

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.