

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 (AETFAs) 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.

