rights which most interrelates, and is accessible to, individuals. The system consists of a variety of mechanisms. The more formal machinery or mechanisms include the judicial system, parliamentary committees, national human rights institutions and/or ombudspersons. The non-formal actors include members of civil society, such as NGOs, active media and concerned individuals. Generally, they act as checks-and-balances to ensure equilibrium in the use of State power and to advocate and/or provide redress where there are grievances in relation to the implementation of human rights. Their roles vary in scope and content – and the quality of their impact varies according to the context in which they live.⁹⁹

4.93 The UN consider the key features of human rights protection at the national level to be:

- Democracy: democratic institutions and processes that enable participation;
- The rule of law: including the incorporation of international human rights standards in the national constitution and laws;
- An independent and corruption-free judiciary that applies international human rights standards and jurisprudence;

98 ACTU, *Transcript*, 15 April 2009, p. 57.

99 APF, *Submission no. 21*, p. 8.

- Good governance: effective structures of government at central, regional and local levels that recognise, respect and apply human rights standards;
- Specialised human rights institutions and formal procedures for accountability;
- Human rights information and education;
- An active civil society: i.e. citizens that engage, organise and participate; [and]
- A focus on the most vulnerable parts of the population.¹⁰⁰

Constitutional protections

4.94 One avenue for human rights protection at the national level is to have human rights and fundamental freedoms enshrined in a constitution. However, evidence to the Committee suggests that constitutional provisions for human rights protection are not necessarily reflected in the day-to-day reality of nation states.

4.95 Many Pacific nations already have some human rights reflected in their constitutions or legal frameworks. However, the HRLRC questioned the effectiveness of existing provisions:

When I have been speaking to people, I have heard that these legal frameworks, like the human rights within constitutions and national laws, are not necessarily helpful for a lot of people within the Pacific who do not access the centralised government based legal systems. Instead, they solve most of their day-to-day issues and problems under the customary laws or via the chieftains within the villages.¹⁰¹

4.96 The HRLRC further commented that:

...high-level legal frameworks might not be the best way to promote human rights in these societies. It suggests to me that it has to be something that is more around, or at least supplemented by, very strong education programs and those sorts of things.¹⁰²

4.97 The Commission observed that most of the Pacific constitutions only guaranteed civil and political rights and did not address economic, social and cultural rights.¹⁰³

100 APF, *Submission no. 21*, p. 9.

101 HRLRC, *Transcript*, 15 April 2009, p. 25.

102 HRLRC, *Transcript*, 15 April 2009, p. 27.

103 Australian Human Rights Commission, *Submission no. 19*, p. 19.

- 4.98 In particular, the Fijian Constitution includes ‘recognition of the human rights and fundamental freedoms of all individuals and groups, safeguarded by adherence to the rule of law, and our respect for human dignity’ and section 42 provides for the establishment of Fiji’s Human Rights Commission.¹⁰⁴
- 4.99 However, given the current state of affairs in Fiji, this is a clear example that constitutional provisions offer no guarantees that democratic principles and human rights standards will be adhered to. In April 2009, the Fijian President suspended the Constitution of Fiji, dismissed all judges and constitutional appointees and assumed governance of the country.¹⁰⁵ A new reformed constitution is anticipated in 2013 and an election is not expected until 2014.
- 4.100 The Vietnam Committee on Human Rights raised the case of Vietnam. While the Constitution ‘formally guarantees human rights such as freedom of expression, religion, assembly and association’, in practice the exercise of these freedoms are restricted by conditioning them on compliance with state policies and interests:
- Article 70 states that “All citizens shall enjoy freedom of belief and religion”, but that “no-one can misuse beliefs and religions to contravene the laws and State policies”. Since State policies are established and enforced by the one-Party State which has extensive control over the executive, legislative and judiciary powers, these provisions gravely limit the scope and exercise of human rights.¹⁰⁶

Ombudsman offices

- 4.101 The primary focus of an Ombudsman’s office is to investigate cases of administrative misconduct; addressing individual grievances and working to improve administrative practice. However, concerns about the difficulties of establishing national human rights commissions, have prompted the suggestion that the role of other domestic bodies, such as Ombudsman offices, could be enhanced to take on a great role in promoting and protecting human rights at the national level.¹⁰⁷

104 Source: http://www.servat.unibe.ch/icl/fj00000_.html, viewed 3 September 2009.

105 Source: <http://www.theaustralian.news.com.au/story/0,24897,25316239-601,00.html>, viewed 3 September 2009.

106 Vietnam Committee on Human Rights, *Submission no. 32*, p. 1.

107 Australian Human Rights Commission, *Submission no. 19*, p. 22.

4.102 In their submission to the Committee, some Pacific NGOs were adamant that Ombudsman offices:

...are not expected nor equipped to perform the broader roles envisaged for a human rights commission, such as public education about human rights, assisting courts or parties in litigation involving human rights issues, or assisting governments with their reporting or implementation obligations under human rights Conventions.¹⁰⁸

4.103 In particular, Amnesty disagreed with including human rights commission functions within the Pacific Ombudsman Network:

...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.¹⁰⁹

4.104 So while they perform functions contributing to the protection of human rights, Ombudsman offices may not be ideal substitutes for human rights institutions at the national level.

National Human Rights Institutions

4.105 NHRIs are bodies that have been established by a State – either by legislation or constitutional provision – with a specific mandate to promote and protect human rights. National human rights systems complement regional and international systems.

4.106 The Paris Principles set out the minimum standards that an NHRI must meet in order to be effective in its role. They came out of the first NHRIs conference held in Paris in October 1991, and were adopted by the UN General Assembly in December 1993. NHRIs must have:

- a clearly defined and broad-based mandate, based on universal human rights standards;
- independence guaranteed by legislation or the constitution;
- autonomy from government;
- pluralism, including membership that broadly reflects the society the institution serves;

108 FWRM, FWCC and CCF, *Submission no. 33*, p. 2.

109 Amnesty, *Transcript*, 7 April 2009, p. 11.

- adequate powers of investigation; and
 - sufficient resources.¹¹⁰
- 4.107 A complaints function – to hear complaints about human rights breaches – is a feature of some NHRIs. However, this is not a requirement under the Paris Principles.¹¹¹ NHRIs may take various forms, but their functions generally include:
- reviewing national laws, policies and programmes to ensure that they are consistent with human rights standards;
 - monitoring a States' compliance with its own laws and with international human rights standards and recommending changes when necessary;
 - education: raising community awareness and understanding of human rights issues; and
 - complaints handling: receiving, investigating and/or mediating complaints of discrimination or human rights abuses.¹¹²
- 4.108 First established in the 1970s, there are now approximately 90 NHRIs in operation around the world. However, only around two-thirds of these are accredited as compliant with the Paris Principles.¹¹³
- 4.109 The International Coordinating Committee for the Promotion and Protection of Human Rights administer the Paris Principles and the accreditation of NHRIs. The Committee noted the Commission's advice that:
- Over the last three years the accreditation process has undergone reform and now rigorously applies a body of principles recorded in the General Comments developed by the [International Coordinating Committee] Sub-Committee on Accreditation.
- All accredited NHRIs are presently going through the process of re-accreditation which applies these principles and will in future be required to go through a re-accreditation process every five years.¹¹⁴

110 APF, *Submission no. 21*, p. 10.

111 Australian Human Rights Commission, *Submission no. 19*, p. 7.

112 APF, *Submission no. 21*, pp. 9-10.

113 APF, *Submission no. 21*, p. 9. A current list of NHRIs globally is available at: <http://www.nhri.net/NationalDataList.asp?MODE=1&ID=5>, viewed 3 September 2009.

114 Australian Human Rights Commission, *Submission no. 19*, pp. 6-7.

4.110 The APF observed that:

Models of NHRIs vary and the characteristics of a particular NHRI will, to some extent, reflect the political system of the State, its domestic legal system and cultural setting. In practice, all are 'administrative' bodies – that is, they do not have the power to 'make' laws or 'enforce' laws. NHRIs operate independently from government...[but the] degree of independence which each NHRI enjoys will depend on a range of factors, including its legal framework, its membership and its financial resources.¹¹⁵

Advantages of NHRIs

4.111 The UN human rights system recognises the positive roles that NHRIs can play in the promotion and protection of human rights. As well as acknowledging the importance of regional and subregional mechanisms, the 1993 *Vienna Declaration and Programme of Action* encourages the establishment and strengthening of NHRIs.

4.112 The Commission contended that:

...establishing NHRIs in Pacific Island countries is the most effective way of enhancing human rights protection for people living in the Pacific.¹¹⁶

4.113 The Commission suggested that NHRIs have significant benefits and privileges that other domestic bodies working on human rights lack, such as:

- status within the community;
- capacity to act as an official body to receive and remedy individual complaints;
- ability to provide legal assistance in human rights matters to disadvantages persons;
- power to pursue systemic responses to human rights issues;
- access to expert technical assistance from OHCHR and regional networks;
- participation in the UN Human Rights Council; and

115 APF, *Submission no. 21*, p. 9.

116 Australian Human Rights Commission, *Submission no. 19*, p. 22.

- expertise in international human rights law.¹¹⁷
- 4.114 ASEAN has endorsed the need to develop NHRIs. The APF noted that the conclusions of the 7th Workshop on the ASEAN Region Mechanism on Human Rights highlighted the need:
- For ASEAN member countries that have not already done so to establish NHRIs;
 - To involve/consult with NHRIs in the development and operation of the ASEAN human rights body; and
 - For a more formal dialogue between ASEAN and ASEAN NHRIs.¹¹⁸
- 4.115 The High Level Panel on the establishment of the ASEAN human rights body in August 2009 acknowledged that the success and effectiveness of the new body would 'depend on the relationships it established with NHRIs, civil society groups and other stakeholders'.¹¹⁹
- 4.116 The Castan Centre encouraged the development of NHRIs and commented that:
- The development of such bodies at a local level is arguably a necessary prerequisite to a regional mechanism.¹²⁰
- 4.117 The APF noted that in Asia:
- ...the four existing ASEAN NHRIs continue to play a role not only in the possible establishment of other NHRIs in the region but also, and significantly, have provided a crucial 'building block' – and a critical mass of capability and capacity – to enable progression of the debate around a sub-regional mechanism.¹²¹
- 4.118 Along similar lines, the RRRT commented:
- There are two potential models for the way forward. The first is setting up a national human rights commission in each PICT, and the second, is a regional human rights mechanism. Both ought to be explored.

117 Australian Human Rights Commission, *Submission no. 19*, pp. 22-23.

118 APF, *Submission no. 21*, p. 21.

119 APF website: <http://www.asiapacificforum.net/news/asean-nhris-call-for-engagement-with-regional-rights-body.html>, viewed 1 October 2009.

120 Castan Centre, *Submission no. 10*, p. 7.

121 APF, *Submission no. 21*, p. 28.

We do not see the two models as mutually exclusive but rather that the establishment of one promotes advancement of the other; both are mutually reinforcing.¹²²

4.119 The APF agreed that:

Under ideal circumstances, both are desirable and – with the possible exception of very small Pacific States – both may be attainable over time.¹²³

Concerns about NHRIs

4.120 While the Uniting Church acknowledged that NHRIs offer an independent check on the human rights performance of government, it noted that ‘the performance of such bodies within the Asia-Pacific region is mixed’.¹²⁴ For example:

In the case of Sri Lanka, the submitting bodies are concerned that the Government of Sri Lanka has undermined the independence of the Human Rights Commission by the President making appointments directly onto the Commission, rendering the body weak and ineffective as a check on gross human rights abuses committed by members of the security forces and paramilitary groups aligned to the security forces.¹²⁵

4.121 However, there are concerns that complying with the Paris Principles can be too onerous for many states, especially smaller nations that are still developing. In particular, the requirements for it to be sufficiently resourced and for independence from government are challenges. For example, groups have expressed their concerns that the ‘independence and efficacy [of NHRIs] in many countries has been seriously challenged’.¹²⁶

4.122 Establishing and maintaining NHRIs are challenges for many of the smaller countries in the region. In the Pacific in particular:

It is difficult for countries like Tuvalu (pop 9561), Tokelau (pop 1466), Niue (pop 1679), Cook Islands (pop 11,900) or even Tonga (pop 97,784) to fully comply with [the minimum standards of the Paris Principles]...

122 RRRT, *Submission no. 13*, pp. 4-5.

123 APF, *Submission no. 21*, p. 28.

124 Uniting Church, *Submission no. 20*, p. 3.

125 Uniting Church, *Submission no. 20*, p. 23.

126 Amnesty, *Submission no. 26*, p. 2.

The problem of resource constraints faced by most Pacific Island countries will mean that the Paris Principles relating to the status of national human rights institutions will be hard to meet. One of the Principles requires national institutions to have adequate funding for its staff and premises so that it is independent of government control. The publication of the Pacific Islands Forum Secretariat (PIFS) and the NZ Human Rights Commission, *Pacific Pathways*, recognises these difficulties and acknowledges that PICTs may need to give their “own unique expression to the international standards (the Paris Principles) for NHRIs.” Not all Pacific countries will be able to satisfy these excellent criteria. A regional commission on the other hand will have increased autonomy, more distance from government and so better be able to satisfy the Paris Principles.¹²⁷

4.123 The AHRC stressed that:

The establishment of an NHRI and its compliance with the *Paris Principles* does not provide a panacea for the human rights problems that any country faces; nor do all NHRIs, even those formally in compliance, necessarily show the level of independence and vigour that might be desirable. The effectiveness and impact of a NHRI is the result of many factors, including not just the efforts of the NHRI’s members and staff, but also of the government’s attitude to human rights and the NHRI and the broader political and social context. Furthermore, a NHRI is generally just one of a number of actors which contribute to the observance of human rights in any country – parliaments, courts, ombudsmen and similar offices, the media, and civil society organisations are all necessary components of an effective system for the protection of human rights.¹²⁸

4.124 To address some of the resource and capacity constraints, the Commission recommended:

That a ‘building blocks’ approach to the development of NHRIs in Pacific States be adopted, gradually increasing the role and functions of the NHRI as resources and capacity become available. This approach should include education and awareness-raising

127 RRRT, *Submission no. 13*, p. 17.

128 AHRC, *Submission no. 4*, p. 12.

programs on the meaning of human rights and their interaction with custom.¹²⁹

4.125 The Committee also noted the HRLRC's advice that:

...it may not be appropriate for each Pacific Island country to have its own NHRI...The Australian Government should be sensitive to context and capacity when developing its policy on NHRIs in the Pacific.¹³⁰

Australian Human Rights Commission

4.126 As an accredited NHRI and APF member, the Commission:

...undertakes an international education and training role, with a specific focus on the Asia-Pacific region. This work builds the capacity and experience of the Commission in promoting and raising awareness about human rights, which enhances its domestic activities in this area.¹³¹

4.127 The Commission's core budget is devoted to fulfilling its domestic mandate and so must source funding for human rights activities in the region from external sources.

4.128 A significant area of achievement for the Commission has been in providing technical assistance. The Human Rights Technical Cooperation Program (HRTC) came out of the Australian Government's human rights dialogue with China, and is provided through AusAID, which has entered into a Record of Understanding with the Commission to manage the overall implementation of this program.¹³²

4.129 The Commission commented that:

...[it] has engaged with some of the most authoritarian regimes in the region, and in the area of technical cooperation has developed a management style and process that sustains human rights engagement. The engagement with China is the most substantial illustration of this. Australia, through the Australian Human Rights Commission, is the only nation that has been able to sustain a government-to-government program that deals specifically with human rights in China. While other governments have programs

129 Australian Human Rights Commission, *Submission no. 19*, p. 4.

130 HRLRC, *Submission no. 15*, p. 31.

131 Australian Human Rights Commission, *Submission no. 19*, p. 13.

132 Australian Human Rights Commission, (Supplementary) *Submission no. 27*, p. 3.

with China in broader governance related areas, Australia's is the only bilateral program with an explicit human rights focus. The success and longevity of the program reflects its non-confrontational management style, the emphasis on building of relationships, and the program's alignment with the priorities of the partner government.¹³³

4.130 The Commission's recent participation in the region to enhance human rights mechanism in the Pacific has included:

- attending the Strategies for the Future: Protecting Rights in the Pacific Conference in Samoa, April 2008;
- presenting at the Australasian Law Reform Agencies Conference on the Potential Role of National Human Rights Institutions in the Pacific in Vanuatu, September 2008;
- participating in the Pacific Disability Forum's Council Meeting and National Women with Disabilities Forum in Samoa;
- conducting training, on behalf of the APF, on Convention on the Rights of Persons with Disabilities and advocacy to government, and a workshop on the international framework protecting the rights of women with disability; and
- participating in regional Pacific networks among Indigenous peoples, such as in preparation for the UN Permanent Forum on Indigenous Issues.¹³⁴

133 Australian Human Rights Commission, *Submission no. 19*, p. 29.

134 Australian Human Rights Commission, *Submission no. 19*, p. 15.

Possible human rights approaches for the Asia-Pacific

- 5.1 The Committee noted that, to a great extent, the evidence received indicated that it would be premature to propose possible models for an Asia-Pacific regional human rights mechanism as an outcome of this inquiry. Rather, two more fundamental issues required to be addressed: ‘Is a regional human rights mechanism needed in the Asia-Pacific?’ and ‘Is an Asia-Pacific regional human rights mechanism feasible?’.

Is a regional mechanism needed?

- 5.2 The Human Rights Law Resource Centre made the point that the fact that Asia and the Pacific are the only (sub) regions without a regional human rights framework is not reason enough to create a mechanism.¹
- 5.3 There are a number of human rights challenges that Asian and Pacific nations must confront and manage if there is to be improvement in human rights in the Asia-Pacific region (chapter 2).
- 5.4 While there are existing mechanisms that cover the promotion and protection of human rights in this region (chapters 3 and 4), some argue that a regional mechanism is – or at least subregional mechanisms are – a crucial component missing from the human rights machinery of the Asia-Pacific region.
- 5.5 Those in support of a regional mechanism contended that it may go some way towards addressing human rights problems that nation states are either unable – perhaps due to resource constraints – or unwilling to deal with.

1 HRLRC, *Submission no. 15*, p. 6.

5.6 Amnesty observed that while advances are being made, for instance with the region containing two of the world's fastest growing economies (China and India):

The challenge to match economic development with an increase in economic, social and cultural rights for the region's poor remains unmet, and this challenge will increase as economic growth slows.²

5.7 SCIL cautioned that:

Without a regional human rights mechanism, it is not possible to genuinely safeguard the human rights of the most vulnerable persons and groups in the Asia-Pacific.³

5.8 The Australian Bahá'í Community saw a regional mechanism as a way to focus on human challenges:

As a matter of principle, we support mechanisms which assist states to cooperate with each other, to transcend considerations of national sovereignty and to focus on the needs of humanity as a whole in addressing the challenges before them. With the understanding that any such mechanism would have as its mandate universal human rights standards, we see merit in a regional inter-governmental human rights mechanism for the Asia-Pacific.⁴

5.9 The joint submission from Fijian NGOs, the Fiji Women's Rights Movement, the Fiji Women's Crisis Centre and the Citizen's Constitutional Forum, contended that a regional mechanism would '...promote the recognition and observance of human rights standards in the region by':

- overcoming the lack of capacity in the smaller island states;
- enabling the formation of a critical mass of human rights expertise;
- providing greater independence from national governments;
- developing a Pacific voice in human rights debates; and
- providing an international forum for human rights issues that is closer and more responsive than UN agencies.⁵

5.10 It was argued that, in particular, the smaller Pacific Island countries need a regional mechanism. Former Commissioners of the Fiji Human Rights Commission asserted that events in Fiji clearly demonstrate the need for

2 Amnesty, *Submission no. 26*, p. 2.

3 SCIL, *Submission no. 5*, p. 2.

4 Australian Bahá'í Community, *Submission no. 14*, p. 4.

5 FWRM, FWCC and CCF, *Submission no. 33*, p. 2.

an independent regional human rights mechanism.⁶ In its joint submission, the former Commissioners stated:

A regional mechanism could both support national institutions where they are established, and fill the void where, like Fiji, the national institutions fail.⁷

5.11 The RRRT argued that a level of regional scrutiny acts as an important incentive, stating:

As is the experience with other regional bodies, the threat of scrutiny by the regional body, let alone scrutiny of its reports by other member states, will persuade countries to pay closer attention to these violations.⁸

5.12 It felt that:

A regional body would provide a single contact point for the entire region, providing an effective and efficient conduit through which external bodies could disseminate information to the region, and receive reliable information and advice back from the region. It would also enjoy greater independence from individual national governments, reducing the risk of partiality in appointments to the [national] commission and of undue influence in its operations.⁹

5.13 The APF argued that its own establishment and rapid growth 'both responded to and demonstrates the need for a regional mechanism to promote cooperation and mutual assistance on human rights issues'.¹⁰ However, the AHRC commented that:

...it should be noted that many of the core functions of the APF in supporting the work of NHRIs are not those performed by regional human rights mechanism[s] in other parts of the world.¹¹

5.14 While recognising the value of national human rights institutions, some groups were concerned that some countries in the region, particularly smaller Pacific nations, would find it very difficult to establish and maintain Paris Principles compliant NHRIs. The RRRT argued that a regional human rights mechanism would be better placed to overcome some of the constraints facing individual nations, stating:

6 Former Commissioners of the Fiji Human Rights Commission, *Submission no. 34*, p. 1.

7 Former Commissioners of the Fiji Human Rights Commission, *Submission no. 34*, p. 6.

8 RRRT, *Submission no. 13*, p. 22.

9 RRRT, *Submission no. 13*, p. 9.

10 APF, *Submission no. 21*, p. 15.

11 AHRC, *Submission no. 4*, p. 14.

...a regional Commission would have significant cost savings for PICTs [Pacific Island Countries and Territories] in contrast to a National Human Rights Institution (NHRIs) for each PICT. Costs would be shared without duplication and unnecessary bureaucratic structures. The establishment of NHRI's for many of the smaller PICTs would be prohibitive. However, contributive costs on a user pays model such as that which exists with the University of South Pacific should be feasible. We would expect that a persuasive argument for PICTs to contribute to the working costs of a Pacific Regional Human Rights Commission (PRHRC) would exist in terms of international obligations to human rights and donor country expectations.¹²

- 5.15 The RRRT noted that the UN had made many calls for 'regional arrangements' for the promotion and protection of human rights in the Asian and Pacific regions. It suggested that the region's failure to do so may call into question their commitment, as members of the international community.¹³

Committee comment

- 5.16 The Committee sees a need for enhancing mechanisms for protecting human rights, monitoring and redressing human rights violations. A human rights mechanism at the subregional or wider Asia-Pacific level would offer many benefits, and complement existing and emerging mechanisms at the international and national levels. Developments in Asia with the ASEAN human rights body and the support of Pacific groups (such as the RRRT) and by PIF leaders through the Pacific Plan, illustrate the growing recognition of the value of a human rights mechanism at the regional level.
- 5.17 However, any moves towards subregional or a unified regional mechanism must originate with, be driven by, and have the timetable set by, the countries of the region. There remain many challenges for the region to address if it is to progress on human rights mechanisms on a regional scale.

12 RRRT, *Submission no. 13*, p. 6.

13 RRRT, *Submission no. 13*, p. 16.

Is a regional mechanism feasible?

Ongoing challenges

- 5.18 As signposted in chapter 2, some key challenges to addressing human rights concerns in the Asia-Pacific are also constraining factors on the development of a regionally specific human rights mechanism. These include: geographic and resource constraints; the lack of cohesive regional identity; limited engagement with human rights concepts; and perceived tensions with culture. The concern that a regional mechanism may represent a dilution of universal human rights standards to accommodate regional particularities must also be considered.
- 5.19 In its evidence to the Committee, the APF observed that:
- ...progressing dialogue and agreement about regional mechanisms can raise complex issues about identity, sovereignty, the under-pinning relationships between states, and the ways and extent to which understandings about “human rights” are shared, and negotiated, by a community of regional states.¹⁴

Universal standards and regional relevance

- 5.20 The Castan Centre made a case for using existing universal standards as the basis for any new human rights mechanisms, stating:
- The UDHR and its implementing treaties, the ICCPR and ICESCR, provide the best example of universal agreement of what human rights are...it is counterproductive to start from scratch.¹⁵
- 5.21 However, concerns were expressed that the pursuit of a regional mechanism at all costs could result in a diluted form of human rights protection. For example, SCIL noted that:
- ...some argue that an attempt to formulate an Asia-Pacific Charter would be counter-productive. The concern here is that, in light of the great cultural, social and economic diversity of states within the Asia-Pacific region, the lack of consensus over applicable human rights standards and the low rates of ratification of international human rights instruments, any regional human rights charter would inevitably provide a lower standard of

14 APF, *Submission no. 21*, p. 19.

15 Castan Centre, *Submission no. 10*, p. 5.

human rights protection than the international human rights system.¹⁶

5.22 The Castan Centre felt strongly that:

...any regional instrument that might...[develop]...should not become a lowest common denominator exercise. While regional instruments are valuable to the extent that they can get like-minded countries together and get a stronger enforcement system than the one we have at the universal level, if they in effect water down the provisions that we have at the universal level, that would be dangerous and would be a step backwards for the human rights system. The bottom line there is that we do not say a regional system 'at all costs' or 'at any cost'; we say that it should be one that reflects Australia's existing commitment to universal human rights.¹⁷

5.23 Evidence to the Committee stressed the importance of meeting rather than diluting universal standards. For example, the Australian Bahá'í Community commented that:

Whatever happens within the Asia-Pacific region, it should be in harmony with the international mechanisms that exist and...give increased body to the Universal Declaration of Human Rights and the various treaties that lie underneath that and, in doing so, cast a particular Asia-Pacific light onto that declaration but not something which dilutes or operates in any way out of sync with the mechanism.¹⁸

5.24 The Castan Centre recognised that:

Provided that universality is not undermined, regional influences are not always inappropriate, and can improve the degree of acceptance or 'ownership' of a regional instrument among the people of the region.¹⁹

5.25 In the case of the Pacific, the RRRT felt that:

The rights enshrined in the UDHR are complemented by the rights particular to the Pacific, and are not a derogation from them.²⁰

16 SCIL, *Submission no. 5*, p. 6.

17 Castan Centre, *Transcript*, 15 April 2009, p. 2.

18 Australian Bahá'í Community, *Transcript*, 19 March 2009, p. 1.

19 Castan Centre, *Submission no. 10*, p. 6.

20 RRRT, *Submission no. 13*, p. 3.

Regional identity

5.26 Evidence to the Committee indicated that there is no cohesive regional identity subscribed to by the countries that are deemed to fall under the Asia-Pacific region umbrella.²¹ ACFID, for example, commented that:

None of the 40 governments to which “Asia-Pacific” or “an Asia-Pacific region” could readily...regard themselves in any meaningful sense as being part of a single broader region.²²

5.27 The HRLRC described the Asian and Pacific regions as ‘extremely different socially, economically and politically’ and argued that:

...different approaches are needed to accommodate the varying levels of engagement and influence in both regions.²³

State sovereignty

5.28 SCIL suggested that:

One of the greatest obstacles to the existence of a regional mechanism is the strong desire of countries to assert the primacy of state sovereignty whenever human rights concerns are raised. As such, human rights are straightjacketed as ‘internal affairs’ to be dealt with by national governments, with a desire to avoid international scrutiny.²⁴

5.29 The HRLRC commented that:

Whether it is a justifiable position or not, many developing countries see human rights as a Western construct that threatens the sovereignty of developing or non-Western nations and perpetuates colonial relationships...While this view is certainly not shared by all stakeholders, it is important to recognise and be sensitive to [this concern].²⁵

5.30 The HRLRC did note that the 1993 Bangkok NGO Declaration on Human Rights reflected a willingness by 110 NGOs from 26 countries in the Asia-Pacific to acknowledge that ‘human rights are of universal concern and are

21 See, for example, NCYLC, *Submission no. 25*, p. 6; AHRC, *Submission no. 4*, p. 3; Amnesty, *Submission no. 26*, p. 4.

22 ACFID, *Submission no. 9*, p. 1. This includes the 8 members of the South Asian Association for Regional Cooperation; the 10 members of ASEAN; the 16 Pacific Forum Island members and the countries of North Asia – Japan, North Korea, South Korea, China, Taiwan and Mongolia.

23 HRLRC, *Submission no. 15*, p. 5.

24 SCIL, *Submission no. 5*, p. 4.

25 HRLRC, *Submission no. 15*, pp. 7-8.

universal in value, the advocacy of human rights cannot be considered to be an encroachment upon national sovereignty'.²⁶

- 5.31 The RRRT maintained that the Pacific Plan applies regionalism without limiting state sovereignty. Further, it suggested that the 'sovereignty test' is one of three tests to be applied when determining whether a regional approach is appropriate. It claimed that the question to be asked is:

Does the proposed regional initiative maintain the degree of effective sovereignty held by national governments? Regional initiatives should shift only the management of services to regional bodies, not policy-making as well. Countries, not regional bodies, should decide priorities.²⁷

- 5.32 However, the Australian Bahá'í Community was of the opinion that a regional mechanism may be a way to transcend national sovereignty concerns and focus on the wider challenges. It suggested that:

As the world faces increasing challenges such as economic disparities, violence, prejudice and environmental degradation, attention is turning to the responsibilities of states vis-à-vis the protection and promotion of human rights. These crises are helping to forge a new awareness of international responsibility, and recasting the concept of sovereignty from inherent right to responsibility.²⁸

Cultural considerations

- 5.33 The APF commented that:

Customary law is still the most significant existing mechanism for human rights protection and promotion in many small Pacific states and this has clear implications for dialogue on possible regional human rights mechanisms.²⁹

- 5.34 It drew the Committee's attention to the view that:

For Pacific peoples, the interaction of culture (including cultural expression, respect for cultural diversity and promotion and protection of culture, language and tradition) and cultural identity with the promotion and protection of human rights remains a significant issue within which both the traditional strengths of Pacific peoples – the importance of family relationships, resilience,

26 HRLRC, *Submission no. 15*, p. 10.

27 RRRT, *Submission no. 13*, p. 8.

28 Australian Bahá'í Community, *Submission no. 14*, p. 2.

29 APF, *Submission no. 21*, p. 24.

the sharing of resources and a co-operative approach to economic and social activity – is often seen to be a necessary precursor to the discussion about national and regional human rights mechanisms.³⁰

5.35 The trend in evidence to the Committee was that, in the Pacific in particular, the promotion of human rights in the region would be more effective if a sensitive and respectful approach was taken when addressing cultural issues and customary practices, especially where there are perceived conflicts between international standards and local practice. But this does not mean that international human rights standards should be compromised.

5.36 The RRRT stressed that:

Cultural sensitivity is different from cultural relativism, the former being an acknowledgement that Pacific island cultures are, like all cultures, idiosyncratic. Sensitivity in approach and form is critical. However Pacific peoples and Pacific culture are not so different that international human rights standards and norms ought not to be applicable to them. If anything we should be levelling up, not down, from our own Pacific Island conditions.³¹

5.37 World Vision observed that:

The international human rights system is in essence concerned with holding States accountable for their responsibility to ensure that people under their influence live full and dignified lives. In the Pacific there is a range of strongly held customary practices and systems that perform similar roles. In promoting human rights in the Pacific these existing practices must be respected and may be an appropriate channel through which rights can be met at local levels. This is not to say that all customary practice is consistent with human rights, nor that many practices labelled as ‘custom’ actually are.³²

5.38 Evidence from the Castan Centre indicated that it would be worthwhile to get to the root of perceived cultural differences. It stated that:

...a lot of the arguments are put at an extremely general level, which is almost useless because it is hard to argue in the abstract. But it is not aggressive to say, ‘Okay, exactly what is it about the

30 APF, *Submission no. 21*, p. 24.

31 RRRT, *Submission no. 13*, p. 12.

32 World Vision, *Submission no. 7*, p. 4.

ICCPR, about freedom of expression, that doesn't fit in?' That is just putting the onus on them...It may even be based on some misunderstandings.³³

5.39 The HRLRC saw setting human rights against custom as a false dichotomy.³⁴ It argued that:

...human rights constitute core minimum standards and that they are capable of being adopted and implemented in such a way as to ensure respect for local values and customs. In many respects, local values and customs will not even be inconsistent with human rights. For example, the Pacific emphasises that all people have a divine essence and dignity, which is not dissimilar to the centrality of a person's dignity in human rights law.

...Where individual rights are in conflict with custom, a human rights framework allows both rights and custom to be taken into account. Sometimes it will require that either rights or custom will prevail, but we do not think this is a reason for not using a human rights framework at all.³⁵

5.40 The HRLRC also made reference to evidence, now twelve years old, but which still has resonance for this inquiry, that when addressing perceived conflicts between culture and human rights norms 'most of the disagreement is over the implementation of human rights, rather than the norms themselves'.³⁶

5.41 The National Children's and Youth Law Centre contended that it is a matter of striking a balance, stating 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.³⁷

5.42 In evidence to the Committee, reference was made to the New Zealand Law Commission's 2006 study paper *Converging Currents: Custom and Human Rights in the Pacific*. The HRLRC, for example, described the paper as 'a detailed and persuasive analysis on the harmonisation of custom and human rights law'.³⁸

33 Castan Centre, *Transcript*, 15 April 2009, p. 9.

34 HRLRC, *Transcript*, 15 April 2009, p. 25.

35 HRLRC, *Transcript*, 15 April 2009, p. 19.

36 HRLRC, *Submission no. 15*, p. 10. Evidence provided by Sarah Pritchard and Jane Corpuz-Brock to the Joint Standing Committee on Foreign Affairs, Defence and Trade for its Australia's Regional Dialogue on Human Rights inquiry (1997-1998).

37 NCYLC, *Transcript*, 7 April 2009 p. 49.

38 HRLRC, *Submission no. 15*, p. 10.

5.43 The NZ Law Commission acknowledged that Pacific nations are faced with the challenge of ensuring their legal systems draw on local customs, values and international human rights standards. It found that:

In many Pacific Island countries, customary methods predominate in determining local disputes. Human rights law, on the other hand, holds sway mainly in the courts. The separation between customary methods and court methods of dispute settlement can foster distorted views, such as that the courts rely on foreign values or that custom is irrelevant.

In the view of the Law Commission, the perceived conflict must not be allowed to become a major impediment to Pacific legal development. The reality is that both custom and human rights are expressly provided for in most domestic constitutions and statutes. While there are conflicting views about the role of custom and human rights in Pacific legal systems, there is at the same time much similarity in the values underlying both.³⁹

5.44 The NZ Law Commission proposed that action be taken in three key areas to improve the cohesion of custom and human rights in the legal systems of the Pacific region:

- that governments, legislatures, courts and communities actively seek ways to harmonise custom and human rights in order to promote the equitable development of custom and the appreciation of human rights in culturally relevant terms;
- that courts and legislatures develop a more coherent legal system by recognising and respecting the contribution of community justice bodies to dispute resolution, while also promoting the use of human rights norms in community justice; and
- that the courts develop an indigenous jurisprudence that draws upon both custom and human rights.⁴⁰

5.45 The Committee noted the HRLRC's advice that further to previous judicial training programs in the region, the Pacific Judicial Development Program – which provides professional development to judicial and court officers and is supported by AusAID and NZAID – will cover custom law and human rights.⁴¹

39 New Zealand Law Commission, *Converging Currents: Custom and Human Rights in the Pacific*, Study paper 17, 2006, p. 8.

40 New Zealand Law Commission, *Converging Currents: Custom and Human Rights in the Pacific*, Study paper 17, 2006, p. 240.

41 HRLRC, *Submission no. 15*, p. 26.

- 5.46 The Committee also noted the RRRT's advice that the 15 Strategic Objectives of the Pacific Plan, which give effect to the Pacific Island Forum leaders' vision for the region, are virtually all also goals of human rights treaties.⁴² This would seem to suggest that Pacific and human rights goals, ultimately, may not be fundamentally at odds.

Resources

- 5.47 Limited resources, particularly in the Pacific, can mean that countries choose to focus on making progress in economic and other spheres, leaving human rights on the backburner.
- 5.48 However, the HRLRC argued that there is '...substantial evidence that economic growth is not hampered by respect for human rights',⁴³ and the Castan Centre encouraged people to:
- ...not buy into the fallacious argument that economic, social and cultural rights are too 'expensive' for its developing neighbours. Such rights are economically relative, and thus a State's level of economic prosperity is taken into account in the determination of a State's obligations.⁴⁴
- 5.49 The RRRT argued that:
- Many worthy initiatives in the Pacific fail for want of financial and human resources. Thus, initiatives to set up national mechanisms fail due to a lack of resources, especially for small or resource poor island nations. A regional mechanism, however, will allow PICTs to pool their resources.⁴⁵
- 5.50 Some consider funding as the most practical challenge to be addressed in the establishment and maintenance of a human rights body. The RRRT argued that a regional commission would offer significant cost savings in contrast to individual NHRIs.⁴⁶
- 5.51 The HRLRC acknowledged that there are complex issues to be addressed, but noted that:
- ...the debates around [these issues]...are often removed from the practical business of promoting and implementing human rights. Theoretical concerns should not be ignored, but nor should they be allowed to obstruct the work of those within the region who are

42 RRRT, *Submission no. 13*, p. 18.

43 HRLRC, *Submission no. 15*, p. 11.

44 Castan Centre, *Submission no. 10*, p. 4.

45 RRRT, *Submission no. 13*, p. 20.

46 RRRT, *Submission no. 13*, p. 21.

improving the lives of marginalised and disadvantaged people and whose work would be made more effective through enhanced regional dialogue and engagement with human rights.⁴⁷

An Asia-Pacific human rights mechanism

5.52 The following comment from the Castan Centre is reflective of a recurring theme in the evidence received by the Committee:

We believe such a mechanism could be very fruitful in promoting and protecting human rights in the region, but we think it is probably premature at this stage to be discussing details of such a mechanism.⁴⁸

5.53 ACFID suggested that:

For effective policy development at a regional level, it is important to distinguish between what may be feasible within individual countries and what may be feasible across a whole region.⁴⁹

5.54 It was suggested that if a regional mechanism is to be developed, the Asia-Pacific Forum may be the most likely group from which a regional mechanism could evolve. The Castan Centre observed that:

...[while it] is an odd grouping, because the Asia-Pacific Forum countries are scattered, but at least that is some sort of grouping which might help, and there has been some commitment made by the countries involved, in that they have got Paris compliance or NHRIs which are on the way to becoming Paris compliant.⁵⁰

5.55 SCIL agreed that:

...it may be easier and more productive to develop human rights mechanisms attached to existing regional bodies, rather than to create a new human rights commission from scratch. In particular, given the valuable work of the Asia-Pacific Forum (APF), one possibility would be to expand the functions of, and regional participation in, the APF so that it may become a quasi-human rights commission for the Asia-Pacific region.⁵¹

47 HRLRC, *Submission no. 15*, p. 8.

48 Castan Centre, *Transcript*, 15 April 2009, p. 1.

49 ACFID, *Submission no. 9*, p. 2.

50 Castan Centre, *Transcript*, 15 April 2009, p. 8.

51 SCIL, *Submission no. 5*, p. 8.

- 5.56 Many groups expressed scepticism about the feasibility of a unified Asia-Pacific regional mechanism at any point in the short to medium term. For example:
- Amnesty felt that the ‘...diversity of the Asia-Pacific region, together with the political environment, make it unlikely that there will [be] progress in the near future towards a human rights mechanism for the whole region’.⁵²
 - The FWRM, FWCC and CCF thought it ‘...unlikely that a human rights commission for the entire region would be viable. The countries are too diverse and geographically distant to form any coherent grouping for these purposes. It is also likely that the small countries of the Pacific would be swamped by the populous countries of Asia’.⁵³
 - The AHRC acknowledged that ‘...the Asia-Pacific region might presently lack the political and cultural cohesion required to secure arrangements for a regional mechanism’.⁵⁴
 - UNIFEM remarked that ‘...a large formal Asia-Pacific mechanism may evolve over time, but now is probably not the precise time to win that political support’.⁵⁵
 - SCIL observed that ‘...given the diversity of the Asia-Pacific region it may be difficult to achieve the necessary consensus, political support and resources for such a mechanism’.⁵⁶
 - ACFID argued that ‘...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’.⁵⁷
- 5.57 The Uniting Church summed up the thrust of this evidence in its comment that:
- ...the idea of setting up an Asia-Pacific regional human rights body probably is not a reality and we need to acknowledge that there are those subregions that already exist that, from a

52 Amnesty, *Submission no. 26*, p. 1.

53 FWRM, FWCC and CCF, *Submission no. 33*, p. 4.

54 AHRC, *Transcript*, 18 February 2009, p. 3.

55 UNIFEM, *Transcript*, 7 April 2009, p. 6.

56 SCIL, *Submission no. 5*, p. 1.

57 ACFID, *Transcript*, 7 April 2009, p. 34.

governmental point of view, it would make more sense to engage with.⁵⁸

Subregional human rights mechanisms

- 5.58 The preference for focusing on the subregions of the Asia-Pacific was a common theme which emerged during the course of this inquiry. Submitters agreed that the goal of better addressing human rights issues and potentially establishing human rights mechanisms was more likely to be successful when pursued at the subregional level.
- 5.59 The APF argued that:
- It seems, at this point in time, highly unlikely that a pan-Asia-Pacific human rights body/commission/mechanism will be established as had been originally envisaged. Instead, discussions and initiatives continue to focus on sub-regional (Asia and Pacific) mechanisms rather than a unifying or unitary pan-regional mechanism.⁵⁹
- 5.60 Amnesty commented that:
- The development of the political consensus required to develop and establish a human rights protection mechanism is far more likely to emerge at the sub-regional level, where in some cases there are more shared values and political priorities. At this level, there are encouraging, albeit embryonic, moves towards the development of such mechanisms, most notably in ASEAN.⁶⁰
- 5.61 Focusing on Asia and the Pacific as separate entities is certainly not a recent development. The HRLRC noted a recommendation along similar lines by a former Human Rights Sub-Committee in its 1998 report *Improving But...Australia's Regional Dialogue on Human Rights*, that the 'Committee should conduct separate analyses and develop distinct approaches to the development and enhancement of human rights mechanisms for Asia and the Pacific'.⁶¹
- 5.62 The AHRC suggested that:
- The [Asia-Pacific] region has disaggregated into 'sub-regions,' that are most commonly referred to as: West Asia (linked to the League of Arab states), South Asia (linked to the South Asian Association

58 Uniting Church, *Transcript*, 15 April 2009, p. 33.

59 APF, *Submission no. 21*, p. 3.

60 Amnesty, *Submission no. 26*, p. 4.

61 HRLRC, *Submission no. 15*, p. 2.

for Regional Cooperation, SAARC), Southeast Asia (linked to Association of Southeast Asian Nations, ASEAN) and the Pacific region (linked to the Pacific Islands Forum). East Asia lacks an associated organisation. Of these regional groupings, at present only the Pacific Islands Forum includes Australia as a member.⁶²

5.63 The APF noted that:

Two inter-governmental organisations in the region (ASEAN and the PIF) have emerged, respectively, as the nexus of discussions around sub-regional human rights mechanisms. Related sub-regional inter-governmental agreements (the ASEAN Charter, and the PIF *Pacific Plan*) provide underpinning frameworks for the promotion and protection of human rights in each sub-region.⁶³

5.64 However, the AHRC observed that 'efforts toward the creation of regional mechanisms in the Asia-Pacific, by the sub-regions of ASEAN and the Pacific Islands, [have] reflected ambivalence towards the notion of regionalism'.⁶⁴

5.65 In its consideration of the subregions, the Committee has examined the current developments by the ASEAN states and the possibility of human rights mechanisms emerging in the Pacific and other Asian subregions.

Asia

South East Asia

5.66 While it may not have gone as far as many had hoped, the emerging ASEAN mechanism – covering its South East Asian member countries – is a significant step in this subregion towards a formal framework for regional cooperation on human rights. However, even with its comparatively smaller membership of ten, there is still a variety of regimes and competing forces within the ASEAN group.⁶⁵

5.67 World Vision suggested that:

...rhetorically at least there appears to be some reluctance in Asia in particular to embrace human rights as an overarching regional priority.⁶⁶

62 AHRC, *Submission no. 4*, p. 3.

63 APF, *Submission no. 21*, p. 3.

64 AHRC, *Submission no. 4*, p. 1.

65 Amnesty, *Transcript*, 7 April 2009, p. 11.

66 World Vision, *Transcript*, 7 April 2009, p. 24.

5.68 The AHRC outlined in its submission 'various factors mitigating against' the creation of an ASEAN human rights body. It claimed that these had been raised over many years during deliberations on such a body, but that they may still have current application. These factors include:

- a resistance to interference in domestic affairs which could be a restraining factor on investigative and monitoring powers in member states;
- the absence of a regional human rights charter or set of agreed standards by which the new body can assess and determine compliance;
- the accommodation of national and regional peculiarities, culture and history which could detract from the universal application of human rights standards;
- linked to state sovereignty concerns, a preference for consultative rather than prescriptive model of rights protection (i.e. more promotion and monitoring rather than investigation of breaches);
- if government officials rather than independent experts are appointed to the body, they are more likely to 'play it safe' rather than jeopardise friendly relations; and
- that developments have been driven by a willing minority (Indonesia, Thailand, the Philippines and Malaysia) rather than a full ASEAN contingent.⁶⁷

5.69 Further, the AHRC observed that:

How these factors are mediated in the lead-up to the December 2009 date for the implementation of the proposed human rights body will be critical for its ultimate success as an effective mechanism for human rights protection in the region.⁶⁸

5.70 Despite concerns about an ASEAN human rights body's limitations, Amnesty was optimistic about the longer-term potential of such a body, stating:

I cannot see ASEAN...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

67 AHRC, *Submission no. 4*, pp. 4-5.

68 AHRC, *Submission no. 4*, p. 5.

going to get much more than that. But, in the long term, we just have to assist that process along.⁶⁹

5.71 However, this diminished role was of concern to the APF. It contended that:

The main challenge will be to ensure that the ASEAN human rights mechanism is a credible, meaningful and accessible entity. There are fears, particularly from civil society organisations, that the powers of the mechanism will be geared to promotional activities such as education and technical assistance rather than offering genuine protection of human rights and enabling the peoples of ASEAN to request help and access the ASEAN mechanism for assistance.⁷⁰

5.72 Evidence to this inquiry indicated that many of the concerns outlined by the AHRC persist in Asia and the wider region,⁷¹ representing ongoing challenges for the region in the establishment of a regional human rights mechanism.

The rest of Asia

5.73 While optimistic about ASEAN developments, Amnesty felt that a mechanism covering other Asian countries was far less likely. It commented that the:

...political sensitivities between...[the North Asian] states make prospects for a sub-regional agreement on a human rights protection mechanism in the foreseeable future bleak.⁷²

5.74 World Vision argued that:

An overarching human rights mechanism for Asia is desirable in principle, however limited consistency in the adoption and observance of human rights treaties and norms in Asia creates the risk that an Asian regional body established at this time would be likely to have a flawed foundation and limited mandate.⁷³

5.75 In view of the evidence presented to the Committee, progress toward an Asia wide regional mechanism seems unlikely at this time. However, there are other initiatives within the region seeking to address human rights issues affecting the region.

69 Amnesty, *Transcript*, 7 April 2009, p. 11.

70 APF, *Submission no. 21*, p. 23.

71 AHRC, *Submission no. 4*, pp. 4-5.

72 Amnesty, *Submission no. 26*, p. 4.

73 World Vision, *Submission no. 7*, p. 2.

5.76 The South Asian Association for Regional Cooperation (SAARC) was established in 1985 – by Bangladesh, Bhutan, India, the Maldives, Nepal, Pakistan and Sri Lanka – to provide a platform for South Asian nations to work together to accelerate the process of economic and social development in Member States. In terms of human rights, its Social Charter, commits state parties to:

...promote universal respect for and observance and protection of human rights and fundamental freedoms for all, in particular the right to development; promote the effective exercise of rights and the discharge of responsibilities in a balanced manner at all levels of society; promote gender equity; promote the welfare and interest of children and youth; promote social integration and strengthen civil society.⁷⁴

5.77 SAARC has also adopted specific regional conventions, including the 2002 Regional Convention on Combating the Crime of Trafficking in Women and Children for Prostitution.⁷⁵

5.78 Non government organisations also operate in the region. An example is the Asian Human Rights Commission, which is an independent body working (since 1986) to promote greater awareness and realisation of human rights in the Asian region, and to mobilise Asian and international public opinion to obtain relief and redress for the victims of human rights violations. SCIL noted that the Asian Human Rights Commission had drafted an Asian Human Rights Charter; the outcome of three years of discussion with various Asian countries and over 200 regional NGOs.⁷⁶

The Pacific

5.79 The RRRT maintained that:

...the most appropriate long term model for a human rights mechanism in the Pacific region, with a mandate for promoting and defending human rights, is a regional human rights commission, set up under The Pacific Plan, and envisaged by it. A regional mechanism could be closely tied to the Pacific Islands Forum Secretariat (PIFS) which administers and monitors the Plan, although it can be later assessed whether this is appropriate. The

74 Source: <http://www.saarc-sec.org/data/summit12/socialcharter.pdf>, viewed 1 October 2009.

75 APF, *Submission no. 21*, p. 23.

76 SCIL, *Submission no. 5*, p. 23.

mechanism need not start off by being a fully fledged commission but a simple mechanism.⁷⁷

5.80 In their joint submission, Fijian NGOs FWRM, FWCC and CCF, expressed their belief that a Pacific based subregional mechanism:

...would be far more effective to support a mechanism focusing on the island countries of the Pacific as a sub-region of Asia-Pacific. Although each country is proud of its own distinctive history, culture and traditions, there is sufficient commonality between the countries in this region to make a regional mechanism viable.⁷⁸

5.81 The RRRT raised the three criteria by which to determine whether a regional approach could value-add to an initiative:

Market Test: Is the market providing a service well? If so, involvement by national governments and/or regional bodies should be minimal...

Subsidiarity Test: Can national or local governments provide the service well? If so, involvement by regional bodies should be minimal...

Sovereignty Test: Does the proposed regional initiative maintain the degree of effective sovereignty held by national governments? Regional initiatives should shift only the management of services to regional bodies, not policy-making as well. Countries, not regional bodies, should decide priorities.⁷⁹

5.82 The RRRT considered these tests with respect to a Pacific human rights mechanism, and concluded that:

...the approach suggested by a regional mechanism satisfies all 3 criteria with ease as well as being cost effective. The overall costs and accountability responsibilities to the region, supportive agencies and development partners, would be significantly less than dealing with several separate mechanisms.⁸⁰

5.83 The APF suggested that it is crucial to remember that:

Experience from dialogue on national human rights mechanisms also suggests that attempts to impose 'template mechanisms' from elsewhere will either be resisted or will fail.⁸¹

77 RRRT, *Submission no. 13*, p. 5.

78 FWRM, FWCC and CCF, *Submission no. 33*, p. 4.

79 RRRT, *Submission no. 13*, pp. 7-8.

80 RRRT, *Submission no. 13*, pp. 8-9.

81 APF, *Submission no. 21*, p. 29.

5.84 The RRRT asserted that:

A charter and regional human rights mechanism must be an initiative of the Pacific peoples as a whole. It must truly represent and consider all views of its constituents. The goodwill and support of development partners and international agencies is critical to the advancement of human rights in the Pacific and the ensuing benefits to all Pacific peoples.⁸²

5.85 The Committee noted SCIL's suggestion that:

In order to assess whether it is both desirable and possible to establish a human rights mechanism for the Asia-Pacific region, it is necessary first to consider the reasons why, to date, no such mechanism has been established.⁸³

5.86 The RRRT noted that in the Pacific the proposal to set up a human rights mechanism for Pacific Island countries and territories has been around for more than 20 years. In 1982, a UN sponsored seminar on National, Local and Regional Arrangements for the Promotion and Protection of Human Rights in the Asia-Pacific Region was held. This was followed by a series of annual workshops. LAWASIA, an NGO of lawyers in the Asia-Pacific, initiated dialogue on the possibility of a Pacific regional human rights mechanism in 1985, with 63 government and NGO delegates meeting in Fiji to work on this issue.⁸⁴

5.87 In 1989, LAWASIA put forward a draft Pacific Charter of Human Rights.⁸⁵ However, it 'failed to gain the support of Pacific Island leaders, civil society or the people of the Pacific Islands'.⁸⁶ This failure has been attributed to a number of factors:

- A lack of ownership and buy in by the Pacific peoples. The initiative seen as being driven by outsiders and not Pacific Islanders.⁸⁷
- Many of the 'people's rights' and 'collective rights' did not dispel concerns about human rights as a western construct with little cultural relevance to the Pacific; a perceived clash with Pacific values.⁸⁸

82 RRRT, *Submission no. 13*, p. 22.

83 SCIL, *Submission no. 5*, p. 4.

84 RRRT, *Submission no. 13*, p. 9.

85 *Exhibit 2*.

86 AHRC, *Submission no. 4*, p. 6.

87 AHRC, *Submission no. 4*, p. 6.

88 AHRC, *Submission no. 4*, p. 7; RRRT, *Submission no. 13*, p. 9.

- Many of the rights were already provided for in constitutions and bills of rights already in the Pacific, with a regional level protection consequently seen as superfluous.⁸⁹
 - There was limited recognition of the value of ratifying international human rights treaties in the mid-1980s.⁹⁰
 - Lack of follow up and evaluation.⁹¹
 - Participation was not inclusive of stakeholder groups other than government, and that government participants were not of high enough rank to effect real change.⁹²
- 5.88 In exploring attempts to establish subregional mechanisms in Asia and the Pacific in the past, it is evident that some of the issues raised are ongoing challenges for the region.
- 5.89 Evidence to the Committee suggested that the Pacific is now more willing and better placed to pursue its own regional human rights mechanism:
- The AHRC noted that ‘...the leaders of the Pacific Islands are again considering the potential merits of a regional human rights mechanism’.⁹³
 - SCIL suggested that ‘...there may now be greater governmental support for such an instrument, as there appears to be growing recognition, on the part of leaders of Pacific nations, that the protection and advancement of human rights is a regional issue’.⁹⁴
 - RegNet noted that under the auspices of the Pacific Plan, key ‘...stakeholders in the region were charged with drafting and submitting a proposal on a potential regional human rights mechanism, which is due to be presented at the Pacific Island leaders’ meeting in August 2009’.⁹⁵
- 5.90 In 2008, a Strategies for the Future: Protecting Human Rights in the Pacific conference held in Samoa discussed key human rights challenges in the Pacific and strategies for strengthening national, regional and international mechanisms for protecting human rights in the region.⁹⁶

89 AHRC, *Submission no. 4*, p. 7.

90 RRRT, *Submission no. 13*, p. 10.

91 RRRT, *Submission no. 13*, pp. 9-10.

92 RRRT, *Submission no. 13*, pp. 9-10.

93 AHRC, *Submission no. 4*, p. 6.

94 SCIL, *Submission no. 5*, p. 9.

95 Referred to by RegNet in *Submission no. 3*, p. 3.

96 Source: <http://www.victoria.ac.nz/law/research/VUWLR/forthcoming.aspx>, viewed 12 July 2009.

5.91 The RRRT envisaged:

A simple regional human rights mechanism might in time become a fully fledged commission with powers to issue advisory opinions, promote human rights, receive complaints and hear and adjudicate disputes. In addition it may also be tasked to assist in ratification, reporting and the implementation of human rights treaties. However, not all these mandates need to be granted initially or all at once. The process should be a continuous one developing progressively over time.⁹⁷

5.92 In terms of Australia's involvement in any future mechanisms, the Castan Centre suggested that:

A human rights mechanism joining Australia to South Asia or China also seems politically unlikely. It seems more likely that Australia could join a grouping of Pacific nations. An ambition could be for such a mechanism to one day be united with an ASEAN mechanism. Alternatively, it may be that some ASEAN members will tire of the organisation's lack of consensus in moving forward on a human rights mechanism, and could be tempted to join in a functioning Pacific mechanism.⁹⁸

5.93 Similarly, SCIL observed that:

There are many options for sub-regional groupings. Perhaps the most promising, and that with most relevance to Australia, is the possibility of a Pacific human rights mechanism.⁹⁹

5.94 Despite the trend toward subregional mechanisms, the APF was optimistic that in the longer term, a unified Asia-Pacific mechanism may be possible in the future, stating:

The APF does not consider that the evident current tendency towards sub-regional mechanisms need compromise any future momentum or regional consensus to progress a *pan* Asia-Pacific human rights mechanism. As a member driven organisation, the APF is well positioned to continue to respond effectively to discussions at both the sub- and pan-regional levels.¹⁰⁰

97 RRRT, *Submission no. 13*, pp. 21-22.

98 Castan Centre, *Submission no. 10*, p. 2.

99 SCIL, *Submission no. 5*, p. 9.

100 APF, *Submission no. 21*, p. 4.

Elements of a regional mechanism

Charter

5.95 APF observed:

To date, there has not been strong or unified regional political support for a regional Charter and the issue will require considerable further discussion and negotiation.¹⁰¹

5.96 SCIL noted that:

...some argue that an attempt to formulate an Asia-Pacific Charter would be counter-productive. The concern here is that, in light of the great cultural, social and economic diversity of states within the Asia-Pacific region, the lack of consensus over applicable human rights standards and the low rates of ratification of international human rights instruments, any regional human rights charter would inevitably provide a lower standard of human rights protection than the international human rights system.¹⁰²

5.97 Instead SCIL proposed that:

...rather than putting effort into creating a regional human rights charter that is inferior to, and would undermine, the international human rights framework, emphasis should rather be placed on encouraging regional states to ratify existing human rights instruments.¹⁰³

5.98 The Castan Centre felt that developing a charter with:

...terminology that is vague and potentially unenforceable, particularly in relation to the scope of a State's obligations and the conditions that will give rise to a breach, should be steadfastly avoided, even if there is no intention for a regional enforcement mechanism in the near future.¹⁰⁴

5.99 Previous efforts – the Asian Human Rights Charter and the draft Pacific Charter – can be drawn on in the drafting of a regional charter. The HRLRC noted that a draft Pacific charter from the 1980s is being revisited and revised.¹⁰⁵

101 APF, *Submission no. 21*, p. 25.

102 SCIL *Submission no. 5*, p. 6.

103 SCIL, *Submission no. 5*, pp. 6-7.

104 Castan Centre, *Submission no. 10*, p. 7.

105 HRLRC, *Submission no. 15*, p. 26.

- 5.100 SCIL suggested that the current climate may offer a greater chance for a charter to be realised than has been the case in the last 15 years. It cautioned that 'reaching consensus on the content of such a Charter is likely to be a lengthy and difficult process', but that the process itself may be worthwhile in spurring human rights dialogue in the region.¹⁰⁶
- 5.101 SCIL was optimistic that:
- ...once the ratification of international instruments becomes a more widespread reality, a regional charter will actually *strengthen* protection for human rights. This is because a charter that contextualises internationally recognised rights might be seen to have greater legitimacy, and thus greater acceptance by states in the region, than international instruments that are arguably not sufficiently sensitive to regionally-specific needs and realities.¹⁰⁷

Executive body or commission

- 5.102 The RRRT believe that a regional human rights commission is the 'most appropriate long term model' for the Pacific. It argued that in the case of developing a charter or commission, all Pacific countries should be involved, but do not all have to agree. If a mechanism was developed, some countries could ratify immediately and others when they are ready.¹⁰⁸
- 5.103 The RRRT saw a significant potential role for a commission in fostering a human rights culture in the Pacific, stating:
- A regional commission will facilitate and foster an appreciation of human rights values within the citizenry of PICTs, in both government and civil society. It will create the necessary environment for the dialogue regarding international human rights and Pacific culture. Hence, this will create a widespread body of human rights case law specific to PICTs.¹⁰⁹
- 5.104 As reflected in earlier discussion on the potential scope of subregional human rights mechanisms or a unified mechanism, any emerging body is likely to have limited functions initially to be followed by a gradual evolution of its role and powers. SCIL suggested that a simple regional

106 SCIL, *Submission no. 5*, p. 10 and 7.

107 SCIL, *Submission no. 5*, p. 7.

108 RRRT, *Submission no. 13*, pp. 5-7.

109 RRRT, *Submission no. 13*, p. 15.

human rights mechanism at inception could evolve into a fully fledged commission. It also felt that there would be more support for a commission than for a judicial option.¹¹⁰

- 5.105 Fijian NGOs FMRM, FWCC and CCF saw practical benefits in a regional commission that would:

...address some of the larger issues that affect all of the Pacific Island states, such as human rights aspects of climate change, human rights and religion, gender discrimination or access to land, in ways that might be beyond the capacity of individual national commissions. It could be asked to coordinate regional responses to these issues, for consideration by national governments and agencies.¹¹¹

- 5.106 Amnesty advised that:

A number of regional organisations are putting together a joint proposal for the EU to fund the setting up and work of a working group to investigate this option. The Pacific Islands Forum Secretariat will be the focal point but the initiative will be lead by the Pacific Regional Rights Resource Team, a project of the Secretariat of the Pacific Community and the UN Development Program. Amnesty International is currently providing advice to this process, which is envisaging a 5-10 year timeframe for the establishment of a functioning commission.¹¹²

Judicial body or court

- 5.107 SCIL argued that a judicial body or court is not currently a viable option for the Asia-Pacific. It commented that:

...at present, attempts to establish a regional court of human rights would be unproductive...In our view, a mediatory or conciliatory enforcement mechanism is more suited to the region.¹¹³

- 5.108 Before a regional court can be a feasible option, SCIL contended, a number of these ongoing challenges must be resolved. It found that:

First, before a regional court with enforcement jurisdiction can be established, it is necessary to articulate precisely *what* rights will be enforced. This could be done either by formulating a regional charter of human rights that is then adopted by a majority of states

110 SCIL, *Submission no. 5*, p. 8.

111 FWRM, FWCC and CCF, *Submission no. 33*, p. 5.

112 Amnesty, *Submission no. 26*, pp. 8-9.

113 SCIL, *Submission no. 5*, pp. 7-8.

in the region, or by encouraging the widespread ratification of international instruments by the relevant states in the region. Neither of these have yet occurred in the context of the Asia-Pacific. Second, a regional human rights court is unlikely to receive sufficient support, given the general lack of consensus over the content of human rights and the need for a regional human rights system. Third, given the traditional scepticism of regional states towards the imposition of 'Western' human rights concepts, their hostility towards perceived interference in domestic affairs, and the relative instability of the region, the introduction of an adversarial enforcement mechanism is probably unsuited to the Asia-Pacific context.¹¹⁴

- 5.109 Similarly, the RRRT argued that a court mechanism for addressing human rights is unlikely to garner support in the Pacific, stating:

This prediction is confirmed by past experiences: the Draft Pacific Charter's proposal for an enforcement mechanism proved to be a substantial barrier to it gaining acceptance. Further, the vision currently articulated in the Pacific Plan and Auckland Declaration is largely one based on facilitating cooperation between states to encourage the development of national human rights machinery within their own countries. There is no conception of a supra-national mechanism that would impose reporting obligations on the state, have investigative powers, or receive complaints about human rights contraventions.¹¹⁵

- 5.110 The recent developments with ASEAN seem to indicate that support for a judicial body is also lacking in the Asian region. The evolving ASEAN human rights body does not include any significant enforcement measures.

- 5.111 Taking a longer term view however, the Castan Centre felt that it was important to keep in mind that:

One of the main benefits of a regional system over the existing UN-based international system is the greater capacity for implementation of the covered rights, hearing human rights complaints and granting concrete remedies. As noted above, regional systems have traditionally been entrusted with greater 'judicialisation' of human rights than the international system, due at least in part to the closer proximity – both geographically and

114 SCIL, *Submission no. 5*, pp. 7-8.

115 SCIL, *Submission no. 5*, p. 10.

culturally – to the people of the region, therefore making a regional system more practical and less alien than an international system.¹¹⁶

Links to other policy areas

5.112 Given the range and significance of human rights issues needing to be addressed in the Asia-Pacific region, the Committee recognises the importance of being open to diverse approaches or strategies for promoting and protecting human rights.

5.113 In addition to pursuing the establishment and support of national mechanisms – and regional mechanisms in the longer term – there are other policy approaches that may help to improve human rights. For example, Amnesty commented:

...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.¹¹⁷

5.114 Similarly, UNIFEM proposed considering human rights when tackling other issues, stating that:

...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...¹¹⁸

5.115 The HRLRC drew on the example of defence and trade contracts, specifically:

...having human rights impact assessments as part of those contracts – so, building an awareness within those governments that these basic minimum standards are a requirement, or at least of interest, for the Australian government when they are entering into these contracts.¹¹⁹

116 Castan Centre, *Submission no. 10*, p. 7.

117 Amnesty, *Transcript*, 7 April 2009, p. 21.

118 UNIFEM, *Transcript*, 7 April 2009, pp. 8-9.

119 HRLRC, *Transcript*, 15 April 2009, p. 22.

5.116 It was suggested that the mere presence of human rights clauses in bilateral trade agreements can have an effect. For example, the Vietnam Committee on Human Rights commented that:

Australia has bilateral free trade agreements with several Asian nations...Although this may not be classed as a “mechanism”, “human rights clauses” in these agreements are important tools for achieving human rights protection. Academic research has shown that, in many circumstances, the mere invocation of human rights clauses – without resorting to sanctions or punitive actions – can obtain specific results.¹²⁰

5.117 In its recent report on *Australia’s relationship with ASEAN*, the Committee considered the merits of pursuing human rights and other key issues as part of the free trade bilateral agreements, and recommended that DFAT pursue and report on human rights standards in current agreements and as a component of future agreements.¹²¹ The Committee has not yet received a response from the Government.

5.118 Countries such as Singapore and China illustrate that civil and political rights do not necessarily follow from economic development. However, the Committee noted that it is unsafe to assume an inverse correlation, that political and civil rights in anyway hamper economic development.¹²²

5.119 Amnesty did note that:

...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.¹²³

120 Vietnam Committee on Human Rights, *Submission no. 32*, p. 3.

121 Available on the Committee’s website at:

<http://www.aph.gov.au/house/committee/jfadt/Asean1/report/Final%20Report.pdf>.

122 Castan Centre, *Transcript*, 15 April 2009, pp. 3-4.

123 Amnesty, *Transcript*, 7 April 2009, p. 19.

5.120 In the case of aid, DFAT advised the Committee that Australia's aid program does operate in countries¹²⁴ where human rights abuses exist, and acknowledged that it is argued by some that the provision of aid should be contingent on a country's respect for human rights and democracy. However, DFAT was of the opinion that such an approach:

...can jeopardise the welfare of the poorest and most isolated. Accordingly, linking aid or development assistance to a country's human rights record will only be used in extreme circumstances. Factors such as delivery mechanisms (the ability to deliver aid without benefiting the incumbent government) and in-country verification procedures will be relevant.¹²⁵

Committee comment

5.121 The Committee carefully considered the two questions: 'Is a regional human rights mechanisms needed?' and 'Is it feasible?'. With the human rights challenges facing the region and commitments under the Vienna Declaration, 'yes' is a logical response to the first question. However, it was also apparent to the Committee that many contributors to the inquiry felt that discussion of a potential wider regional or sub-regional human rights mechanisms was premature.

5.122 The Committee agree that there are many hurdles to overcome before any shared set of human rights standards can be agreed upon or mechanisms developed.

5.123 There was a clearly held view among many contributors that a subregional mechanism would be feasible and workable. However, a wider Asia-Pacific model appeared to be a less viable option at this time. Australia should lend its support to moving forward what Asian and Pacific countries decide is the best approach to addressing the human rights challenges facing these regions.

5.124 The next step was for the Committee to consider what role Australia can play in promoting and supporting human rights developments in the region.

124 A map of countries in which AusAID works is available on its website: <http://www.ausaid.gov.au/about/ausaidmap.cfm>.

125 DFAT (supplementary) *Submission no. 35*, p. 11.

Australia's role

- 6.1 Like many nations, Australia is working to meet its human rights responsibilities at the international and domestic levels. Australia has ratified seven of the nine core international human rights treaties: *International Covenant on Economic, Social and Cultural Rights, International Covenant on Civil and Political Rights, Convention on the Elimination of All Forms of Racial Discrimination, Convention on the Elimination of All Forms of Discrimination against Women, Convention against Torture, and other Cruel, Inhuman or Degrading Treatment or Punishment, Convention on the Rights of the Child and Convention on the Rights of Persons with Disabilities.*
- 6.2 The Committee noted RegNet's observation on 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.¹
- 6.3 At the domestic level, a national human rights consultation was launched in December 2008. The Australian Government tasked the National Human Rights Consultation Committee to undertake an Australia-wide community consultation on protecting and promoting human rights and corresponding responsibilities in Australia. The Consultative Committee received over 35,000 submissions and held 66 community roundtables and three days of public hearings in Canberra. It reported to the Australian Government on 1 October 2009, and made 31 recommendations, including making education the highest priority for improving and promoting

1 RegNet, *Transcript*, 7 April 2009, p. 52.

human rights in Australia, increasing legislative scrutiny and adopting a human rights Act.²

Australia and the Asia-Pacific

6.4 The HRLRC noted that 'comprehensive engagement' with the Asia-Pacific region is one of the three foreign policy pillars that guide Australia's international relationships.³ Australia currently engages with the Asia-Pacific region on human rights in two main ways: through bilateral relationships and participation in the multilateral human rights system.⁴

6.5 In its evidence, World Vision described Australia's approach to relationship building in the region as 'generally sound', stating:

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...⁵

6.6 Amnesty observed that Australia's multilateral human rights diplomacy has been 'quite strong, particularly in recent years, with regard to treaty action'. However, it expressed concern that there is a danger that Australia's bilateral human rights dialogue processes could become a formality – an end in itself – rather than effective fora for progressing human rights issues.⁶

6.7 The HRLRC suggested that:

Australia can and should contribute to the promotion of human rights in the region in a collaborative fashion by:

- (a) providing technical and financial support for the ratification of international human rights treaties and associated implementation and reporting requirements;

2 Source: <http://www.humanrightsconsultation.gov.au/www/nhrcc/nhrcc.nsf/Page/Home>, viewed 1 October 2009.

3 HRLRC, *Submission no. 15*, p. 17.

4 DFAT, *Transcript*, 13 August 2009, p. 3.

5 World Vision, *Transcript*, 7 April 2009, p. 25.

6 Amnesty, *Transcript*, 7 April 2009, p. 12.

- (b) assisting in the establishment and operation of national human rights institutions;
 - (c) recognising and supporting local human rights NGOs within the region; and
 - (d) contributing to regional human rights education.⁷
- 6.8 Evidence suggested that the Pacific, rather than Asia, was a more likely potential sphere of influence for Australia.⁸ The HRLRC commented that announcements by the current Australian Government have indicated a new approach in the Pacific; the 'beginning of a new era of co-operation' that involves a 'fundamental change in the way we work with and talk with, not at, our neighbours'.⁹

Bilateral human rights dialogues

- 6.9 In August 2007, the Australia-China Human Rights Dialogue was established as a high level dialogue on human rights. The DFAT website described the dialogue as '...an important forum for frank exchanges on human rights and for identifying areas where Australia can help China implement international human rights standards, including through technical cooperation'.¹⁰
- 6.10 The Chinese Embassy website described the most recent 12th human rights dialogue between China and Australia, held in Canberra in February 2009, as:
- ...an in-depth exchange of views on a broad range of topics, including human rights protection measures, economic, social and cultural rights, the rights of ethnic minorities, women, children and the disabled and international human rights cooperation. The dialogue proceeded in a positive and candid atmosphere and has been constructive. The two sides agreed to continue dialogue, exchange and cooperation on human rights on the basis of mutual respect, equal treatment and non-intervention in each other's internal affairs.¹¹

7 HRLRC, *Submission no. 15*, p. 27.

8 See, for example, Castan Centre, *Transcript*, 15 April 2009, p. 1.

9 HRLRC, *Submission no. 15*, p. 17.

10 DFAT website: http://www.dfat.gov.au/geo/china/china_brief.html, viewed 6 October 2009.

11 Amnesty, *Exhibit no. 11*, p. 3.

- 6.11 An important component of this bilateral dialogue has been the China-Australia Human Rights Technical Cooperation Program (HRTC); funded by AusAID (\$2 million per year) and administered by the Australian Human Rights Commission (the Commission).¹²
- 6.12 The HRTC activities focus on legal reform, women's and children's rights, and ethnic and minority rights. They are generally small scale activities of short duration. The Commission acknowledged that 'overall impact is likely to be modest and that substantial change is likely to come slowly'.¹³
- 6.13 However, groups expressed concern about the lack of transparency and accountability of this process. In 2009, the 12th Australia-China Human Rights Dialogue took place, but Amnesty, for example, was concerned that the process has 'become more of a formality' than a forum for meaningful dialogue and progress on human rights issues.¹⁴
- 6.14 There is no requirement for the Department of Foreign Affairs and Trade to report to interest groups the details or outcomes of the dialogues. However, details of activities under the technical cooperation program are outlined on the AusAID website and regular reviews by outside consultations are undertaken and published on the website, including government responses to these reviews.
- 6.15 The 2007 review of the China-Australia HRTC found that:
- ...the HRTC has generally been very effective in fulfilling its objective to work collaboratively with Chinese government agencies and NGOs to implement programs and activities 'to strengthen the administration, promotion and protection of human rights in China'. The HRTC program is strongly supported by both the Chinese and Australian partners. Most activities are achieving their objectives and there are indications of capacity building in some areas. The HRTC program has a wide range of Chinese cooperating organisations. The Managing Contractor has established a strong, cooperative relationship with these organisations based on trust and mutual respect.¹⁵

12 DFAT (Supplementary) *Submission no. 35*, p. 7.

13 Australian Human Rights Commission, (Supplementary) *Submission no. 27*, p. 4.

14 Amnesty, *Transcript*, 7 April 2009, p. 12.

15 AusAID website: http://www.ausaid.gov.au/publications/pdf/hrtc_review.pdf, p. 41, viewed 6 October 2009.

- 6.16 The Review Team did, however, make a number of recommendations of ways to refine and improve implementation, monitoring, evaluation and reporting, most of which were accepted by the Australian Government.¹⁶
- 6.17 In response to a question taken on notice, the Commission outlined for the Committee key achievements and outcomes from HRTC activities. Some general outcomes included:
- helping to raise the prominence of human rights issues in public discourse and debate;
 - raising the awareness of Chinese citizens of their rights and the consciousness of officials as to their obligations to protect those rights; and
 - increasing willingness to examine the possibility of developing meaningful complaints mechanisms.¹⁷
- 6.18 The Committee noted the series of case studies undertaken by the Commission in early 2008, which also revealed specific outcomes in the areas of law and regulation, policy and practices and generating civil society demand for particular services.¹⁸ To select one issue by way of example, the Commission identified a number of developments on addressing domestic violence, including:
- amendments to the *Law on the Protection of Minors*, including new provisions prohibiting domestic violence against minors;
 - guidelines on combating domestic violence setting, which outline Ministerial and agency responsibilities;
 - local regulations on domestic violence across 25 provinces, autonomous regions and provincial level municipalities;
 - creation of specialist legal aid centres for women within the legal aid offices of local justice departments;
 - establishment of anti-domestic violence emergency hotlines and complaint handling centres in provinces across China;¹⁹ and

16 AusAID website: http://www.ausaid.gov.au/publications/pdf/hrtc_response.pdf, viewed 6 October 2009.

17 Australian Human Rights Commission, (Supplementary) *Submission no. 27*, pp. 6-7.

18 Australian Human Rights Commission, (Supplementary) *Submission no. 27*, pp. 7-10.

19 Australian Human Rights Commission, (Supplementary) *Submission no. 27*, p. 8. The Commission noted that in Beijing the use of these facilities has consistently increased, which the Beijing Women's Federation concludes is due to increasing awareness of the service and confidence that they will receive help.

- establishment, by the Centre for Women and Children's Health, of an active screening program to identify domestic violence victims and accompanying referral system to other relevant support services.²⁰

6.19 The Commission felt that one of the strengths of the HRTC is that it:

...strongly aligns itself with the human rights priorities of the Chinese Government. The program supports major policy and legislative reforms being pursued by PRC [People's Republic of China] authorities. This alignment helps give HRTC activities momentum and sustainability, and increases the likelihood that activities will contribute to concrete outcomes, by "riding the wave" of existing Government reform initiatives.²¹

6.20 The Committee noted the Commission's advice that these changes are small steps towards greater accountability, the end benefits of which 'may take generations to unfold'.²²

6.21 Since 2002, Australia and Vietnam have also held a formal human rights dialogue. A Vietnam-Australia Human Rights Technical Program was introduced in 2006; funded by AusAID through the Human Rights Small Grants Scheme and administered by the Commission.²³

6.22 Australia is the only country in the Asia-Pacific region that has a bilateral human rights dialogue with Vietnam. However, the Vietnam Committee on Human Rights expressed similar concerns to Amnesty's, that the dialogue not be used as an end in itself to addressing human rights problems, and that the process could be made more transparent.²⁴

6.23 ACFID recommended that the Australian Government:

Draw on the lessons learned from the Australia-China Human Rights Technical Cooperation Program for application to selected other countries.²⁵

20 Australian Human Rights Commission, (Supplementary) *Submission no. 27*, pp. 7-8 and 10.

21 Australian Human Rights Commission, (Supplementary) *Submission no. 27*, p. 6.

22 Australian Human Rights Commission, (Supplementary) *Submission no. 27*, p. 6.

23 DFAT website: http://www.dfat.gov.au/geo/vietnam/vietnam_brief.html, viewed 6 October 2009.

24 Vietnam Committee on Human Rights, *Submission no. 32*, p. 3.

25 ACFID, *Submission no. 9*, p. 5.

6.24 The Commission recommended:

That Australia should continue its engagement on human rights in the Asian region, through bilateral dialogues, technical cooperation programs and other exchanges, and consider expanding its programs into other countries in the region.²⁶

Committee comment

6.25 The Committee believes that the bilateral dialogue process is a worthwhile process for fostering and strengthening relationships with countries in the Asia-Pacific region. Understanding, mutual respect and trust must feature in bilateral relationships if meaningful progress is to be made on human rights issues in the region.

6.26 The Committee recognises that these dialogues are a formal government to government mechanism. It did however note concerns in the evidence that unaccountable dialogue processes could breed complacency. The Committee feels, slow and steady though progress may be, it is important to keep up the momentum for advancing human rights in cooperation with our bilateral dialogue partners. Establishing the practice of briefing parliament on outcomes of these dialogues on a regular basis is one way in which greater accountability could be injected into the process.

26 Australian Human Rights Commission, *Submission no. 19*, p. 5.

Recommendation 1

The Committee recommends that:

- the Australian delegations to its bilateral human rights dialogues with China and Vietnam include parliamentary representation from the Human Rights Sub-Committee of the Joint Committee on Foreign Affairs, Defence and Trade; and that
- the Department of Foreign Affairs and Trade provide the Human Rights Sub-Committee with an annual briefing on the outcomes of these dialogues, and on any other bilateral human rights dialogues that may later be established with countries in the Asia-Pacific.

Aid

6.27 The HRLRC noted that:

In relation to aid, the Australian Government's position is that 'development and human rights are interdependent and mutually reinforcing'.²⁷

6.28 RegNet recommended that AusAID adopt a human rights-based²⁸ framework for its development assistance aid.²⁹ On this theme, World Vision called for the better integration of human rights across AusAID projects. It saw:

...huge potential for human rights to be infused right across every aspect of the organisation's work. Practical rights based

27 HRLRC, *Submission no. 15*, p. 15.

28 A human rights-based approach to development is a framework based on international human rights standards and seeks to analyse inequalities at the root of development problems and redress discriminatory practices and unjust power distribution that impedes development progress. As ACFID outlines, it is as much about *how* development is undertaken as it is about *what* is done. More information about this approach is available in UN OHCHR, 2006, *Frequently asked questions on a human rights-based approach to development cooperation*; ACFID, 2009, *Millennium Development Rights: How human rights-based approaches are achieving the MDGs – Case-studies from the Australian aid and development sector*.

29 RegNet, *Submission no. 3*, p. 2.

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.³⁰

6.29 ACFID acknowledged that a human rights-based approach is 'not a silver bullet' and that it may tend to gravitate towards a particular human rights priority issue in the region, for example domestic violence or gender empowerment, while work on other objectives such as rule of law may lag.³¹ However, it noted that a 2005 report of the Development Assistance Committee of the Organisation for Economic Co-operation and Development indicated that taking a human rights-based approach to development aid is 'a particularly effective way to deliver aid and encourage donor governments to do more'.³² The Office of the High Commissioner for Human Rights also detailed the benefits of implementing a human rights-based approach in the delivery of development aid in a 2006 paper.³³

6.30 ACFID expressed concern about AusAID's reform agenda, stating:

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.³⁴

6.31 Effective human rights protection cannot occur in a vacuum. As the Castan Centre noted:

30 World Vision, *Transcript*, 7 April 2009, p. 27.

31 ACFID, *Transcript*, 7 April 2009, p. 41.

32 ACFID, *Transcript*, 7 April 2009, p. 39.

33 OHCHR, *Frequently asked questions on a human rights-based approach to development cooperation*, 2006. Available at: <http://www.ohchr.org/Documents/Publications/FAQen.pdf>, viewed 23 October 2009.

34 ACFID, *Transcript*, 7 April 2009, pp. 35-36.

...it is important in our view not to segregate human rights from other areas of Australia's international engagements. We do not want to see Australia's human rights commitments 'over here' and everything else that we do 'over there'. It is important to integrate Australia's human rights commitment to its aid program.³⁵

- 6.32 The Committee noted that other than in human rights specific projects, there is no requirement for AusAID, managing contractors, or NGOs delivering overseas developing assistance, to give consideration to the human rights impacts of AusAID programs.³⁶

Human Rights Small Grants Scheme

- 6.33 The Human Rights Small Grants Scheme provides small grants to in-country organisations – primarily NGOs in the Asia-Pacific – to undertake activities for the promotion and protection of human rights in a direct and tangible way. The 2008-09 program included:

- providing human rights training and capacity building for leaders and members of Pacific Christian churches;
- strengthening the capacity of Indonesia's Islamic local leaders on gender equality and human rights in Jombang, Lamongan, and Kediri, East Java, plus a focus on strengthening the civil society networks dealing with these issues in Muslim communities;
- raising awareness and promoting the implementation of the Convention on the Rights of Persons with Disabilities in Vanuatu; and
- protecting the rights of children in direct conflict with law enforcement agencies, by working with policy to create a 'good practice' model of detaining, questioning and protecting these children.³⁷

- 6.34 ACFID contended that the scheme should be expanded.³⁸ The Uniting Church agreed, suggesting that:

...the budget for the Human Rights Small Grants Scheme increase from the current just over \$1 million to \$4 million, which would

35 Castan Centre, *Transcript*, 15 April 2009, p. 2.

36 AusAID's business and contract guidelines make no explicit mention of human rights. For example, see <http://www.ausaid.gov.au/business/contracting.cfm>, viewed 23 October 2009.

37 AusAID website: http://www.ausaid.gov.au/business/pdf/hrsgs_proposals08-09.pdf, viewed 16 July 2009.

38 ACFID, (Supplementary) *Submission no. 30*, p. 6.

represent 0.1 per cent of the aid budget, believing that is necessary to facilitate civil society groups having more access to that and to support their work within countries in the region. Specifically, there is a need to provide that those on-the-ground organisations are able to make application. We note that there is some AusAID staff time already provided for that function, but it could be expanded.³⁹

Committee comment

- 6.35 The Committee shared the concerns of groups that Australia's development assistance aid dollars and efforts sometimes go to countries in which human rights abuses exist. It noted DFAT's argument that if the provision or level of aid was contingent on a country's human rights record, it 'can jeopardise the welfare of the poorest and most isolated'.⁴⁰ In addressing this concern the Australian Government in some cases provides resources and support through international aid agencies rather than directly to governments.
- 6.36 The Committee believes that the Australian Government should be conscious of its human rights obligations in all its regional relationships. It reaffirms its comments and recommendation in its *Inquiry into Australia's relationship with ASEAN* report, that in the area of trade:
- ...human rights, core labour standards, and the environment be pursued in future free trade agreements and, when existing free trade agreements which do not contain such issues are reviewed, these issues should be pursued.⁴¹

39 Uniting Church, *Transcript*, 15 April 2009, p. 30.

40 DFAT (Supplementary) *Submission no. 35*, p. 11.

41 JSCFADT, *Inquiry into Australia's Relationship with ASEAN*, June 2009, p. 159, Recommendation 8.

- 6.37 Further, the Committee suggests that development assistance is a natural and logical arena of government operations in which consideration of human rights impacts should be integral to the planning and implementation. While the Committee is pleased to note that foci on gender, poverty and the environment are increasingly becoming part of the consideration process of AusAID projects, it believes that a more integrated approach is needed.

Recommendation 2

The Committee recommends that AusAID adopt a human rights-based approach to guide the planning and implementation of development aid projects.

Supporting the development of regional mechanisms

Concerns about Australia as a driving force

- 6.38 Evidence to the Committee strongly cautioned against Australia being seen to be driving any initiative for a regional human rights mechanism in the Asia-Pacific. For example, the Castan Centre told the Committee that:

We believe that any move towards the creation of a regional mechanism is going to necessitate serious regional dialogue. We do not think that this will really get off the ground, if it is perceived outside Australia as being led by Australia – for a number of political reasons, I do not think that would work – whereas if it is seen as being led by other countries or perhaps equally led by everybody within the region, that is going to be more successful.⁴²

- 6.39 The Castan Centre was concerned that:

...Australia and New Zealand are perceived to be the only Western style states. There is a perception of alienness within the region and it gives states an excuse to either reject the idea outright or simply adopt it at a formal level and not embed it in their legal and social culture.⁴³

42 Castan Centre, *Transcript*, 15 April 2009, p. 1.

43 Castan Centre, *Transcript*, 15 April 2009, p. 6.

6.40 The HRLRC advised the Committee that:

In the course of preparing the centre's submission, we spoke to a number of human rights lawyers and activists with experience working in the Pacific, and the almost universal response to the proposition that Australia might unilaterally develop and promote a particular model of mechanism was that such an approach would not work. This is why our submission, along with numerous others, highlights the importance of stakeholder buy-in, bottom-up approaches and enhanced dialogue.⁴⁴

6.41 However, groups did see a significant supporting role for Australia in promoting human rights in the region.⁴⁵ The Uniting Church encouraged:

...the Australian government to seek to use what influence it has as a medium-sized and respected middle power globally and a significant regional power in the Asia-Pacific region to engage other nations with countries in our region to effectively influence them towards protection and respect for basic human rights. We note such influence will vary greatly across the region.⁴⁶

6.42 HRLRC referred to and endorsed a recommendation of the 1998 Committee report *Improving But...Australia's Regional Dialogue on Human Rights*, which was that:

The Australian Government should not adopt a top-down leadership role in the development of a regional human rights mechanism. However, in recognition of the many benefits that would flow from the development of such a mechanism, the Australian Government should be prepared to provide significant financial and technical assistance to Pacific Island government and non-government organisations that wish to develop and promote a regional mechanism.⁴⁷

Australia's potential involvement

6.43 Amnesty observed that:

As consensus for an Asia-Pacific regional mechanism is unlikely to be achieved in the near future, Australia should concentrate on

44 HRLRC, *Transcript*, 15 April 2009, p. 19.

45 See, for example, HRLRC, *Transcript*, 15 April 2009, p. 1 and p. 19, Uniting Church, *Transcript*, 15 April 2009, p. 31.

46 Uniting Church, *Transcript*, 15 April 2009, p. 30.

47 HRLRC, *Submission no. 15*, p. 4.

promoting and assisting the development of sub-regional mechanisms for the protection of human rights, such as those emerging in the ASEAN and Pacific Island contexts.⁴⁸

6.44 However, the AHRC argued that it is unlikely that Australia will actually be part of an ASEAN human rights mechanism, stating that:

In terms of geographical proximity, Australia is most closely aligned to the Pacific and to Southeast Asia. But there has been no suggestion of which we are aware, by advocates for mechanisms in either of these regions, that Australia should become a party to any prospective regional charter or convention. Australia is not a member of ASEAN and it could be argued that Australia lacks a “community of interest” or “common affinity” with the ASEAN region...⁴⁹

6.45 The Castan Centre suggested that:

A human rights mechanism joining Australia to South Asia or China also seems politically unlikely. It seems more likely that Australia could join a grouping of Pacific nations. An ambition could be for such a mechanism to one day be united with an ASEAN mechanism. Alternatively, it may be that some ASEAN members will tire of the organisation’s lack of consensus in moving forward on a human rights mechanism, and could be tempted to join in a functioning Pacific mechanism.⁵⁰

6.46 The AHRC countered suggestions about Australia’s potential membership of a Pacific subregional mechanism, stating:

Advocates for a human rights mechanism in the Pacific ... display no desire that Australia should become party to any prospective regional human rights charter for the Pacific.

...Most current dialogue about a regional mechanism for the Pacific proceeds on the basis that Australia and New Zealand would not be invited to join any Pacific Human Rights Mechanism, at least not at first.⁵¹

48 Amnesty, *Submission no. 26*, p. 4.

49 AHRC, *Submission no. 4*, p. 8.

50 Castan Centre, *Submission no. 10*, p. 2.

51 AHRC, *Submission no. 4*, p. 8.

- 6.47 The AHRC recommended that Australia support subregional initiatives and encourage them to develop in accordance with the following key principles:
- derives its functions from human rights conventions, treaties or standards which combine universal human rights principles with domestic considerations;
 - comprises independent experts rather than government officials;
 - exercises investigatory and monitoring roles with powers to enforce determinations and award redress;
 - be properly resourced to implement its mandate.⁵²
- 6.48 The AHRC saw potential for Australia to be involved in the drafting of a convention for the protection of human rights in the region, which could go on to form the basis for establishing a regional mechanism. It suggested that New Zealand would be a possible partner for such an endeavour.⁵³
- 6.49 As discussed previously, a lack of understanding of human rights and perceptions that these rights may be at odds with culture and local values are challenges facing the region. An area of direct assistance in the region to help address these challenges could be the provision of human rights education and training.⁵⁴ The UN High Commissioner has described human rights education as '...a vaccine against intolerance, animosity and conflicts between members of different groups in our communities'.⁵⁵
- 6.50 According to the Australian Bahá'í Community:
- ... systematic programs of human rights education are indispensable to the realisation of human rights in the Asia-Pacific region. All citizens need not only to learn about their own rights but to develop respect for the rights of humanity in general.
- ...Education that instils in hearts and minds an awareness of and sensitivity to the human rights of all persons constitutes an essential tool for the promotion and implementation of international human rights standards.⁵⁶
- 6.51 The Castan Centre noted that an area of direct assistance in the region could be the provision of human rights training.⁵⁷ ACFID suggested that

52 AHRC, *Submission no. 4*, p. 16.

53 AHRC, *Submission no. 4*, p. 9.

54 Castan Centre, *Transcript*, 15 April 2009, p. 1.

55 Quoted in HRLRC, *Submission no. 15*, p. 33.

56 Australian Bahá'í Community, *Submission no. 14*, p. 7.

57 Castan Centre, *Transcript*, 15 April 2009, p. 1.

AusAID seek inclusion of human rights education as a cross-cutting topic for its work, and noted that:

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.⁵⁸

Support for existing mechanisms

6.52 The Australia West Papua Association (Sydney) suggested:

As a [Pacific Island Forum] member, Australia should be supporting the Forum financially to set up a mechanism to improve the human rights situation in the Pacific region.⁵⁹

6.53 The APF noted that it has received ongoing financial – approximately 30 per cent of its budget – and political support for its establishment and work from the Australia Government.⁶⁰ Groups called for the Australian Government to continue its support of the work of the Asia-Pacific Forum:

- The Uniting Church asked that ‘...the Australian government seek to enhance the role of this body by assisting... national human rights commissions to increase their effectiveness, where such opportunities exist’.⁶¹
- The Castan Centre recommended that Australia ‘...should strengthen the capacity of [the] APF, as well as the capacities of nascent NHRIs in the region to facilitate their joining to APF’.⁶²
- Amnesty suggested that with the increasing number of NHRIs they are assisting – with a staff of only six people – additional financial assistance should be provided.⁶³
- The HRLRC saw a role for Australia ‘...in providing financial and technical resources to assist in the development of NHRIs’.⁶⁴

58 ACFID, *Transcript*, 7 April 2009, p. 36.

59 Australia West Papua Association (Sydney), *Submission no. 24*, p. 4.

60 APF, *Submission no. 21*, p. 15.

61 Uniting Church, *Transcript*, 15 April 2009, p. 30.

62 Castan Centre, *Submission no. 10*, p. 9.

63 Amnesty, *Transcript*, 7 April 2009, p. 11.

64 HRLRC, *Submission no. 15*, p. 31.

6.54 The AHRC commented that:

While we endorse Australian support for the development of regional human rights mechanisms created in accordance with the key principles that we outline, we believe that support should not be provided in the absence of parallel support for facilitating the establishment and strengthening of national human rights institutions.⁶⁵

6.55 The HRLRC asserted that support for NHRIs now is an investment in a future human rights mechanism.⁶⁶

6.56 However, as evidence has indicated, in the region, particularly the Pacific, there are countries that are unlikely to be able to develop sustainable NHRIs and would struggle to meet international obligations under the UN human rights system. Some form of supranational forum may be an option for countries in danger of falling through the gaps in the existing system. This could take the form of an advisory, rather than a formally chartered structure, working strategically with smaller states to better access the different layers of existing human rights mechanisms and address the states' specific human rights concerns and human rights obligations.

Working on specific issues

6.57 As discussed in previous chapters, working on specific issues – especially those in which Australia have a shared interest – can be a productive and pragmatic approach to address human rights issues in the Asia-Pacific.

6.58 World Vision noted that Australia can, in many respects, be regarded as an outsider when looking to engage in the Asia region.⁶⁷ By engaging in cooperative approaches to shared problems Australia can impact on these issues in practical terms and strengthen its human rights credentials in the region.

6.59 UNIFEM maintained that:

...[a worthwhile] 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

65 AHRC, *Transcript*, 18 February 2009, p. 4.

66 HRLRC, *Submission no. 15*, p. 36.

67 World Vision, *Transcript*, 7 April 2009, p. 26.

give you some money to help you? But you will have ownership and design.⁶⁸

6.60 Engagement on issues such as human trafficking, labour and child rights, gender discrimination and domestic violence, is making vital inroads into reshaping the human rights landscape in the region.

6.61 Speaking on promoting child rights, the NCYLC comments also have wider application for building on work already underway on a range of issues. It stated:

Supporting and developing the work that is already [underway] ...allows the Australian Government to direct its resources into programmes that are most likely to build on existing community and political support. These programmes are more likely to succeed and produce results in the short and longer term. This in turn builds credibility. Clear benefits to communities generate legitimacy and can be used to build momentum for a human rights framework and dialogue. For the Australian Government it allows for clearer links between resources provided and the outcomes achieved.⁶⁹

6.62 World Vision saw a role for Australia in combating human trafficking and labour exploitation through bilateral engagement, multilateral forums, multilateral instruments, regional cooperation and increasing policy and funding focus on prevention and protection.⁷⁰

6.63 On labour rights, ACTU argued that:

...there is considerable scope for the Australian Government to further integrate the promotion and protection of fundamental workers' rights in its overseas aid program through AusAID, its commitments to multilateral aid programmes as well as in support of technical cooperation with the International Labour Organisation.⁷¹

6.64 UNIFEM saw an opportunity for Australia to exhibit leadership on women's issues, stating that:

68 UNIFEM, *Transcript*, 7 April 2009, p. 9.

69 NCYLC, *Submission no. 25*, p. 7.

70 World Vision, (Supplementary) *Submission no. 29*, p. 1.

71 ACTU, *Submission no. 16*, p. 10.

...the lack of human rights mechanisms within East and South-East Asia and the Pacific is having a dramatic effect on women throughout the region and urges the Australian Government to become a regional leader in relation to the promotion of human rights. Specifically, we urge the Australian Government to encourage the countries within our region that are yet to ratify the Convention on All Forms of Discrimination against Women (CEDAW) to do so, that is Tonga, Nauru and Palau.⁷²

International mechanisms

- 6.65 A regional focus does not mean that support for international mechanisms should wane. The human rights standards and principles that form the basis of the UN system clearly have emblematic and practical application in the Asia-Pacific.
- 6.66 Through AusAID, the Australian Government provides funding to the OHCHR through annual contributions. ACFID noted that the 2008-2009 contribution was \$1.9 million, with \$400,000 earmarked for the Pacific Regional Office and \$100,000 for the National Institutions Unit.⁷³
- 6.67 The Australian Bahá'í Community commended Australia's renewed commitment to the UN, noting that:
- ...the Government has made a significant budgetary allocation to fund Australia's engagement with the United Nations. Without sufficient resources the work of United Nations human rights mechanisms will continue to be hampered and we trust that Australia will play its part, as a responsible international citizen, in providing appropriate levels of financial support to the United Nations to enable it to prevent and redress human rights violations. We also suggest that Australia should be a vigorous advocate internationally for an increase in the resources allocated for the promotion and protection of human rights, to reflect their importance to the mandate of the United Nations.⁷⁴
- 6.68 Submitters emphasised the importance of continuing and enhancing Australia's support for the mechanisms under the UN human rights system:

72 UNIFEM, *Submission no. 1*, p. 2.

73 ACFID, (Supplementary) *Submission no. 30*, p. 4.

74 Australian Bahá'í Community, *Submission no. 14*, p. 3.

- The Uniting Church suggested that Australia should continue to support UN special rapporteurs, providing financial support that 'allows for effective establishment and maintenance' of these positions, which have been adequately resourced in the past.⁷⁵
- The Australian Bahá'í Community suggested increased resources would assist the OHCHR to better face challenges internationally and in the Asia-Pacific.⁷⁶
- World Vision suggested that Australia could provide practical support to small nations in the region, particularly the Pacific nations, to assist in meeting their reporting obligations under the Universal Periodic Review process.⁷⁷
- The HRLRC highlighted the lack of financial and human resources in the Pacific and contended that as part of its commitment to promoting human rights in the region, the Australia Government:

...must ensure adequate resourcing to allow for Pacific governments and civil society to engage in a regional dialogue on human rights and to participate in the international human rights system. This should include, for instance, funding adequate to ensure that programs and policies are accessible in the language and media appropriate for Pacific people.⁷⁸

6.69 DFAT noted that the Commonwealth Joint Office initiative assisting Pacific Island nations to participate in human rights and other discussions at UN bodies, receives funding from Australia.⁷⁹

Treaty ratification

6.70 It was suggested that Australia could play a role in assisting Pacific nations to address the low rate of ratification of treaties.⁸⁰

75 Uniting Church, *Transcript*, 15 April 2009, p. 32.

76 Australian Bahá'í Community, *Submission no. 14*, p. 3.

77 World Vision Australia, *Transcript*, 7 April 2009, p. 10.

78 HRLRC, *Submission no. 15*, p. 12.

79 DFAT, *Submission no. 17*, p. 1.

80 See, for example, Castan Centre, *Transcript*, 15 April 2009, p. 1, HRLRC, p. 19 and Amnesty, *Transcript*, 7 April 2009, pp. 11-12.

6.71 The HRLRC argued that:

...working with Pacific island nations on treaty ratification is really important. It is more than just a symbolic gesture from that nation that the human rights of their citizens and people in their territory matter. It is also an ongoing review of that country and an ongoing dialogue with the international system about how human rights are being implemented in their countries...⁸¹

6.72 The Castan Centre, when discussing a possible role for Australia in promoting the ratification of treaties in the Pacific, suggested:

It would be helpful for Australia to engage directly with those States that have ratified only one of these international treaties, to find out why they have not ratified the other. Specifically, Samoa should be asked why it decided to ratify ICCPR but not ICESCR. ...After links are made with these States, they could be helpful partners in bringing other States that have not ratified either treaty on board.

In the engagement process, Australia should encourage States to ratify the Covenants and other international human rights treaties. This could occur in a manner of soft diplomacy, perhaps through the provision of human rights education and training. Such programs, such as the Indonesia-Australia Specialised Training Program (orchestrated through AusAID), probably played a role in prompting Indonesia to ratify both international Covenants recently. Other States should be encouraged to ratify the Covenants through similar programs.⁸²

6.73 The Castan Centre also commented in relation to ratification that:

It is necessary to understand the reasons behind the States' failure to ratify these basic human rights documents [ICCPR and ICESCR], as those reasons are currently unclear.⁸³

6.74 However, it suggested that further research into the causes of the low ratification level of treaties in the Pacific may be unnecessary. ACFID opined that:

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

81 HRLRC, *Transcript*, 15 April 2009, p. 25.

82 Castan Centre, *Submission no. 10*, pp. 5-6.

83 Castan Centre, *Submission no. 10*, p. 5.

human rights treaties. I think it would be very worthwhile to look into those issues that are already on the table before we pursue anything else.⁸⁴

- 6.75 RegNet suggested that working through the Commonwealth system is one way Australia can promote and provide practical support for treaty ratification in the region. It noted in its work on this issue, that the Commonwealth has been working with governments in these countries and 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'. For example, a Commonwealth facilitated meeting in 2006 led to treaty ratifications by Papua New Guinea and the Maldives.⁸⁵
- 6.76 The HRLRC proposed that the Australian Government:
- ... develop a program that assists Pacific island countries with ratification of international human rights treaties and associated implementation, monitoring and reporting obligations.⁸⁶

Committee comment

- 6.77 While the ratification of treaties is voluntary, the Committee appreciates that many smaller nations in the Asia-Pacific region may be under considerable external and internal pressure to ratify various United Nations treaties. The Committee is also mindful that nations who are already parties to one or more of the treaties also face the challenge of trying to meet their ongoing international obligations, especially in the case of smaller states with limited resources (financial and expertise) to direct to these activities.
- 6.78 The Committee believes that a targeted approach is needed to improve the level of ratification of core human rights treaties in the Asia-Pacific, and to assist countries in meeting their obligations once they are parties to these important treaties.

84 ACFID, *Transcript*, 7 April 2009, p. 43.

85 RegNet, *Transcript*, 7 April 2009, p. 56 and 53.

86 HRLRC, *Transcript*, 15 April 2009, p. 20.

Recommendation 3

The Committee recommends that in responding to the need to make progress in the region on embracing and implementing the universal human rights principles contained in the core human rights treaties, the Australian Government should review its current strategies, consult closely with key regional stakeholders, and consider work already being undertaken on this issue. This should include consideration of:

- human rights education to enhance understanding in the region of the content, benefits and practical local application of these treaties; and
- ongoing support for countries to meet reporting and other participation obligations in the United Nations human rights system.

Other human rights initiatives

6.79 UNIFEM suggested that:

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.⁸⁷

6.80 The Uniting Church argued that:

Australia should continue to support and emphasise multilateral initiatives that promote and defend human rights where it assesses the initiative in question is effective.⁸⁸

6.81 For the Pacific, the Commission suggested:

That the federal government consider expanding its human rights technical assistance programs to countries in the Pacific region to help build capacity of organisations working in the area of human rights.⁸⁹

87 UNIFEM, *Transcript*, 7 April 2009 p. 4.

88 Uniting Church, *Transcript*, 15 April 2009, p. 31.

89 Australian Human Rights Commission, *Submission no. 19*, p. 5.

6.82 ACFID saw merit in the Human Right Small Grants Scheme's focus on:

...supporting the human rights activities of civil society organisations. Focusing on civil society organisations is an effective way to build the overall capacity of a country on human rights. Vibrant civil society organisations play an important role in holding their governments to account for human rights.⁹⁰

6.83 The Commission recommended:

That, in the absence of NHRIs in Pacific States, resources and training be provided to civil society organisations to assist them to engage with government and communities in the promotion and protection of human rights.⁹¹

6.84 ACFID proposed an exchange program at the civil society level, stating:

...[we] 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.⁹²

6.85 The Committee sees merit in supporting the vital work being done by NGOs and civil society groups in the promotion of human rights and the monitoring and prevention of human rights abuses.

Recommendation 4

The Committee recommends that the Australian Government establish a scholarship fund to enable individuals from non-government organisations and civil society groups in Asia and the Pacific, who work in human rights or relevant fields, to attend approved human rights courses in Australia.

90 ACFID, (Supplementary) *Submission no. 30*, p. 6.

91 Australian Human Rights Commission, *Submission no. 19*, p. 4.

92 ACFID, *Transcript*, 7 April 2009, p. 37.

Committee comment

- 6.86 Throughout this inquiry groups have presented the Committee with many suggestions and recommendations for how the Australian Government can contribute to the promotion and protection of human rights in the Asia-Pacific.
- 6.87 The Committee endorses the Australian Government's goal to enhance its engagement in the Asia-Pacific region, generally, and to contribute to addressing the human rights challenges facing the region, specifically. However, it also appreciates that Australia must be sensitive and cooperative in its approach and action on human rights matters.
- 6.88 It was clear, on the balance of evidence received, that to provide any sort of proposal or blueprint on what form a regional mechanism could or should take is premature. Australia does have a significant role to play in providing expertise and financial support, especially with emerging initiatives on subregional human rights mechanisms and to the organisations, such as the APF and the RRRT, currently working to address the gaps in human rights protection in the region.
- 6.89 In engaging in the region on human rights matters and the development of regional or subregional mechanisms, Australia should take its lead from organisations already established in the region, seek to address issues in which Australia has expertise or a shared interest, and infuse human rights standards and its practical application into relationships within the Asia-Pacific region.

An Asia-Pacific community?

- 6.90 On 4 June 2008, the Australian Government reaffirmed its commitment to strong, close and cooperative relations in the region, outlined its vision for an 'Asia-Pacific Community' by 2020, and announced the Government's appointment of Mr Richard Woolcott as Australia's Special Envoy to engage the capitals of the wider region to discuss the proposal.⁹³
- 6.91 A key element of the development of an Asia-Pacific community (APC) would be the strengthening of regional institutions to better enable the region to address collective challenges such as: security; terrorism; natural disasters; disease; enhancing trading regimes; and long-term energy, resource and food security. It was stressed that exploring the option of an

93 Source: http://www.asiasociety.org.au/speeches_current/s55_PM_Rudd_AD2008.html, viewed 18 November 2009.

APc 'does not of itself mean the diminution of any existing regional bodies', stating:

APEC, the ASEAN Regional Forum, the East Asia Summit, ASEAN Plus Three and ASEAN itself will continue to play important roles, and longer-term may continue in their own right or embody the building blocks of an Asia-Pacific Community.⁹⁴

6.92 The Special Envoy engaged with 21 countries in the region and beyond and reported on key findings of the consultations in a concept paper prepared for the Asia-Pacific community conference in December 2009. The consultations revealed the following:

- a high level of interest across the region in the APc proposal, including widespread agreement about the importance of a discussion on how regional architecture can be developed to best suit the region's purposes;
- a strong recognition in the region that our current institutions, as they are currently configured, do not provide a forum for all relevant leaders to discuss the full range of economic, security, environmental and political challenges the region needs to address;
- little appetite for creating new institutions in addition to existing forums, such as ASEAN, ASEAN+3, the EAS, APEC, ARF and others, given the heavy travel schedule and meeting demands that regional leaders face;
- ASEAN's involvement in regional institutions is crucial to fostering habits of cooperation and understanding across the region, and has contributed strongly to the level of peace and stability the region has achieved; and
- a keen interest in further discussion on the Asia-Pacific community proposal, including on the geo-strategic and economic challenges we will face in the twenty-first century and how we might develop our institutions to meet these.⁹⁵

Committee comment

6.93 The Committee agrees that it is better for countries of the region to work cooperatively in developing architecture to meet the collective challenges

94 Ibid.

95 Source: <http://apc2009conference.org/site/concept.php>, viewed 18 November 2009.

facing the region. The Committee appreciates that there are significant obstacles to overcome before any wider regional mechanism for the Asia-Pacific could be achieved. However, the Committee strongly believes that this issue is too important to be relegated to the backburner.

- 6.94 In addressing the challenge of human rights, the Committee sees significant merit in taking a targeted and cooperative approach in the region. Evidence to the Committee during the course of this inquiry, and Members' discussions with colleagues and groups in the regions, indicated that there is interest in exploring options for improving how human rights challenges are addressed in the region, and for Australia to play some role.
- 6.95 The Committee is mindful that Australia should not be prescriptive in what human rights approach or mechanism would best suit the region, but it is well placed to foster an opportunity for discussion and progress on a cooperative approach to human rights challenges facing the Asia-Pacific region.

Recommendation 5

The Committee recommends that the Australian Government appoint a special envoy for Asia-Pacific regional cooperation on human rights, to undertake consultations with countries in Asia and the Pacific, and report to the Government within 12 months. The special envoy should engage in discussion in the region on how Australia can best support regional approaches to the protection and promotion of human rights, and the redress for human rights violations in the Asia-Pacific. The special envoy's responsibilities should be determined by the Minister for Foreign Affairs, but could include:

- **undertaking high-level political consultations about the establishment of a Pacific subregional human rights mechanism and a wider Asia-Pacific regional mechanism; and**
- **consulting with government officials and key regional non-government stakeholders.**

Parliaments and human rights

7.1 Organisations that provided evidence to the inquiry had differing views on what roles parliaments should play in protecting human rights within the region.

7.2 RegNet urged caution noting that parliaments in many Pacific countries were not representative of their population, stating:

We would urge caution in considering Parliaments as key institutions for protecting human rights in the region. The Inter-Parliamentary Union reported in March 2008 that Pacific countries have the world's lowest proportion of female representatives. Solomon Islands, Nauru and Tuvalu are among the 13 countries worldwide with no women in Parliament at all. The others include Libya, Saudi Arabia and Burma. The Committee should be careful of using Parliaments as the only mechanism to promote human rights outcomes with respect to groups who are not represented in the Parliament, such as women, people with disabilities, migrants and refugees and indigenous groups.¹

7.3 The Asia-Pacific Forum held a contrary view believing that parliaments played a critical role, and advised that:

...the role of parliaments, parliamentarians and legislators remains crucial to the promotion and protection of human rights. In all regional settings, parliamentarians and legislators either play – or potentially could play – a critical role in the incremental “building block” approach to the establishment and/or maintenance of NHRIs and their compliance to the “Paris Principles”, alternative forms of sub-NHRI national human rights machinery, and to the

1 RegNet, *Submission no. 3*, p. 5.

progression of discussions around sub-regional human rights mechanisms.²

7.4 Amnesty was also of the view that parliament could play an important role and encouraged greater engagement 'through the ASEAN parliamentary process, the international process and, also, more informally'.³

7.5 RegNet agreed that it was important to have parliament-to-parliament initiatives,⁴ and other evidence to the Committee also identified the need for parliamentarians to put pressure on governments or to advocate and lobby in order for governments to do the right thing.⁵

7.6 The AHRC argued that Australian parliaments can 'both contribute to, and learn from, the practices of other parliaments so far as effective parliamentary procedures for the protection of human rights are concerned'.⁶

7.7 The AHRC also made a number of recommendations including:

...enacting legislation which gives effect to human rights guarantees, including international treaty obligations, scrutinising bills and delegated legislation to ensure consistency with human rights standards and scrutinising the policies and actions of the executive and in some cases non-state actors for consistency with human rights norms. Importantly, we recommend the establishment of a parliamentary committee to review the implementation of a UN treaty body, including observations on Australian government reports and UN committee decisions on individual complaints.⁷

7.8 The HRLRC was of the opinion that parliamentarians were 'essential actors' in the protection and promotion of human rights⁸ and noted that in Australia '...there are currently no formal domestic mechanisms to ensure comprehensive parliamentary scrutiny of human rights, including by independently monitoring and reporting on the implementation of the recommendations of UN treaty bodies or Special Procedures'.⁹

2 APF, *Submission no. 21*, p. 31.

3 Amnesty, *Transcript*, 7 April 2009, p. 14.

4 RegNet, *Transcript*, 7 April 2009, p. 60.

5 Dr Clinton Fernandes, *Transcript*, 7 April 2009, p. 66.

6 AHRC, *Submission no. 4*, p. 2.

7 AHRC, *Transcript*, 18 February 2009, p. 4.

8 HRLRC, *Exhibit no. 18*, p. 2.

9 HRLRC, *Exhibit no. 18*, p. 3.

- 7.9 The Australian Bahá'í Community was of the view that parliaments could be effective in measuring progress against human rights benchmarks¹⁰ and, more specifically, noted that the role of the Committee could be strengthened, stating:

We see the equivalent of human rights subcommittees in other Western parliaments having a very proactive role in processes that this committee is not tasked with. It would be good to see the role of this committee strengthened so that it can have a more active role, and given its place geographically and politically in the region it could start to expand its mandate as well.¹¹

- 7.10 Amnesty was also of the view that the Committee could engage more, stating:

[Amnesty International] would welcome any engagement that this committee can have through the ASEAN parliamentary process, the international process and, also, more informally.¹²

International approaches

Joint Committee on Human Rights, United Kingdom

- 7.11 The United Kingdom (UK) Joint Committee on Human Rights consists of twelve members appointed from both the House of Commons and the House of Lords. The Committee is charged with considering human rights issues in the UK and undertakes thematic inquiries on human rights issues and reports its findings and recommendations. It scrutinises all Government Bills and picks out those with significant human rights implications for further examination.¹³
- 7.12 The Joint Committee also looks at Government action to deal with judgments of the UK courts and the European Court of Human Rights where breaches of human rights have been found. As part of this work,

10 Australian Bahá'í Community, *Submission no. 14*, p. 5.

11 Australian Bahá'í Community, *Transcript*, 19 March 2009, p. 2.

12 Amnesty, *Transcript*, 7 April 2009, p. 14.

13 Parliament UK website:
http://www.parliament.uk/parliamentary_committees/joint_committee_on_human_rights.cfm, viewed on 21 September 2009.

the Joint Committee looks at Remedial Orders, the legislative mechanism that allows legislation to be amended in response to these judgments.¹⁴

7.13 Additional functions of the Joint Committee include scrutiny of compliance with UN human rights treaties; scrutiny of human rights treaties prior to ratification; and inquiries into urgent thematic human rights issues.¹⁵

7.14 The Council of Europe¹⁶ has noted that the Joint Committee 'is a rare example of the existence of a special parliamentary body with a specific mandate to verify and monitor the compatibility of national law and practice with the European Convention on Human Rights'.¹⁷

Tom Lantos Human Rights Commission, United States

7.15 In 1983, the Congressional Human Rights Caucus (CHRC) was founded in the defence of all rights codified in the UN Universal Declaration of Human Rights.¹⁸

7.16 In 2008, the CHRC was replaced with the Tom Lantos Human Rights Commission. According to its website, the Tom Lantos Human Rights Commission's mission is 'to promote, defend and advocate internationally recognised human rights norms in a non-partisan manner, both within and outside of Congress, as enshrined in the Universal Declaration of Human Rights and other relevant human rights instruments',¹⁹ and it shall:

14 Parliament UK website: http://www.parliament.uk/parliamentary_committees/joint_committee_on_human_rights.cfm, viewed on 21 September 2009. Articles on the assessment of the work of the UK Joint Committee on Human rights include Michael C Tolley, *Parliamentary scrutiny of rights in the United Kingdom: assessing the work of the Joint Committee on Human Rights*, *Australian Journal of Political Science*, v.44(1) March 2009, pp. 41-55; and Francesca Klug, *Breaking new ground: the Joint Committee on Human Rights and the role of Parliament in Human Rights compliance*, *European human rights law review*, no. 3, 2007, pp. 231-250.

15 HRLRC, *Exhibit no. 18*, pp. 6-7.

16 Founded in 1949, the Council of Europe is the oldest international organisation working towards European integration. It has a particular emphasis on legal standards, human rights, democratic development, the rule of law and cultural co-operation. It has 47 member states.

17 Council of Europe website: <http://assembly.coe.int/ASP/APFeaturesManager/defaultArtSiteView.asp?ID=783>, viewed on 21 September 2009.

18 Tom Lantos Human Rights Commission website: <http://tlhrc.house.gov/mission.shtml>, viewed on 21 September 2009.

19 Tom Lantos Human Rights Commission website: <http://tlhrc.house.gov/mission.shtml>, viewed on 21 September 2009.

- develop congressional strategies to promote, defend and advocate internationally recognised human rights norms reflecting the role and responsibilities of the United States Congress;
- raise greater awareness of human rights issues among Members of Congress and their staff, as well as the public;
- provide expert human rights advice to Members of Congress and their staff;
- advocate on behalf of individuals or groups whose human rights are violated or are in danger of being violated;
- collaborate closely with professional staff of relevant congressional committees on human rights matters;
- collaborate closely with the President of the United States and the Executive Branch, as well as recognised national and international human rights entities, to promote human rights initiatives in the United States Congress; and
- encourage Members of Congress to actively engage in human rights matters.²⁰

Subcommittee on Human Rights, European Parliament

7.17 The Subcommittee on Human Rights consists of 32 Members of the European Parliament and is a subcommittee of the Committee on Foreign Affairs. Its main responsibilities are on 'issues concerning human rights, the protection of minorities and the promotion of democratic values in third countries'.²¹

7.18 The Subcommittee on Human Rights provides:

...a permanent forum for discussions on the human rights situation and the development of democracy in non-EU countries, with other EU institutions, UN Special Rapporteurs and representatives of the UNDP, the Council of Europe, government representatives, human rights activists and NGOs. It has conducted delegation visits to individual third countries seeking EU membership. One of the main goals of the Subcommittee has been to contribute to the mainstreaming of human rights issues into all aspects of the EU's external relations and the relevant [European Parliament] activities. It has done so inter alia by

20 Tom Lantos Human Rights Commission website: <http://tlhrc.house.gov/mission.shtml>, viewed on 21 September 2009.

21 European Parliament, European Parliament Subcommittee on Human Rights Summary of activities - 6th parliamentary term, 2004-2009, March 2009, p. 6. A third country is defined as another country outside the European Union.

drafting guidelines for all the [European Parliament's] inter-parliamentary delegations with third countries.²²

Senate Standing Committee on Human Rights, Canada

- 7.19 In March 2001, the Senate of Canada established the Standing Committee on Human Rights which has a mandate to examine issues relating to human rights, and, *inter alia*, to review the machinery of government dealing with Canada's international and national human rights obligations.²³
- 7.20 The Standing Committee is able to examine a Bill or undertake a special study. In 2009, the Senate of Canada referred the following inquiries to the Standing Committee:
- examine the issue of the sexual exploitation of children in Canada;
 - monitor the implementation of recommendations contained in the Committee's report entitled *Children: The Silenced Citizens: Effective Implementation of Canada's International Obligations with Respect to the Rights of Children*;
 - examine issues of discrimination in the hiring and promotion practices of the Federal Public Service; and
 - monitor issues relating to human rights and, *inter alia*, to review the machinery of government dealing with Canada's international and national human rights obligations.

Inter-Parliamentary Union

- 7.21 Established in 1889, the Inter-Parliamentary Union (IPU):
- fosters contacts, co-ordination, and the exchange of experience among parliaments and parliamentarians of all countries;
 - considers questions of international interest and concern and expresses its views on such issues in order to bring about action by parliaments and parliamentarians;
 - contributes to the defence and promotion of human rights – an essential factor of parliamentary democracy and development;

22 European Parliament, European Parliament Subcommittee on Human Rights Summary of activities - 6th parliamentary term, 2004-2009, March 2009, p. 5.

23 Senate of Canada, *Canada and the United Nations Human Rights Council: A Time for Serious Re-Evaluation*, June 2008, p. 1.

- contributes to better knowledge of the working of representative institutions and to the strengthening and development of their means of action;
- supports the efforts of the United Nations through close collaboration; and
- operates with regional inter-parliamentary organisations, as well as with international intergovernmental and non-governmental organisations.²⁴

7.22 There are currently 153 Members and 8 Associate Members of the IPU including Australia.²⁵ The IPU's main areas of activity include:

- promoting democracy worldwide through setting standards and guidelines; strengthening representative institutions; promoting human rights and protecting members of parliament; promoting knowledge of parliaments; and providing a guide on parliament and democracy in the twenty-first century;²⁶
- working towards peace and security through working for disarmament and the elimination of conflict situations through political negotiation;²⁷
- sustainable development through protection of the environment and making recommendations with regard to various specific problems of world economic and social development;²⁸
- promoting and defending human rights;²⁹
- creating partnerships between men and women in politics;³⁰ and
- working on common thematic issues relating to education, science and culture.³¹

7.23 In particular, part of the IPU's work to promote human rights includes taking a stance on human rights issues; ensuring that parliamentarians understand human rights and put human rights promotion and protection

24 IPU website: <http://www.ipu.org/english/whatipu.htm>, viewed 21 September 2009.

25 IPU website: <http://www.ipu.org/english/membshp.htm>, viewed 21 September 2009.

26 IPU website: <http://www.ipu.org/dem-e/overview.htm>, viewed 21 September 2009.

27 IPU website: <http://www.ipu.org/iss-e/peace.htm>, viewed 21 September 2009.

28 IPU website: <http://www.ipu.org/iss-e/sustdev.htm>, viewed 21 September 2009.

29 IPU website: <http://www.ipu.org/iss-e/hr-law.htm>, viewed 21 September 2009.

30 IPU website: <http://www.ipu.org/iss-e/women.htm>, viewed 21 September 2009.

31 IPU website: <http://www.ipu.org/iss-e/ed-cltr.htm>, viewed 21 September 2009.

at the centre of their legislative and oversight work; setting the course for reconciliation in post-conflict situations; and cooperating with a range of national, regional and international partners to promote and protect the human rights standards.³²

7.24 The IPU has also established a Committee on the Human Rights of Parliamentarians to protect parliamentarians against human rights abuses.³³ It oversees the implementation of the United Nations human rights treaties; provides support to parliamentary human rights committees and an international platform for their members to share experiences and discuss common challenges; and operates a technical cooperation programme to assist national parliaments, particularly in developing countries, to improve the organisation of their work and strengthen their infrastructure.³⁴

7.25 The Australian National Group of the IPU, established in 1956, aims to:

...foster and maintain friendship with, and understanding of, particular countries through links with national legislatures. The Groups meet with members of visiting parliamentary delegations and other distinguished visitors of relevance to the groups, as well as with diplomatic representatives in Australia of the countries concerned. Members of the Groups may also take the opportunity to meet with their counterparts when travelling overseas.³⁵

Parliamentarians and the Asia-Pacific

7.26 The Asia-Pacific Forum were also of the opinion that parliamentarians within the region are actively engaged in developing a human rights framework:

Numbers of parliamentarians in the Pacific (for instance, the recent regional consultation for parliamentarians from eleven Pacific Island countries on the Pacific Plan and human rights) and in Asia (where ASEAN parliamentarians supported the quick ratification of the ASEAN Charter and have called for the creation of an ASEAN Human Rights Body) have actively engaged with, and

32 IPU website: <http://www.ipu.org/iss-e/hr-law.htm>, viewed 21 September 2009.

33 IPU website: <http://www.ipu.org/hr-e/committee.htm>, viewed 21 September 2009.

34 IPU website: <http://www.ipu.org/hr-e/parliaments.htm>, viewed 21 September 2009.

35 Parliament of Australia: <http://www.aph.gov.au/house/info/pro/index.htm>, viewed 21 September 2009.

supported, developments relating to human rights framework developments in their respective regions.³⁶

7.27 In its submission to the inquiry, the APF noted that the human rights infrastructure in the Pacific is comprised of:

- National constitutions: many Pacific countries have constitutional documents which guarantee fundamental human rights and incorporate the principle of the rule of law including Papua New Guinea, Vanuatu, Nauru, the Republic of the Marshall Islands, Fiji, Kiribati, Samoa, Solomon Islands and Tuvalu.
- Parliamentary systems: Pacific expressions of the parliamentary foundations of democracy do vary, but are generally underpinned by respect for electoral participation and contested national elections.
- Governance structures and systems: national laws, regulations, government policies, and service administration though government administration provides the machinery through which human rights can be delivered by government agencies. These structures and systems include ministerial offices, leadership codes, public sector codes of conduct, and other policies and practices related to the exercise of governance powers.
- Legal systems: legal systems to support the rule of law vary including both traditional courts and associated legal systems and judicial court systems.
- Active civil society: civil society groups, including non-governmental organisations, exist throughout the region and play an active role in critical analysis of and advocacy for promotion and protection of human rights.
- Regional infrastructure and initiatives: the Pacific Islands Forum has a Secretariat which services the Forum and governments of the region. There is a range of inter-governmental regional agreements (including multi-lateral and bilateral agreements). Regional and international aid and development agencies operate in the region and increasingly these work with both civil society groups and governments on human rights related matters.³⁷

Asia-Pacific Parliamentary Forum

7.28 The Asia-Pacific Parliamentary Forum (APPF), established in Tokyo in 1993, aims to:

³⁶ APF, *Submission no. 21*, pp. 31-32.

³⁷ APF, *Submission no. 21*, pp. 26-27.

...promote greater regional identification and cooperation among national parliamentarians in the Asia-Pacific region, especially those from ASEAN, APEC group nations and the South Pacific Forum. The APPF seeks to further the advancement of peace, freedom, democracy and prosperity.³⁸

7.29 The APPF focuses its activities on a wide range of areas, aimed at resolving and preventing problems that the region faces, including politics and security; the economy and the environment; law and order; human rights; and education and cultural exchanges.³⁹

7.30 According to the APPF website, it seeks to provide opportunities for federal parliamentarians from the Asia-Pacific region to:

...identify and discuss matters of common concern and interest and to highlight them in a global context; to deepen their understanding of the policy concerns, interests and experiences of the countries of the region; to examine the critical political, social, and cultural developments resulting from economic growth and integration; to encourage and promote regional cooperation at all levels on matters of common concern to the region; and to play the roles of national parliamentarians in furthering in their respective countries a sense of regional cohesion, understanding and cooperation.⁴⁰

7.31 Parliamentarians can participate either as delegates of their parliaments or in a personal capacity. The APPF also acts as the legislative branch of the Asia-Pacific Economic Cooperation, and keeps close ties with other regional integration institutions such as ASEAN, the South Pacific Forum, Pacific Economic Cooperation Council, and Pacific Basin Economic Council.⁴¹

38 Parliament of Australia website: <http://www.aph.gov.au/house/info/pro/index.htm>, viewed on 21 September 2009.

39 APPF website: <http://www.appf.org.pe/>, viewed on 22 September 2009.

40 APPF website: <http://www.appf.org.pe/>, viewed on 22 September 2009.

41 APPF website: <http://www.appf.org.pe/>, viewed on 22 September 2009.

Other initiatives

Networks of parliamentarians

7.32 Amnesty advised that it had been conducting human rights training for MPs from a number of South Pacific countries and was of the opinion that it was an important example of how to engage on specific issues.⁴²

7.33 ACFID suggested that an exchange program focusing on MPs could open a dialogue:

...in countries where civil society does not have much of a voice...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.⁴³

7.34 The ACTU agreed that there is value in developing networks at the parliamentary level, stating:

Inter-parliamentary visits can play an important role in developing and promoting sustained relations between Australia and countries in the Asia-Pacific. These delegations can help build political confidence between Australia and its neighbours and facilitate discussion and promotion of human rights in the region. The ASEAN Inter-Parliamentary Myanmar Caucus (AIPMC) is one such structure, where government and opposition MPs work together to promote human rights and democracy in Burma/Myanmar.⁴⁴

ASEAN Inter-Parliamentary Myanmar Caucus

7.35 The ASEAN Inter-Parliamentary Myanmar Caucus (AIPMC) is a network formed by and for parliamentarians from ASEAN countries, with the aim of advocating for human rights and democratic reform in Myanmar/Burma. Its members represent both the ruling and non-ruling

42 Amnesty, *Transcript*, 7 April 2009, p. 15.

43 ACFID, *Transcript*, 7 April 2009, p. 38.

44 ACTU, *Submission no. 16*, p. 10.

political parties of countries such as Malaysia, Indonesia, Singapore, Thailand, Philippines and Cambodia.⁴⁵

7.36 National caucuses, parliamentary groups and individual parliamentarians from India, the Republic of Korea, Japan, Australia and New Zealand are affiliated with AIPMC. It also works closely with civil society organisations and members of Burma's government-in-exile, to further the democratic cause in Myanmar/Burma.⁴⁶

7.37 Burma Campaign Australia believed that the AIPMC had expanded, noting that:

...[caucus members] in democratic countries have their own national caucuses as well, so it is a growing movement. Working with the MPs are Burma's border based civil society human rights organisations and other organisations throughout ASEAN, so there is also a forum alongside it for Burma-focused or Burma-sympathetic civil society organisations throughout ASEAN to work together and collaborate.⁴⁷

7.38 The ACTU noted that participation in the AIPMC was very active and that it has 'provided a real base of discussion and debate and knowledge in those ASEAN governments', and added that:

Outside of a foreign ministry to ministry relationship, I think we were promoting this as one example in the region where parliamentary dialogue would be really effective, and for Australia to benefit also from understanding the kinds of perspectives and changing perspectives in the region, around promoting human rights in general.⁴⁸

Improving scrutiny of human rights in Australia

7.39 The federal parliament has passed a number of laws which aim to protect people from breaches of their human rights:

- *Australian Human Rights Commission Act 1986*;

45 European Parliament website:

http://www.europarl.europa.eu/meetdocs/2004_2009/documents/dv/dase20080227_aipmc_background_002/dase20080227_aipmcbackground_002en.pdf, viewed 22 September 2009.

46 Ibid.

47 BCA, *Transcript*, 15 April 2009, p. 50.

48 ACTU, *Transcript*, 15 April 2009, pp. 59-60.

- *Age Discrimination Act 2004*;
- *Disability Discrimination Act 1992*;
- *Race Discrimination Act 1975*;
- *Sex Discrimination Act 1984*; and
- *Human Rights (Sexual Conduct) Act 1994*.

7.40 The HRLRC was of the view that ensuring ‘compliance with obligations arising under both international and domestic human rights laws requires effective monitoring systems’.⁴⁹ It therefore believed that there was some merit in centralising and formalising the Committee process to review both legislation and delegated legislation and the human rights treaties that Australia has signed onto.⁵⁰

7.41 The HRLRC recommended that the Australian Government establish a Joint Parliamentary Committee on Human Rights to:

- scrutinise all Bills and subordinate legislation for compatibility with protected rights;
- conduct thematic inquiries into human rights issues;
- monitor and report on the implementation of the concluding observations and views of UN treaty bodies and the recommendations of the special procedures of the UN Human Rights Council; and
- monitor and assist in government responses to declarations of incompatibility (under any Australian Human Rights Act) and other court and tribunal decisions and judgments.⁵¹

7.42 As noted earlier in this chapter, the AHRC was of the view that enacting legislation could ensure consistency with human rights standards through scrutinising the policies and actions of the executive.⁵² The AHRC also recommended that the role of the Senate Standing Committee for the Scrutiny of Bills and Senate Standing Committee on Regulations and Ordinances be expanded by amending the former’s terms or reference:

...to require that it report to the Senate on whether any provisions of a proposed Bill appear to be in conflict with Australia’s human rights treaty obligations (in particular but not confined to the

49 HRLRC, *Exhibit no. 18*, p. 2.

50 HRLRC, *Transcript*, 15 April 2009, p. 28.

51 HRLRC, *Exhibit no. 18*, p. 5.

52 See paragraph 7.7.

principal UN human rights treaties to which Australia is party), and make corresponding amendments to the terms of reference of the Senate Standing Committee on Regulations and Ordinances.⁵³

7.43 In a similar vein, the National Human Rights Consultation Committee, in its September 2009 report, recommended that a Joint Committee on Human Rights be established. Its responsibilities would include the review of all bills and relevant legislative instruments for compliance with the 'interim list of rights for protection and promotion', and eventually the 'definitive list of Australia's human rights obligations' also recommended by the Consultation Committee.⁵⁴

7.44 The AHRC recommended:

...that reports of the Australian government to United Nations treaty bodies and the concluding observations of those committees adopted after their consideration of Australia's reports, as well as decisions of those committees in individual cases brought under complaints procedures, are tabled before an appropriate Committee of the Parliament and are discussed by that Committee, and that the Committee keeps under review the implementation of those treaty body recommendations.⁵⁵

7.45 The Commission noted that it is able to investigate human rights breaches, stating that it can:

...receive and investigate acts or practices that may be contrary to a human right or that may constitute workplace discrimination under the HREOC Act. If the complaint is unable to be resolved through conciliation and is not discontinued for other reasons, the President may report on the case and make recommendations. The report is tabled in federal Parliament. These complaints do not give rise to any enforceable legal rights.⁵⁶

53 AHRC, *Submission no. 4*, p. 17.

54 Source: <http://www.humanrightsconsultation.gov.au/www/nhrcc/nhrcc.nsf/Page/Report>, viewed 2 November 2009.

55 AHRC, *Submission no. 4*, p. 17.

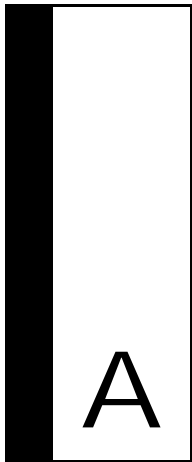
56 Australian Human Rights Commission, *Submission no. 19*, p. 12.

Committee comment

- 7.46 Parliaments from around the world have established different oversight mechanisms, on national and regional levels, designed to ensure that human rights are protected. Each of these bodies plays a critical role in monitoring national and international human rights obligations and providing suggestions and recommendations on how to best promote and protect human rights standards.
- 7.47 However, the Committee acknowledges that some parliaments are not representative of their population. Parliaments in representative and democratic societies, such as Australia, therefore have a responsibility to assist the international community to help strengthen parliamentary systems and protect fundamental human rights.
- 7.48 In particular, it should be incumbent on parliamentarians to share their knowledge and expertise, especially in the areas of human rights, to ensure that all states have the same understanding of fundamental human rights.
- 7.49 The IPU publishes a regular report from its Committee on the Human Rights of Parliamentarians that details cases of human rights abuses against parliamentarians around the world. The Committee is supportive of the IPU process and will investigate ways in which to enhance Australia's involvement.
- 7.50 The Committee is also mindful that there is scope for improvement domestically. It notes that the Australian Government is still considering the National Human Rights Consultation report. The Committee wishes to express its support for increased parliamentary scrutiny of human rights implications in domestic legislation.

Senator Michael Forshaw

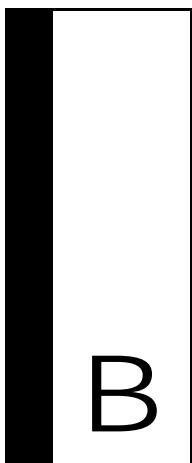
Chair of Joint Standing Committee on Foreign Affairs, Defence and Trade



Appendix A – List of Submissions

- 1 UNIFEM Australia
- 2 Dr Clinton Fernandes
- 3 Centre for International Governance and Justice, RegNet, ANU
- 4 Australian Human Rights Centre
- 5 Sydney Centre for International Law
- 6 The University of New South Wales
- 7 World Vision
- 8 National Native Title Council
- 9 Australian Council for International Development
- 10 Castan Centre for Human Rights
- 11 La'o Hamutuk
- 12 Asian Forum for Human Rights and Development (FORUM-ASIA)
- 13 Pacific Regional Rights Resource Team
- 14 Australian Bahá'í Community
- 15 Human Rights Law Resource Centre
- 16 Australian Council of Trade Unions
- 17 Department of Foreign Affairs and Trade
- 18 Burma Campaign Australia
- 19 Australian Human Rights Commission

- 20 Uniting International Mission
- 21 Asia Pacific Forum
- 22 Australia-East Timor Friendship Association
- 23 Australia West Papua Association
- 24 Mr Joe Collins
- 25 National Children's and Youth Law Centre
- 26 Amnesty International Australia
- 27 Australian Human Rights Commission
- 28 Mr Adam Breasley
- 29 World Vision
- 30 Australian Council for International Development
- 31 Dr Clinton Fernandes
- 32 Vietnam Committee on Human Rights & Que Me Action for
Democracy in Vietnam
- 33 Fiji Women's Rights Movement
- 34 Former Commissioners of the Fiji Human Rights Commission
- 35 Department of Foreign Affairs and Trade



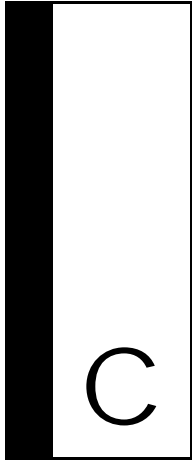
Appendix B – List of Exhibits

1. Ms Andrea Durbach, Ms Catherine Renshaw and Mr Andrew Byrnes
"A tongue but no teeth"? The emergence of a new regional human rights mechanism in the Asia-Pacific region
2. Law Association of Asia and the Pacific
1989 Draft Pacific Charter of Human Rights
3. Human Rights Council of Australia
The Human Rights Centre for Dialogue and Cooperation
4. Mr Adam Breasley
China's Chapter 08, translated from Chinese by Perry Link, The New York Review of Books, Volume 56, No. 1, 15 January 2009
5. Mr Adam Breasley
Zhen Jinyan's Sakharov prize acceptance speech on behalf of Hu Jia, 17 December 2008
6. Mr Adam Breasley
Chinese Human Rights Defenders, Persistent Torture, Unaccountable Torturers: A Report on China's Implementation of Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, November 2008
7. Mr Adam Breasley
Chinese Human Rights Defenders, Re-education through Labor Abuses Continue Unabated: Overhaul Long Overdue

8. Mr Adam Breasley
Chinese Human Rights Defenders, Silencing Complaints: Human Rights Abuses against Petitioners in China
9. Mr Adam Breasley
Greg Walton, China's Golden Shield: Corporations and the Development of Surveillance Technology in the People's Republic of China, 2001
10. Dr Susan Harris Rimmer
Papers on Women in the Pacific
11. Amnesty International Australia
Website material on Australia's bilateral human rights dialogues
12. Dr Susan Harris Rimmer
Commonwealth Human Rights Initiative, Human Wrongs: The Continuing Commonwealth Challenge, 2008
13. Dr Susan Harris Rimmer
United Nations agencies, Advancing the implementation of human rights in the Pacific
14. Castan Centre for Human Rights Law
English translation of the Arab Charter on Human Rights, University of Minnesota
15. Burma Campaign Australia
Additional information on AIPMC and other matters
16. Uniting Church In Australia
Information on the Christian Conference of Asia
17. Vietnam Committee on Human Rights & Que Me Action for Democracy in Vietnam
Human Rights Violations in the Socialist Republic of Vietnam, May 2009
18. Human Rights Law Resource Centre
Human Rights and Parliamentary Scrutiny, Submission to House Standing Committee on Procedure's Inquiry into the Effectiveness of House Committees, July 2009

19. Parliamentary Library

The 'Asia-Pacific' region: notes on concepts and definitions, July 2009



Appendix C – List of Hearings and Witnesses

Sydney

Wednesday, 18 February 2009

Asia Pacific Forum of National Human Rights Institutions

Mr Kieren Fitzpatrick - Director

Australian Human Rights Centre

Professor Andrew Byrnes – Chair, Committee Management

Associate Professor Andrea Durbach – Director

Ms Catherine Renshaw – Research Fellow

Australian Human Rights Commission

The Hon. Catherine Branson QC – President

Ms Cassandra Goldie – Director, Sex and Age Discrimination Unit

Mr David Robinson – Deputy Director, International Programs Unit

Human Rights Council of Australia

Mr Harris van Beek – Member

Secretariat of the Pacific Community

Ms Imrana Jalal – Gender and Human Rights Adviser, Pacific Regional Rights Resource Team

Sydney Centre for International Law

Dr Jacqueline Mowbray – Program Co-Director and Centre Associate

Canberra

Thursday, 19 March 2009

Australian Bahá'í Community

Ms Tessa Scrine – Executive Officer Government Relations

Viet Tan

Mr Diem Hoang Do – Chairman

Dr Phong Nguyen – Central Committee

Mr Duc Minh Truong – Representative

Canberra

Tuesday, 7 April 2009

Amnesty International Australia

Mr John Greenwell – Activist

Mr Andrew Witheford – Government Relations Manager

Australian Council for International Development

Ms Linda Rademakers – Policy Manager

Ms Sarah Winter – Human Rights Adviser

Australian National University

Professor Hilary Charlesworth – Director, Centre for International Governance and Justice

Dr Susan Harris Rimmer – Board Member, UNIFEM Australia; and Research Fellow, Centre for International Governance and Justice

National Children's and Youth Law Centre

Mr James McDougall – Director and Principal Solicitor

University of New South Wales, Australian Defence Force Academy

Dr Clinton Fernandes – Senior Lecturer

World Vision Australia

Mr James Cox – Team Leader, Human Rights

Ms Eleanor Kennon – Policy Officer, Government Relations Team

Melbourne

Wednesday, 15 April 2009

Australian Council of Trade Unions

Ms Alison Tate – International Officer

Burma Campaign Australia

Ms Mary O’Kane – Member

Castan Centre for Human Rights Law

Miss Erica Contini – Project Officer

Professor Sarah Joseph – Director

Dr Adam McBeth – Deputy Director

Human Rights Law Resource Centre

Ms Rachel Ball – Lawyer

Ms Emily Howie – Senior Lawyer

Uniting Church in Australia

Dr Mark Zirnsak – Director, Justice and International Mission Unit, Synod of Victoria and Tasmania

UnitingWorld

Reverend John Barr – Associate Director, Church Solidarity (Asia)

Canberra

Thursday, 13 August 2009

Australian Agency for International Development

Mr Chris Tinning – Assistant Director-General, Development Partnerships Branch

Mr Robert Tranter – Assistant Director-General

Department of Foreign Affairs and Trade

Mr John Fisher – Assistant Secretary, South-East Asia (South) and Regional Issues Branch

Mr Garth Hunt – Director, China Political and External Section

Mr Craig Maclachlan – Assistant Secretary, International Organisations Branch

Ms Lyndall McLean – Assistant Secretary, South-East Asia (North) Branch

Mr Geoffrey Tooth – Acting First Assistant Secretary, Pacific Division