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Agenda success?

The prospects for sub-regional human rights arrangements in the Pacific

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Abstract

Regional human rights institutions have been established in all United Nations (UN)-defined regions except for the Asia-Pacific. Although as a region the Asia-Pacific faces myriad human rights challenges, the diversity of countries and cultures and absence of a shared sense of regional identity inhibits momentum to form a regional mechanism for the promotion and protection of human rights. Within this region several sub-regional configurations exist. The Pacific Islands Forum (PIF), whose members include fourteen small island states, Australia and New Zealand, is the primary political body in the Pacific section of the broader Asia-Pacific region. The vision of the PIF emphasises the promotion and protection of human rights in the Pacific. Human rights issues have, however, tended to be addressed within individual countries, and Pacific leaders have paid little attention to the idea of sub-regional human rights arrangements (SHRAs) as a means of supporting human rights objectives.

Within the PIF complex political and institutional processes shape the work of the Pacific leaders and affect which ideas are focused on and advanced. Within the policy process agenda setting is a critical element as new ideas and policy solutions can only be implemented after they have been deliberately considered and agreed upon by the political decision-makers. Several elements shape the agenda setting process: the framing of issues and possible solutions by policy advocates, the availability of appropriate venues in which decisions can be made, and opportunities to have ideas presented to the decision-makers. If the political decision-makers, in this thesis the PIF leaders, agree to advance and implement a policy idea then agenda success has occurred. This thesis examines the prospects for agenda success of SHRAs in the Pacific.

Twenty two semi-structured interviews were undertaken with selected experts from throughout the Pacific. These empirical materials were triangulated with secondary sources. Analysis of these materials highlighted that all components of the agenda setting process are evident in this case study of SHRAs in the Pacific. In particular, interrelationships between the framing of issues and alternative solutions, venues and policy advocates, previously understated in other agenda setting research, are able to be identified. Certain conditions, such as political instability, international obligations,

environmental challenges, and the current scoping exercise, provide opportunities for policy advocates to push their ideas.

Further, the results of the research identify several contextual factors that are shaping the agenda setting process in the PIF. These include historical, national, sub-regional, international, cultural, economic, and geo-political factors, and issues of sovereignty. Before Pacific leaders are likely to agree to the advancement of SHRAs in the Pacific they will also need to be convinced that the idea is both feasible and immediately important. Therefore, although there is moderate evidence of the preconditions for agenda success being in place, the receptivity and political will of the PIF leaders is critical, and will, in the final instance, determine agenda success for SHRAs in the Pacific.

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List of Acronyms

AIPO	ASEAN Inter-Parliamentary Organisation
APF	Asia Pacific Foundation
ASEAN	Association of South East Asian Nations
AU	African Union
EU	European Union
HRB	Human Rights Body
IACHR	Inter-American Commission on Human Rights
LAWASIA	Law Association of Asia and the Pacific
MPs	Members of Parliament
NGOs	Non-government Organisations
OAS	Organisation of American States
OHCHR	Office of the High Commissioner for Human Rights
PIF	Pacific Islands Forum
PIFSec	Pacific Islands Forum Secretariat
SAARC	South Asian Association for Regional Cooperation
SHRAs	Sub-regional human rights arrangements
SPC	Secretariat of the Pacific Community
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNHCHR	United Nations High Commission for Human Rights
UPR	Universal Periodic Review
US	United States of America

Chapter One

The idea of sub-regional human rights arrangements in the Pacific

Regional human rights arrangements operate in all United Nations (UN)-defined regions except for the Asia-Pacific. Although as a region the Asia-Pacific faces myriad human rights challenges, the diversity of countries and cultures and absence of a shared sense of regional identity inhibits momentum to form a regional mechanism for the promotion and protection of human rights (APF, 2008; Australian Council for International Development, 2008; Enright & Zirnsak, 2009; McDougall, 2009). Developing institutional arrangements at the sub-regional level may, however, be feasible (Hashimoto, 2004; Hay, 2009; Jalal, 2009). In this thesis, I examine the prospects for agenda success of sub-regional human rights arrangements (SHRAs) in the Pacific. In this chapter, I contextualise my research, introduce the concept of SHRAs, justify the application of agenda setting as the theoretical framework, specify the aims of the research, and outline the structure of the thesis.

Situating the idea of Pacific human rights arrangements

In 2008 I spoke with a New Zealand government official and, in the course of the interview, she commented on the relationship between the Pacific and the United Nations using the following example:

The UN sends Niue a survey on tanks, how many tanks are there and have they been demilitarised? And Niue is thinking, are they [referring to] water tanks? (Exec5, 2008)

This quote captures the complexities and tensions between the Pacific as a small and geographically isolated sub-region that is culturally diverse, and the expectations, requirements and understandings of the international community, particularly the UN.

Pacific countries are included in the broader UN-defined region of the Asia-Pacific. This enormous grouping encompasses forty-one countries and includes states as diverse as Iran, Afghanistan, China, India, Australia and Tonga (Farran, 2009). The utility and practicality of having one large region is questionable given the considerable cultural,

political and religious differences within and between these countries. Consequently, cooperation and integration within the region has tended to occur within smaller configurations (APF, 2008; Aqorau, 2006; Crocombe, 2001; Hashimoto, 2004; Peebles, 2005). Examples of these sub-regional political groupings include the Association of South East Asian Nations (ASEAN),¹ the South Asian Association for Regional Cooperation (SAARC),² and the Pacific Islands Forum (PIF).³

The Asia-Pacific region faces numerous challenges across all facets of human rights, for example, civil and political rights, economic and social rights, cultural rights, the rights of women, children, indigenous people, people with disabilities, and labour rights (Enright & Zirnsak, 2009). However, at the regional level, there are currently no Asia-Pacific organisations or conventions to promote or protect human rights (APF, 2008, p. 16). The absence of a regional mechanism has been attributed to the social, geographical, political, cultural, religious, ethnic, legal, and economic diversity and complexity which inhibits the necessary political consensus, resources and support (APF, 2008, p. 3; Sydney Centre for International Law, 2008, p. 1). Given these challenges, sub-regional arrangements may be more tenable both politically and pragmatically (Hashimoto, 2004; Hay, 2009; Jalal, 2009; Peebles, 2005). Over the past five years work on establishing SHRAs has indeed occurred in ASEAN and has more recently been considered by the PIF leaders.⁴ The latter of these contexts is the venue in which the prospects for agenda success of SHRAs in the Pacific will be examined in this thesis.

A region or sub-region can be defined according to geographical boundaries, and the neighbouring cluster of several Polynesian, Micronesian and Melanesian states, as well as Australia and New Zealand has encouraged the shaping of a sub-regional identity (Angelo, 2008; Chand, 2005, Crocombe, 2001). The 'Pacific', however, is not a precise

¹ The ASEAN member states include: Brunei Darussalam, Cambodia, Indonesia, Laos, Malaysia, Myanmar, Philippines, Singapore, Thailand, and Vietnam.

² The SAARC member states include: Afghanistan, Bangladesh, Bhutan, India, the Maldives, Nepal, Pakistan, and Sri Lanka.

³ The Pacific Islands Forum member states include: Australia, Cook Islands, Federated States of Micronesia, Fiji (currently suspended), Kiribati, Nauru, New Zealand, Niue, Palau, Papua New Guinea, Republic of Marshall Islands, Samoa, Solomon Islands, Tonga, Tuvalu, and Vanuatu.

⁴ For the purposes of this research, SHRAs is the term used to refer to human rights institutional arrangements at the sub-regional level.

term and is often used interchangeably with 'South Pacific' and 'Oceania' (Crocombe, 2001, p.16). Literally, the 'South Pacific' refers to the countries south of the equator, although from the perspectives of non-Pacific countries such as the United States of America (US), Japan, and China, the South Pacific may refer to countries south of themselves in any part of the Pacific Ocean (Crocombe, 2001; Farran, 2009). A region or sub-region can also be delineated by historical, political, and cultural traditions and connections (Hashimoto, 2004). It is also, in part, determined by the relationships between the individual states and their formal agreements with one another, as well as through the multitude of state and non-state, national, sub-regional, regional, and international networks that are in operation (Fong Toy, 2006; Shaw, 2006).

There is a tension associated with the inclusion of Pacific countries in the Asia-Pacific configuration (Crocombe, 2001). The grouping of countries for administrative purposes by the UN is contentious and there is a sentiment that many small Pacific Island countries are treated dismissively by the larger and more economically powerful countries in the wider Asia-Pacific assemblage (Tafuna'i, 2002). The 'Pacific' then is also commonly described as a region in its own right (Crocombe, 2001; Farran, 2009; Fong Toy, 2006; Herr, 2006; Tafuna'i, 2002). However, throughout this research, while the challenges and tensions associated with labeling clusters of countries are acknowledged, the UN definitions are adopted, therefore the 'Pacific' is viewed as a sub-region under the regional umbrella of the Asia-Pacific. The rationale for accepting these definitions is primarily based on the decision to examine the concept of an institutional arrangement for the member countries of the PIF, as opposed to a mechanism extending across all of the Asia-Pacific nation states.

Two primary groupings of Pacific countries form the basis of most sub-regional activities. The PIF, created in 1971, is one configuration of Pacific countries whilst the other is the Secretariat of the Pacific Community (SPC), established in 1947 (Crocombe, 2001). This Secretariat has twenty-two members, not all of whom are situated in the Pacific sub-region.⁵ The different alliances can cause some confusion when discussing issues pertaining to the Pacific and while the SPC, as an organisation,

⁵ The current members include: American Samoa, Cook Islands, Federated States of Micronesia, Fiji Islands, French Polynesia, Guam, Kiribati, Marshall Islands, Nauru, New Caledonia, Niue, Northern Mariana Islands, Palau, Papua New Guinea, Pitcairn Islands, Samoa, Solomon Islands, Tokelau, Tonga, Tuvalu, Vanuatu and Wallis and Futuna. In addition there are the founding countries: Australia, France, New Zealand and the United States of America.

contributes to debates on SHRAs, it is the sub-region as defined by the PIF that is of consequence here. The PIF is commonly viewed as the principal political decision-making body in the Pacific and, therefore, the most appropriate nexus for discussion and decision-making on the idea of SHRAs (APF, 2008; Australian Human Rights Commission, 2008; Jalal, 2009; Muntarhorn, 2005).⁶ In this thesis the term ‘Pacific’ will be used to refer to the member countries of the PIF.

The PIF comprises fourteen fully independent sovereign states and the Cook Islands and Niue, which are self-governing states in free association with New Zealand. The geographical connection between the PIF states is that they are all situated across the Pacific Ocean but are not as far north as Hawai’i (Angelo, 2008). The PIF countries exhibit diversity in their economic, cultural, social and political characteristics (Chasek, 2010; Crocombe, 2001, 2006; Reilly & Wainwright, 2005; Scollay, 2005). However, these countries also have common political, economic and strategic interests related to their location (Angelo, 2008). Similarities across the PIF member states include shared economic issues, similar democratic systems of government, Christian heritage and a shared history of colonisation (Crocombe, 2001, 2006; Hamel-Green, 1997; Ladley & Gill, 2008; New Zealand Law Commission, 2006).

Sub-regional cooperation in the Pacific began after World War Two and gathered momentum in the 1960s and 1970s as many of the Pacific states gained independence from colonial powers, especially Britain, France and the US (Angelo, 2008; Palmer, 1991). In the past two decades Pacific countries have increasingly focused on sub-regional policy developments, cooperation and integration (Graham, 2008). As Chand (2005, p. 2) comments, “[sub-] regionalism offers the opportunity to reap the benefits of scale.” As a group, the PIF countries face some disadvantages due to their geographical isolation and small size (Fry, 2005; Powell, 2005). By working together and pooling resources these countries may be more effective in meeting national, sub-regional, regional, and international demands and strengthening their own economies and national environments (Chand, 2005).

⁶ The position of the PIF on the idea of sub-regional human rights arrangements is further discussed in Chapter Three.

Based in Suva, the PIF is headed by a Secretary-General and administratively supported by a Secretariat (PIF Secretariat).⁷ The Pacific leaders are the political executive in the sub-regional jurisdiction and are, therefore, the primary political decision-makers. However, due to its non-constitutional nature the PIF has limited policy-making and enforcement powers. Member countries, for instance, choose whether to implement decisions made at the PIF in their legislative assemblies. The PIF Secretariat provides policy advice, undertakes research, and is involved with the implementation of decisions made by the PIF leaders.

The work of the PIF is founded on a vision for the Pacific, widely known as the Auckland Declaration (2004). The vision states:

Leaders believe the Pacific region can, should and will be a region of peace, harmony, security and economic prosperity ... respected for the quality of its governance, the sustainable management of its resources, the full observance of democratic values and for its *defence and promotion of human rights* (EPG, 2004, np; emphasis added).

The development of the *Pacific Plan for Strengthening Regional Cooperation and Integration* operationalised this vision and was endorsed by Pacific leaders in 2005 and revised in 2007. The Plan is a collective policy that is based on the concept of regionalism, that is, countries working together for their joint and individual benefit (Pacific Islands Forum Secretariat, 2007). The Plan explicitly endorses a concept of regionalism that does not entail any limitation on national sovereignty. A regional approach then is only to be taken in order to support, complement and add to national efforts (Clements, 2008; Fry, 2005; Graham, 2008; Pacific Islands Forum Secretariat, 2007; Urwin, 2007). The Plan is structured around four pillars: economic growth, sustainable development, good governance, and security. Commitments to the promotion and protection of human rights in the Pacific are explicit in Strategic Objective 12 under the Good Governance pillar. The idea of SHRAs can be inferred primarily from the following two objectives:

12.5 Where appropriate, ratify and implement international and regional human rights conventions, covenants and agreements; and support for reporting and other requirements.

⁷ The current Secretary General is Tuiloma Neroni Slade from Samoa.

12.9 ...explore the possibilities for regional support, including through pooling of resources and regional integration, in legal institutions and mechanisms providing legislative services, and in the area of judiciaries, courts and tribunals (Pacific Islands Forum Secretariat, 2007, p. 19).

The Pacific Plan (2007) indicated that both of these strategic objectives were to be implemented by the end of 2008. This did not occur. However, in 2009 the Regional Rights Resource Team (RRRT), a section of the SPC, was given a mandate by the PIF leaders to work with the PIF Secretariat on a scoping exercise to explore the concept of SHRAs in the Pacific. The results of this exercise are expected to be presented to the Pacific Leaders in August 2011. This action by the PIF leaders occurred after this thesis began but reinforces my selection of this body as the primary venue for agenda setting processes in respect of this policy domain.

Why sub-regional human rights arrangements?

The Pacific faces significant human rights issues. As stated by a New Zealand Human Rights Commissioner, these include:

... employment, freedom from discrimination, protection and equal treatment of people living with HIV/AIDS, violence against women and children, the right to health (including water and housing), environmental degradation and associated climate change concerns, the rights of those detained, and incidents related to tribal or land disputes (Liddicoat, 2007, p. 5).

The issues, whilst occurring at the national level, are also common across much of the Pacific, including the two metropolitan countries. Many governments in the Pacific are constrained by resources, both human and financial, and the need to address multiple issues concurrently (Jalal, 2009; Liddicoat, 2007; New Zealand Law Commission, 2006; Urwin, 2005). National human rights institutions (NHRIs) operate in only three Pacific countries: New Zealand, Australia, and Fiji, although the Fiji Commission is not currently accredited by the International Coordinating Committee of National Human Rights Institutions. Human rights, generally, are a low priority for the majority of PIF members as reflected in the low levels of ratification of international human rights treaties, limited human rights legislation, and the absence of NHRIs (Jalal, 2009).

Regional or sub-regional human rights arrangements offer an alternative or complementary means to address common human rights issues. These institutions are

formal in the sense that they are agreed to and developed by governments, as opposed to informal non-government or civil society mechanisms. The primary types of regional human rights arrangements, as evidenced in other parts of the world, include a charter of human rights, a human rights commission, and a human rights court. Whilst all UN-defined regions, apart from the Asia-Pacific, have at least one of these institutional configurations these mechanisms are nuanced in their reflection of the needs and priorities of the particular region.

The advantages of mechanisms that extend across a grouping of countries include increased technical and legal support for individual states in adopting and implementing international standards, and the availability of staff and resources to address particular human rights concerns in a specific country. They can provide monitoring assistance for ensuring human rights standards and norms are upheld within a country as well as the wider grouping, and are an impetus for greater transparency and accountability (Muntarbhorn, 2003, 2005). These types of arrangements may also encourage an exchange of knowledge and experiences among countries in one area which are facing similar issues (Ramcharan, 2004). The threat of inspection by a regional or sub-regional body as well as scrutiny of its reports by other member states is more likely to persuade countries to pay attention to and address human rights violations (Jalal, 2008). These institutions might also be more cost-effective than establishing national mechanisms, especially in smaller countries. Alternatively, they can provide a safety net to support NHRIs if their independence or effectiveness is under threat (Muntarbhorn, 2005; Ramcharan, 2004; Secretariat of the Pacific Community, 2010). Regional or sub-regional mechanisms reflect specific contexts, needs, priorities, cultural, and political environments, and for these reasons could, arguably, also be more effective than international human rights institutions (Hashimoto, 2004; OHCHR, 2001; Pritchard, 1996). On the other hand, opposition to these kinds of arrangements is generally associated with issues of effective implementation, especially in respect of adequate resourcing, skilled staff, accessibility for local peoples, and powers of enforcement (Boyle, 2009; Frémont, 2009; González, 2009).

In the Pacific, the idea of SHRAs has not received significant attention from the PIF leaders and, at the time of writing, no decisions have been made to create such a mechanism. This means that the concept of SHRAs in the Pacific has not, so far, been placed on the leaders' decision agenda (see over page for further discussion).

Understanding the factors affecting the likelihood of SHRAs reaching the decision agenda and potentially being advanced will assist with assessing the prospects for agenda success. To achieve this central aim, an agenda setting framework is adopted in this thesis as the core theoretical framework.

Applying an agenda setting framework

Analyses of processes of agenda setting have historically focused on national political jurisdictions, especially in the US, with the examination of these processes in regional and supranational contexts occurring more recently (Bachrach & Baratz, 1962; Baumgartner, Green-Pedersen & Jones, 2006; Cobb & Elder, 1972; Dearing & Rogers, 1996; Joachim, 2003; Kingdon, 2003 [1984]; Princen, 2009).⁸ No published research on agenda setting in the PIF was located. Furthermore, only one article on agenda setting that directly included Pacific states was identified (Shibuya, 1996).⁹ Therefore, an adaptation of other agenda setting frameworks has been developed and applied in this research (Kingdon, 2003; Princen, 2009).

An agenda is defined as the set of issues that decision-makers decide to devote serious attention to (Kingdon, 2003; Princen, 2009, 2011). Its importance in the broader policy-making process should not be understated; issues that do not receive attention by decision-makers cannot become subject to decision-making (Princen, 2009, 2011). The agenda then is a critical place for policy actors to have new ideas and proposals heard. Alternatively, if policy actors or decision-makers are supportive of the status quo, then attempts will also be made to keep new ideas off the policy agenda (Princen, 2009, 2011). Two types of agendas are identified in the literature: firstly, the pre-decision agenda includes proposals that have been deemed worthy of consideration by the decision-makers; and secondly, the decision agenda includes those proposals actively being decided upon (Kingdon, 2003). At this point in the process, there may be one of three outcomes: a non-decision may occur whereby decision-makers put aside the idea for the time being or may request further information to assist their decision-making; a negative decision, wherein the idea is removed from the decision agenda; or agenda success, which is a positive decision to accept and implement the proposal (Shibuya,

⁸ The seminal work of John Kingdon on agenda setting was first published in 1984. In 2003 a revised edition was published and is the primary source drawn on this research.

⁹ Shibuya (1996, p. 541) examined “the efforts of the South Pacific island nations to place the issue of global change onto the international political agenda.”

1996). Therefore, for the purposes of this research, agenda success will have occurred if the PIF leaders agree to establish SHRAs in the Pacific.¹⁰

As signaled above, the institutionalisation of SHRAs in the Pacific has received minimal attention and it was only in 2009 that the PIF leaders agreed to include this initiative on their pre-decision agenda. Whether agenda success will occur is, at this point, unknown. Agenda setting models, however, provide a means of examining the likelihood of a positive decision by the Pacific leaders. By examining each of the core elements of the agenda setting framework in relation to a specific concept, in this instance, SHRAs in the Pacific, it is possible to establish the constraints and opportunities that are affecting the prospects for agenda success. In addition, agenda setting models enable the identification of appropriate venues, possible policy windows or political opportunities, and also the contextual and institutional factors that are shaping this stage of the policy-making process.

The aims of this research

The central aim of this research is to address the question: what are the prospects for agenda success of SHRAs in the Pacific? The agenda setting framework, outlined in Chapter Two, shapes the design and execution of this research, and enables the following secondary research questions to be answered:

- What are the issues linked to SHRAs in the Pacific and how are these being framed?
- What are the possible alternatives for SHRAs in the Pacific?
- Who are the proponents of the issues and alternatives linked to SHRAs?
- Which venues are the most likely for agenda setting in respect of the idea of SHRAs, and for what reasons?
- What windows of opportunity are open in respect of the idea of SHRAs in the Pacific?
- What factors may be affecting the receptivity of decision-makers to the idea of SHRAs in the Pacific?

¹⁰ It is important to note that consideration of policy outcomes is beyond the scope of this thesis. These matters are briefly alluded to in Chapter Two but the primary focus of this research is on agenda success.

- What institutional factors may be affecting the agenda setting process in regards to the idea of SHRAs in the Pacific?

Therefore, I am interested in how ideas reach the policy agenda of the Pacific leaders, and in the factors which influence whether these ideas are viewed positively by the decision-makers, and thus advanced. It is clear from the Pacific Plan objectives, identified above, that during the development of the Plan the Pacific leaders have been aware of the concept of human rights mechanisms. However, as the time-frame for implementation has not been met it can be assumed that this idea has not been of high priority. In addition, it is not clear whether particular institutional arrangements have been envisaged by the leaders, whether agreement will be reached on advancing new mechanisms, and what factors are likely to affect the agenda setting processes pertaining to this policy idea. At this point it is not yet known whether the leaders will decide to construct human rights institutional arrangements in the Pacific.

In this somewhat fluid and uncertain context, the rationale for this research is threefold: firstly, to establish the prospects for agenda success of SHRAs in the Pacific; secondly, to gain further theoretical understanding of agenda setting in the PIF; and thirdly, to contribute to the agenda setting literature through the development of a new tool for examining agenda setting processes in sub-regional and regional contexts.

The application of an agenda setting framework will advance current understanding of the prospects for agenda success of SHRAs in the Pacific. Moreover, it will illuminate the dynamics of agenda setting processes within the specific context of the PIF. Analysis of this particular dimension of the policy-making process in the PIF has not previously been undertaken, and in this respect the thesis will contribute to the existing literature on policy-making in this sub-regional context. In so doing, it will also contribute to the wider agenda setting scholarship generated in other jurisdictions (see especially Kingdon, 2003 and Princen, 2009). Furthermore, the development of a new framework of agenda setting, as presented in the final chapter of this thesis, provides a tool for further examination of agenda setting processes in the PIF, as well as in other jurisdictions.

Structure of the thesis

The central purpose of this thesis, then, is to examine the prospects for agenda success of SHRAs in the Pacific. The thesis is purposefully situated within the political environment of the PIF, and utilises an agenda setting framework to address the core aim of the research. This opening chapter has contextualised the thesis topic and presented the rationale for the research.

In Chapter Two I review the relevant literature and discuss the theoretical construct of agenda setting. The work of Kingdon (2003), although based within a specific nation state (and one moreover, that is not of the Pacific), provides a starting point for analysis of this theoretical lens. The scholarship of Princen (2009) advances Kingdon's work with its application of agenda setting models at the regional (European Union) level. An examination of the theoretical literature enables the development of an agenda setting framework which structures the analysis of empirical materials in Chapters Five and Six, and subsequently enables the research question to be addressed in Chapter Seven.

Chapter Three examines the institutional and historical context in which the concept of SHRAs is situated. This chapter describes the mechanisms currently operating in world regions and highlights this gap in the Asia-Pacific. Recent sub-regional developments in the ASEAN are documented. A summary of activity in this policy domain at the sub-regional level of the Pacific is provided, emphasising the limited work that has occurred. The primary intergovernmental body in the Pacific, the PIF, is endorsed as the most likely venue for decision-making on the idea of SHRAs.

The methodological approach taken in this thesis is discussed in Chapter Four. This chapter begins with a brief outline of the genesis of the research and the development of the research topic. I then discuss and justify the inductive, constructivist, and interpretivist approach that informs the research strategy. Furthermore, I contend that the research topic lends itself to the use of purposeful sampling and semi-structured interviews. The research design, based on a qualitative case study approach in which I use the Framework method to guide the generation, sorting, and analysis of the empirical materials, provides a clear structure for undertaking the research.

In Chapters Five and Six I present the research findings. I structure these chapters around the core elements of the agenda setting framework elaborated in Chapter Two:

issues, alternatives, policy actors, venues, windows of opportunity, and the receptivity of decision-makers. In addition, I include participants' comments on practicable processes for developing SHRAs in the Pacific. These chapters illustrate the common and diverse views of the participants, all of whom were selected due to their expertise and knowledge of the Pacific, policy-making processes, and/or human rights.

In the penultimate chapter I discuss and analyse these interview findings through the optic of the relevant literature and answer the central research question. Several issues have been linked with the concept of SHRAs in recent times and potential alternative institutional arrangements have been discussed in a small number of forums. Currently the proposal for a human rights commission in the Pacific is being advocated as the most feasible mechanism for advancement. A small number of individuals can be identified as actively encouraging debate and discussion on SHRAs, although cooperation between the supporters of different institutional arrangements is not evident. Several contextual factors that are affecting processes of agenda setting on SHRAs in the Pacific are specified. I conclude that the likelihood of SHRAs in the Pacific being placed on the PIF decision agenda is moderate, thus increasing, but by no means guaranteeing, the prospects for agenda success. In the final instance, it is the receptivity and political will of the Pacific leaders that will determine agenda success for SHRAs in the Pacific.

In Chapter Eight a critique of the agenda setting framework applied in the research generates further insights into agenda setting processes in the sub-regional context of the PIF. In particular, the interrelationships between the elements in the agenda setting framework are highlighted. Furthermore, I argue that it is possible to identify specific contextual factors that are impacting on agenda setting in the PIF, and that this assists with understanding the processes occurring during this stage of policy-making. Whilst the receptivity of decision-makers is included in the original framework as a factor in the agenda setting process, this receptivity together with the political will of decision-makers are emphasised as being the final determinants for agenda success.

Summary

This chapter has established the central aim of the research, which is to examine the prospects for agenda success of SHRAs in the Pacific. It has also situated the research question in the context of the Pacific, and specifically in the venue of the PIF. I have

introduced the idea of SHRAs, justified the theoretical lens used in the thesis, presented the rationale and aims of the research, and also outlined the structure of the thesis. The following chapter will examine the theoretical approach to this research in more detail and present the theoretical framework that underpins this research on the prospects for agenda success of SHRAs in the Pacific.

Chapter Two

Agenda setting

Introduction

The Pacific Plan (2005, 2007) clearly endorses the promotion and protection of human rights throughout the Pacific sub-region, although this has primarily been supported and undertaken at the national level, with the PIF encouraging initiatives such as the development of NHRIs and individual state ratification of international conventions and protocols (Pacific Islands Forum Secretariat, 2007). However, in 2009 a shift towards a more deliberate sub-regional approach to human rights policy became apparent. In particular, two key developments occurred: firstly, the Pacific leaders approved the establishment of a senior human rights advisor position in their Secretariat to support the existing roles of the gender and disability advisors; secondly, they commissioned the Regional Rights Resource Team (SPC/RRRT) with the support of the PIF Secretariat to undertake a scoping exercise on SHRAs. The scoping exercise is indicative that SHRAs are now on the Pacific leaders' pre-decision agenda, which includes proposals for consideration. Whether the idea will receive favourable attention by Pacific leaders leading to the establishment of institutional arrangements and, therefore, agenda success, is as yet unknown.

This chapter reviews the literature - both theoretical and empirical - on agenda setting, within the wider scholarship on the policy process. The relevant scholarship crosses several disciplinary strands including: political science, particularly within the sub-discipline of public policy, media studies, and comparative research. The primary focus here is the first of these categories (Baumgartner et al., 2006; Dearing & Rogers, 1996; Kingdon, 2003). The study of agenda setting, while, a "well-established research tradition" (Baumgartner et al., 2006, p. 959) has been dominated by the examination of this process in nation states, and especially the US (see Bachrach & Baratz, 1962; Cobb & Elder, 1972; Kingdon, 2003; Schattschneider, 1975). The American-based Policy Agendas Project has for the past two decades advanced understanding of agenda setting processes through its generation of a comprehensive dataset on the US policy process and is now extending its work into other countries and arenas, including the European

Union (EU) (Baumgartner et al., 2006; John, 2006).¹¹ Scholarly work on agenda setting in the regional (rather than the nation-state) context has also increased since the 1990s although this has largely focused on the EU (Bulmer, Dolowitz, Humphreys & Padgett, 2007; Green-Pederson & Wilkerson, 2006; Kalu, 2004; Peters, 1994; Pralle, 2006; Princen, 2009). Research in the Asia-Pacific region has primarily focused on agenda setting within the Asia Pacific Economic Cooperation forum (APEC) (Aggarwal & Lin, 2001; Choi & Caparaso, 2005; Downing, 2003; Feinberg, 2003). Literature on agenda setting in the Pacific and, specifically the PIF, is negligible.

This chapter critically examines and probes the core concepts of the agenda setting theoretical lens and integrates these into a framework which, in terms of research design, structures the analysis of the empirical materials in subsequent chapters. Whilst this chapter is largely framed around the influential work of John Kingdon, other agenda setting scholarship, and especially that of Princen (2009, 2011), enhances and advances his work. In combination, this empirical knowledge enables the development of the theoretical framework that shapes this research. In the first section of the chapter, a synopsis of agenda setting models will be outlined before a discussion on issue and alternative formation and an explanation of the types of agendas operating in national and regional settings. Next, consideration of the range of policy actors involved in agenda setting processes is presented. This is followed by a discussion on venues, prior to deliberation on the notion of policy windows and their relationship with institutional and political contexts. The next section comments on the necessity of receptivity from decision-makers in the agenda setting process.¹² Consideration is then given to agenda setting in the sub-regional context. The penultimate section presents a critique of the agenda setting literature and, finally, the theoretical framework that guides this research is outlined.

¹¹ See www.policyagendas.org for information on this project.

¹² Drawing on the work of Post, Raile & Raile (2010, p. 660) a distinction is made between policy-makers and decision-makers for the purpose of this research. Policy-makers are defined as actors that are capable of approving, implementing and enforcing public policies in a particular jurisdiction; that is, the political executive and the bureaucracy/administrative executive. The term 'decision-makers' is a sub-set of policy-makers and refers to the political executive which has ultimate responsibility for deciding whether a policy idea will be advanced.

Agenda setting models

The scholarly work of Roger Cobb and Charles Elder (1972) and John Kingdon (1984) on agenda setting in the US laid the initial foundations for future research in this aspect of the policy process.¹³ In particular, Kingdon's Multiple Streams Model has been used extensively by other agenda setting scholars at both the national and regional levels (for example, Gordenker, Coate, Jonsson and Soderholm, 1995; Howlett, 1998; Joachim, 2003; Princen, 2009, 2011; Shibuya, 1996). Cobb and Elder (1972) suggest the following steps in the agenda setting process: (1) a problem is identified and actors attempt to make it a wider concern; (2) if support is evident the issue becomes part of a government's agenda; (3) if a government decides it needs to respond, the issue becomes part of the policy cycle, entailing - in broad terms - analysing options, taking authoritative decisions, and implementing and evaluating policy. The critical role of political actors who have the power to define and determine which issues may rise to prominence, as well as the importance of understanding how the agenda setting process works, are specifically noted by these authors (Cobb & Elder, 1972).

The context: rational-comprehensive and incremental approaches

Cobb and Elder's model is consistent with the rational-comprehensive approach to policy-making which was developed in the early work of Harold Lasswell (1956) and endorsed by Herbert Simon (1957).¹⁴ The approach is rational in that it outlines a process that, at least theoretically, seeks to be an efficient means of achieving policy outcomes (Jones, 2002; Maddison & Denniss, 2009; Pump, 2011). In addition, it incorporates both normative and descriptive variants; that is, accounts of how policy-making *should* occur and descriptions of *what* the policy-making process involves. The descriptive variant of the rational-comprehensive model of policy-making typically includes five key stages: (1) agenda setting: the process through which issues come to the attention of governments and are given recognition of needing action; (2) policy formulation: the development of options and alternatives that may address the problem; (3) decision-making: when governments decide what action to take (or not to take); (4)

¹³ The scholarship on the wider policy process includes Birkland, 2001; Dye, 1972; Hill, 2009; Hogwood & Gunn, 1984; McCool, 1995; Parsons, 1995; Sabatier, 2007; Simon, 1957, 1989.

¹⁴ Simon's later scholarship on 'bounded rationality' (1983, 1985, 1995, 1996) further developed his earlier work (both normative and descriptive) on rational-comprehensive policy making.

policy implementation: the process through which decisions are actioned and resources are allocated; (5) policy evaluation: the results of the policy are monitored and assessed. This final stage may then lead to further adaptations or changes in the policy. This idealised conceptualisation of the linear or stages process is widely utilised in teaching and research on policy-making, as its separation of the stages enables each step to be examined alone or in relation to the other parts (Bridgman & Davis, 2004; Howlett & Ramesh, 2003; Lowi, 1972; Maddison & Denniss, 2009; Rhodes, 2011; Shaw & Eichbaum, 2011).

Several criticisms of the rational-comprehensive model have, however, been offered. These critiques include that the linear approach is inadequate as in reality policy-making tends to be ad hoc, idiosyncratic and reactive and the model has a vertical or top-down focus that does not address causality or identify who or what drives policy from one stage of the model to the next. Furthermore, time and resource constraints may limit the ability of decision-makers to consider all possible solutions to the problem, therefore, selectivity may occur which compromises rationality. Put simply, the complexity and subtleties of policy development cannot be fully illustrated by the model (Howlett & Ramesh, 2003; Hudson & Lowe, 2009; Peters, 1994; Prasser, 2006; Rhodes, 2011; Sabatier & Jenkins-Smith, 1993; Wolman, 1992).

One response to the perceived limitations of the rational-comprehensive model was by Charles Lindblom (1959) who developed an incremental model of policy-making. The incremental model, or 'successive limited comparisons' approach, is premised upon the view that decisions are based on what may be politically possible rather than an ideal solution (Hill, 2009; Lindblom 1959). Minimal change is preferred over significant or dramatic policy developments (Hudson & Lowe, 2009; Theodolou & Kofinis, 2004). Whilst the incremental model enables a theoretical description of the policy process especially in regards to minor policy changes, it also has limitations. For instance, the model does not explain significant and sudden changes in policy and is also restricted in its ability to incorporate the institutional context into policy decision-making or address new policy problems about which decision-makers have limited knowledge or understanding (Baumgartner & Jones, 1991; Hill, 2009).

Kingdon's seminal contribution

In his work on agenda setting, Kingdon (2003) acknowledges that although oversimplified, public policy-making includes a set of processes which align with the stages heuristic, or policy cycle.¹⁵ His work is primarily concerned with the first two aspects, that is, the setting of the agenda and the specification of alternative solutions. Whilst using this stages model to set the parameters for his own research interests, Kingdon explicitly disassociates himself with the rational-comprehensive approach to policy-making:

Events do not proceed neatly in stages, steps or phases. Instead independent streams that flow through the system all at once, each with a life of its own and equal with one another, become coupled when a window opens. Thus, participants do not first identify problems and then seek solutions for them; indeed advocacy of solutions often precedes the highlighting of problems to which they become attached (2003, p. 206).

Furthermore, Kingdon argues, the incremental model only partially reflects policy developments and he, therefore, utilises “a revised version of the Cohen-March-Olsen garbage can model of organisational choice to understand agenda setting and alternative specification” (Kingdon, 2003, p. 83). The ‘garbage can’ model also disputes that policy-making is a rational process and suggests that policy emerges through a messy and haphazard collision of problems and solutions (Cohen, March & Olsen, 1972; Peters, 1994; Robinson & Eller, 2010). These problems and solutions exist independently in the metaphorical ‘garbage can’ with decision-makers and opportunities. At times each component may connect simultaneously and enable policy change (Cohen et al., 1972; Hill, 2009; March & Olsen, 1984).

However, in place of the ‘garbage can’ metaphor Kingdon introduces the notion of a ‘primeval soup’, referring to early biological evolutionary changes wherein genetic changes occurred in a shapeless, soup-like environment and only certain combinations were successful. Moreover, Kingdon contends that in the agenda setting arena only some ideas survive:

¹⁵ Kingdon (2003, pp. 2-3) outlines these processes as: “(1) the setting of the agenda, (2) the specification of alternatives from which a choice is to be made, (3) an authoritative choice among those specified alternatives, as in a legislative vote or a presidential decision, and (4) the implementation of the decision.”

This policy primeval soup does not closely resemble a rational decision-making system with a few well-defined alternatives among which decision-makers choose ...[instead] a very large number of proposals are considered somewhere along the line. The process is evolutionary, a selection process in which some of these ideas survive and flourish (Kingdon, 2003, p. 124).

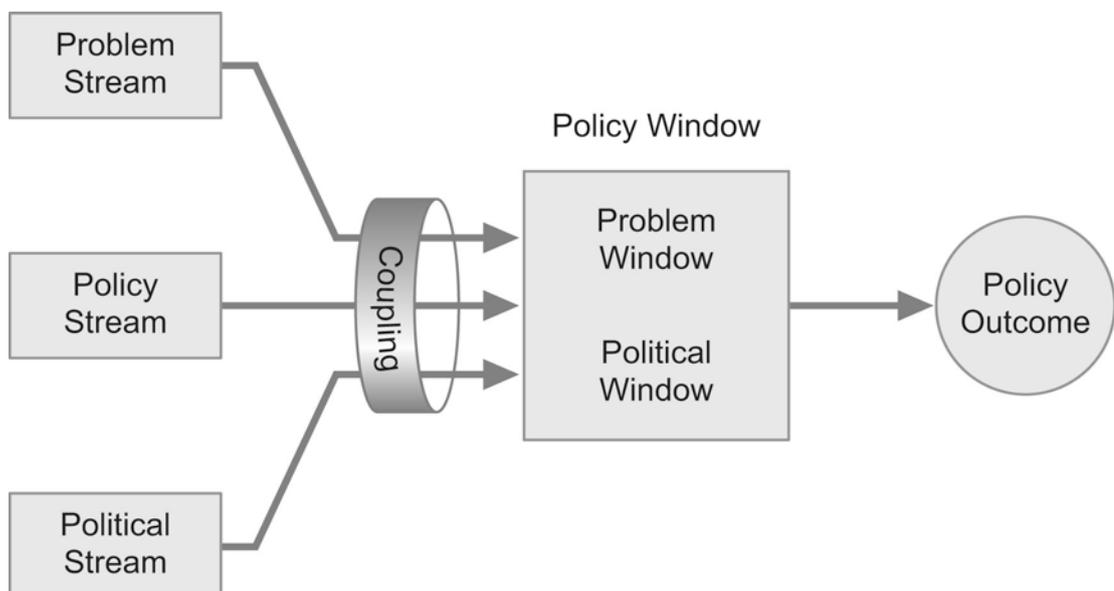
While not mentioned in earlier editions, in Kingdon's 2003 revision of his agenda setting text, he acknowledges the rise of new institutional theory and considers its application to his Multiple Streams Model. In particular, he indicates that the broader environment within which agenda setting takes place, including institutions, constitutions, procedures, governmental structures, and governmental officials, may affect political, social, and economic systems as much as they are affected by them (Kingdon, 2003, p. 229). Governments then, he concludes, have their own autonomy (Kingdon, 2003).

In general terms, new institutionalism is the "study of institutional effects wherever, or however, they occur" (Immergut, 1998, p. 25; Lowndes 1996, 2002; Ma, 2007). An institution can be defined as "formal and informal rules, behavioural codes and norms that constitute prescriptions ordering repeated and interdependent relations" (Kjaer, 2006, p. 9). Institutions may both constrain and enable agenda setting and may "make some outcomes possible and other outcomes unlikely" (Baumgartner & Jones, 1993; Baumgartner et al., 2006; Hudson & Lowe, 2009; Joachim, 2003; John, 2006; Kingdon, 2003, p. 230; Peters, 2001). Institutional concepts such as punctuated equilibrium, whereby attention is fixed upon a problem and/or a solution for a short time and the opportunity for change is fleeting, and institutional venues in which agenda setting may occur are further endorsed by Kingdon as variables influencing the agenda setting process. Specifically he emphasises that the problem, policy and political streams (see below) are interdependent and only sometimes joined (Kingdon, 2003, p. 228).

The new institutional scholarship goes further, however, and stresses the dynamic relationship between structure (in this context, the venues and institutional processes within which agenda setting is occurring) and agency (or the people and organisations involved in these processes) (Immergut, 1998; Joachim, 2003; Kjaer, 2006; Lowndes, 1996, 2002; Peters & Pierre, 1998). The effect of institutional contexts on agenda setting is significant but underdeveloped in Kingdon's work, and will be returned to throughout this thesis.

Kingdon uses the concept of three streams - problems, policies and politics - to explore how issues and policy solutions may emerge in the political environment (see Figure 2.1). Problem recognition is critical, as an event or condition only becomes a problem when policy actors believe something should be done to address it (Radaelli, 1995). How policy issues and alternatives are identified and defined have implications for which ideas, knowledge, and resources are subsequently considered by policy-makers and the importance, or otherwise, attributed to the problem. The selection of a particular analytical position will further affect the conclusions drawn about the process and outcome of a policy issue (Street, 2004). The politics stream includes the broad political and institutional culture in which policies may be operating and may include elections, interest group behaviour, and ideological conflict (Kingdon, 2003). Within the policy stream a constant flow of solutions for any number of issues are being generated by an array of policy actors (Kingdon, 2003; Princen, 2011; Radaelli, 1995). Policy actors are key players at the three critical junctures and may include politicians, bureaucrats, civil society representatives, organisations, and networks (Keck & Sikkink, 1998; Kingdon, 2003; Princen, 2011). Whilst each stream is largely independent and will develop according to its own systems and rules, at particular moments the streams are joined and policy change occurs.

Figure 2.1 The Multiple Streams Model



(Source: Kingdon, 2003)

Princen's 3-step model of agenda setting in the European Union

Princen (2009) outlines three steps in the formation of agendas in the EU. Firstly, issues become part of what he describes as “transnational European policy debates” in that while the issue is not on the EU agenda it can be said to be on the agenda of particular policy communities or entrepreneurs (Princen, 2009, p. 151). The next step occurs when decision-makers begin to debate the issue in their institutional context. This pre-decision agenda may contain multiple issues or alternatives at any one time thus creating opportunities for policy actors to advocate for their particular idea. If decision-makers are largely supportive of the ideas and are able to overcome the constraints described above either within the (sub-) regional institution or among its member states, then the proposals are moved onto the decision agenda. This stage may include bargaining or trade-offs between the decision-makers and/or other actors so that agreement can be reached (Peters, 1994).

Although Princen's model has not been located in other literature on agenda setting, it has relevance for this research. The first stage of Princen's account correlates with the issue of SHRAs being proposed by certain individuals or policy networks as evidenced in memos, meetings and conferences both at the national and (sub-) regional levels. The second step is apparent if officials or political leaders are discussing the idea of SHRAs in the context of the PIF or in their individual countries (the pre-decision agenda). The scoping exercise committed to by the Pacific leaders, which is being undertaken in 2011, is evidence that the idea of SHRAs is currently on the PIF pre-decision agenda. Thirdly, placement of the idea of SHRAs in the Pacific on the decision agenda will be perceptible when Pacific leaders further consider the results of the scoping exercise and make a decision as to how to proceed. Agenda success will occur if PIF leaders agree to establish some form of SHRAs in the Pacific.

Issues and alternatives

Within the agenda setting process, policy actors compete to have particular issues and alternative solutions brought to the attention of decisions-makers. However, due to constrained time and resources only a limited number of these ideas will be placed on the agendas of the political executive (Anderson, 1994; Cobb & Elder, 1972; Kingdon, 2003; Princen, 2007, 2009).

Kingdon defines an agenda as “a list of subjects or problems to which government officials, and people outside of government closely associated with these officials are paying some serious attention at any given time” (2003, p. 3). Agendas can be further delineated to assist with understanding this aspect of policy-making. Issues or alternatives which have been accepted as worthy of consideration have been variously described as being on the ‘systemic’, ‘public’ or ‘governmental’ agenda (Cobb & Elder, 1983; Kingdon, 2003; Peters, 1994; Princen, 2009). After the issue/alternative has received initial attention then decision-makers may agree that further action is warranted. At this point the issue/alternative moves onto the ‘decision’ agenda (Kingdon, 2003), also termed the ‘institutional’, ‘political’ or ‘formal’ agenda (Cobb & Elder, 1983; Princen, 2009).

The terminology used to describe the two different agendas is, to some extent, context-specific. For instance, as Kingdon is referring to agenda setting in a federal government he has adopted relevant terms, that is, governmental and decision agendas. By contrast, in Princen’s (2009) EU research on agenda setting in the health and environmental policy fields, he replaced ‘governmental agenda’ with the phrase ‘international agenda’ in order to reflect the supranational context of the EU. For the purposes of clarity, in this thesis I define the ‘pre-decision’ agenda as that which includes issues and alternatives being considered by the PIF leaders; and the ‘decision’ agenda as incorporating the problems and solutions the PIF leaders are actively deciding upon. Upon reaching the decision agenda three outcomes may occur: a non-decision, a negative decision, or agenda success which is the positive decision to advance and implement a proposal (Bachrach & Baratz, 1962; Peters, 1994; Post et al., 2010; Shibuya, 1996).

The process of agenda setting is contested as topics only become issues when there is variance between how people view a condition and what political actors wish to do about this (Baumgartner et al., 2006; Dudley & Richardson, 1996; Princen, 2009; Schattschneider, 1975; Theodolou & Kofinis, 2004). As a result, agenda setting incorporates a focus on both existing and new issues over which there is disagreement. Issues become defined through complex processes of competing ideas, lobbying, learning and political decision-making (Peters, 1994; Rose, 1991). The way in which an issue is defined, portrayed, and interpreted will directly influence whether it is seen as important for further consideration (Bridgman & Davis, 2004; Dunlop, 2007; Forrest,

2003; Joachim, 2003; Jochim & May, 2010; Keck & Sikkink, 1998; Maddison & Denniss, 2009; Nagel, 2006; Nelson, 2004; Peters, 1994; Post et al., 2010; Rochefort & Cobb, 1994; Stone, 1989). This deliberate framing effort incorporates both a substantive element (explaining why something should be done about the issue) and a scale element (explaining why a jurisdiction should be doing something) (Princen, 2009, 2011; Stone, 1989). The frames may be apparent in ideational statements, or the strategies and tactics of policy actors, and may be developed either inside or outside of established institutions (Joachim, 2003; Surel, 2000). The more appealing the frame is to policy-makers, the higher the issue is likely to be placed on the pre-decision or decision agendas (Dearing & Rogers, 1996; Downs, 1972; Green-Pedersen & Wilkerson, 2006; Princen, 2009, 2011). The acceptance of the frame, however, is also contingent on whether there are opportunities for it to be noticed at the political level and the resources and effectiveness of policy actors in the specific policy domain (Joachim, 2003; Kingdon, 2003; Stone, 1989).

Other influencing factors on whether issues gain the attention of policy-makers include: fiscal and political resources, timing, possible political harm or threat, political calculations of the various actors, political dissatisfaction, perceived severity and frequency of the problem, proximity of the issue, or the occurrence of a crisis or focusing event (Bridgman & Davis, 2004; Cobb & Elder, 1983; Green-Pedersen & Wilkerson, 2006; Kingdon, 2003; Laking & Norman, 2007; Nedley, 2004; Peters, 1994; Princen, 2009, 2011; Rose, 1991). The 'image' of an issue, whether it is seen to be controversial, neutral or have mass public appeal, may also affect its standing on an agenda, especially in instances in which decision-makers are focused on vote-seeking and, therefore, want to appeal to constituents (Baumgartner & Jones, 1993; Birkland, 1998; Cobb & Elder, 1972; Dudley & Richardson, 1996; Green-Pedersen & Wilkerson, 2006).¹⁶ Decision-makers may also be more inclined to advance an idea if significant policy gains are likely.

During the agenda setting process numerous solutions may be generated (Kingdon, 2003). Defining these alternatives is a powerful enterprise as officials and the political executive tend to base their decisions on the proposals that are immediately available

¹⁶ See Dudley and Richardson's (1996) study on trunk roads in Britain in which they concluded that the image of their selected issue altered over time thus enabling a previously unpopular issue to become an object of policy change.

and ready for implementation (Haas, 1992; Schattschneider, 1975). Champions of an issue or proposal, often politicians, officials, policy entrepreneurs or policy networks, bring these to the attention of decision-makers for consideration (Boscarino, 2009; Kingdon, 2003; Neilson, 2001). The roles and influence of these individuals and groups may differ depending on the institutional context (Oborn, Barrett & Exworthy, 2011; Rhodes, 2002). Whilst the linking of a possible solution to an issue appears to enhance its chances of success at moving from the pre-decision to the decision agenda, decision-makers need to be convinced that they are addressing a demonstrable problem that will have significant positive effects, if it is a suitable time for a new policy development and if they will be able to make appropriate policy changes in their institutional context (Kingdon, 2003; Ladley & Gill, 2008; Pierson, 2000). Consistent with the notion of path dependency, the status quo will most likely prevail unless there is considerable pressure, often by dominant groups and sometimes stimulated by a sense of crisis or urgency, to change existing policy (Bale, Boston & Church, 2005; Howlett & Rayner, 2006; Hudson & Lowe, 2009; Kingdon, 2003; König & Poter, 2001; Laking & Norman, 2007; Lindquist, 2001; Peters, 1994; Peters & Pierre, 1998; Pierson, 2000; Princen, 2009; Thelen & Steinmo, 1998).¹⁷ Thus, salience, or the degree to which an issue or solution is perceived to be important, is critical (Boscarino, 2009; Dearing & Rogers, 1996). Learning from other jurisdictions with similar issues may have some merit; however, alternatives suitable for one context may not be as relevant in another (Dolowitz & Marsh, 1996; Evans, 2004a; Rose, 1993).¹⁸ Caution, therefore, should be exercised when considering a transfer of solutions especially across jurisdictions with differing political and institutional structures (Bennett, 1991; Common, 2001; Dolowitz, Hulme, Nellis & O'Neill, 2000; Dolowitz & Marsh, 1996; Evans, 2004a; Gregory, 2004, 2005; Kalu, 2004; Laking & Norman, 2007; Robertson, 1991; Rose, 1993).

¹⁷ The concept of path dependence refers to a “social process grounded in a dynamic of ‘increasing returns’” (Pierson, 2000a, p. 251). Path dependence is often used to support claims that timing and sequence of events matter; large consequences may result from small and/or contingent events; and once a course of action has begun it may be difficult to reverse or halt the action (Bale et al., 2005, p. 483; Howlett & Rayner, 2006, p. 5; Pierson, 2000, p. 251). Consequently policy developments may occur if there are likely to be relatively better or increasing returns by continuing down a policy path or if the costs associated with reversing a decision are too high (Bale et al., 2005; Pierson, 2000, p. 252).

¹⁸ The process of policy transfer is the deliberate movement of ideas, policies, delivery systems, programmes, institutional arrangements or resources from one jurisdiction to another (Anderson, 1971; Bennett, 1991; Common, 2001; Dolowitz & Marsh, 1996; Dolowitz et al., 2000; Evans, 2004b; Evans & Davies, 1999; Evans & McComb, 2004; Shipman, 1997; Stone, 2000; Wolman, 1992).

To gain traction, issues and alternatives need to be both efficient and expedient, that is, cost-effective, technically feasible, politically acceptable, and consistent with the dominant value systems (Althaus, Bridgman & Davis, 2007; Boscarino, 2009; Evans, 2004b; Kalu, 2004; Kingdon, 2003; Laking & Norman, 2007; Maddison & Denniss, 2009). However, even if an issue or alternative reaches the pre-decision agenda it may still be blocked at various 'veto points' or be unsuccessful at rising to an adequate level so that it moves onto the decision agenda (Immergut, 1998; Peters, 1994; Peters & Pierre, 1998). Examples of veto points may include: the issue being seen as a low priority for attention and so the issue/alternative is put aside, the budgetary cycle wherein the issue/alternative may (or may not) be given attention depending on fiscal priorities, key supporters of the political executive may indicate that they may withdraw support if a certain issue/alternative is actioned. Certain policy actors, for example, the administrative and political executives and powerful interest groups, can have a critical influence at these veto points (Immergut, 1998; Shaw & Eichbaum, 2011). Having a number of viable alternatives that can address an issue may counter attempts to block it and may instead assist the problem being placed higher on both of the agendas (Birkland, 1998). The veto point, then, may become an opportunity for mobilising the placement of alternative issues or solutions onto the agenda or, in the case of opponents, an opportunity to stymie progress (Baumgartner et al., 2006; Peters, 1994). Given time and resource constraints and often their own short-term focus, both the administrative and political executives may become 'satisficers', that is they only search long enough to find a policy, idea or programme that will be satisfactory and sufficient in the immediate future (Post et al., 2010, p. 66; Simon, 1995). That means that if a suitable alternative or solution is available at the right time then it is more likely to be either considered or adopted (Kingdon, 2003).

At a (sub-) regional level, identification of a collective issue may lead to attempts to collaborate and coordinate action to address the concern (Shibuya, 1996). Member states of a (sub-) regional grouping may, for instance, agree on the need to address a particular issue that is common to several countries (Princen, 2009; Shibuya, 1996). Environmental issues, such as climate change or marine security regulations, may, for example, facilitate collective action that is of mutual benefit to a number of countries (Shibuya, 1996). SHRAs in the Pacific are viewed by some people as alternatives to several issues pertaining to human rights in the sub-region. Therefore, an examination

of how these issues and the related alternatives are being formed and framed, who is championing the concepts, whether there are veto points impacting on the pre-decision or decision agendas, and what variables may be influencing whether the decision-makers will place SHRAs onto their decision agenda, is important.

The role of policy actors

Policy actors are described by Considine (1994, p. 6) as “any individual or group able to take action on a public problem or issue.” These actors may have a range of roles in the agenda setting process including being initiators, researchers, refiners, and gatekeepers who may enable, delay, block or modify ideas and solutions (Joachim, 2003; Laking & Norman, 2007; Maddison & Denniss, 2009). Kingdon (2003) categorises the different actors as visible or hidden participants, for example, politicians are generally more noticeable compared with bureaucrats and policy entrepreneurs. A multitude of actors may be involved in agenda setting processes including (but not restricted to): the political executive, the bureaucracy or administrative executive, policy entrepreneurs, and policy networks (Baumgartner et al., 2006; Joachim, 2003; Kingdon, 2003; Peters, 1994; Princen, 2009, 2011; Richardson, 2006; Theodolou & Kofinis, 2004).¹⁹ The role of political parties and the public are also noted, but to a lesser extent, in the agenda setting literature (Birkland, 1998; Considine, 1998; Nagel, 2006; Peters, 1994). While it has been said that “the agenda is set often not by policy opinion or media attention but by influential elites either already in government or with access to decision-makers,” a broader mobilisation of support may also be critical in raising the profile and acceptance of an issue and alternatives so as to ensure subsequent agenda success (Baumgartner et al., 2006; Bridgman & Davis, 2004, p. 40; Joachim, 2003; Kingdon, 2003).

Competition among voices seeking attention and influence on a particular issue may lead to disputes over an issue’s perceived significance, implications, urgency and resolution (Considine, 1998; Dudley & Richardson, 1996; Evans, 2004; Lindquist, 2001; Rochefort & Cobb, 1994; Tenbensel, 2006; Theodolou & Kofinis, 2004). The

¹⁹ A policy entrepreneur is a person actively advocating for a particular issue or alternative (Theodolou & Kofinis, 2004).

There is an extensive literature on policy networks, both formal and informal, and variously described as: policy subsystems (Howlett, Ramesh & Perl, 2009), policy networks and policy communities (Rhodes, 1997, 2002, 2007, 2011a), advocacy coalitions (Sabatier, 1988; Sabatier & Jenkins-Smith, 1993, 1999), and epistemic communities (Evans & Davies, 1999; Haas, 1992).

available expertise in a specific policy sector might also influence what problems are identified, what analysis may be undertaken, and what solutions are decided upon (O'Faircheallaigh, Wanna & Weller, 1999; Pralle, 2006; Theodoulou & Kofinis, 2004). Dominant groups that demonstrate a level of cohesion and have readily available resources are more likely to be listened to as decision-makers generally prefer to support an issue and solutions that have a reasonable level of interest and consensus (Birkland, 1998; Kingdon, 2003).

The political executive

The political executive, that is elected representatives in national governments, or the Pacific leaders in the sub-regional context of the PIF, have an important role in getting ideas onto the pre-decision agenda. That is especially so in regards to popular topics that may enhance their chance of re-election, on-going support in the sub-region, or achieving notable policy gains (Green-Pedersen & Wilkerson, 2006; Hill, 2009; Peters, 1994). Certain issues with high visibility or external support may be used by these actors to strengthen their advantaged political position (Baumgartner & Jones, 1991; Stone, 1989). Along with the administrative executive, the political executive has a significant influence on the management and execution of the policy process. These 'inside' political actors may shape the image of issues, as well as influence whether they are placed on the pre-decision or decision agendas (Baumgartner & Jones, 1991; Dunlop, 2007; Hudson & Lowe, 2009; Jennings, Bevan & John, 2010; Liu, Lindquist, Vedlitz & Vincent, 2010; Schattschneider, 1975; Stone, 1989). Importantly, it is these actors that also determine agenda success and subsequent decision-making regarding implementation (Post et al., 2010).

The management of agendas was endorsed in Bachrach and Baratz's (1962) study of race relations in a US state, which demonstrated a 'mobilisation of bias' from the state against 'outside' groups. Other research also supports these views, including findings from the US Policy Agendas Project which indicated that increased attention to an issue by the political executive signals the likelihood of notable policy change (Baumgartner et al., 2006). This change is also more likely to be sustainable if it is determined from inside a jurisdiction rather than imposed, such as by donors (Baumgartner et al., 2006; Bradley, 2008; Laking & Norman, 2007). Drawing on the institutional scholarship of Immergut (1998), Peters (1994, 2001) notes that during processes of agenda setting in the EU, the political executive may wield their power either to enable or prevent certain

issues making it onto the pre-decision and decision agendas (also see Post et al., 2010). Whilst the PIF is considerably less politically and institutionally sophisticated than the EU, the political executive of the Forum, that is the Pacific leaders, hold primary influence over the shaping of the policy agendas and the management of the political process (Crocombe, 2001; Fong Toy, 2006; Frazer & Bryant-Tokelau, 2006; Fry, 1994). For the purposes of my research these political leaders are the decision-makers, due to their determining role in policy decisions and implementation within the PIF.

The administrative executive

While an issue requires the consideration and acceptance of the political executive, the role of other actors should not be underestimated (Bridgman & Davis, 2004; Post et al., 2010; Tenbenschel, 2006). Senior bureaucrats, for example, may significantly influence a policy agenda by providing advice on specific issues and elevating the profile of ideas that they believe deserve attention (Boston, 2001; Bridgman & Davis, 2004; Gregory, 2004; Hill, 2009; Howlett, 2009; Kingdon, 2003; Page, 2000; Peters, 2001a; Teodoro, 2009; Workman, Jones & Jochim, 2009). The administrative executive may also push or ignore certain issues or alternatives so as to assist them to meet their own targets or organisational goals (Peters, 2001; Post et al., 2010). They may establish strategic relationships with other policy actors or interest groups so as to create manageable, coordinated, legitimate, and stable processes, and increase the status of certain ideas (Jochim & May, 2010; Laking & Norman, 2007; Mazey & Richardson, 2006; Nagel, 2006; Peters, 2001a). Support from these 'outside' interests might be mobilised by officials especially when policy-making occurs in multiple venues, such as in the US and the EU, as this potentially allows a stronger case to be presented to the political executive (Peters, 2001a). The power of the administrative executive is also significant because they are often the first point of access for policy actors and may determine whether an idea is to be pursued further (Peters, 1994).

If an issue or alternative is placed on the pre-decision agenda then officials may also be in a position to influence how and by whom it is further examined, what resources are available for scoping exercises, and the findings that are presented back to the political executive (May, Workman & Jones, 2008; Peters, 2001). However, there may be policy trade-offs occurring during these processes and within a contested policy domain the influence of officials may be somewhat limited depending on the levels of outside advocacy and demand for a particular idea (Averch, 2001; Miller, 2004; Nagel, 2006).

The administrative executive for the PIF is the Secretariat, headed by a Secretary-General. The role and influence of the Secretariat on policy-making in the Pacific has received little attention in the literature, however, it is important to consider how they might be acting as a mobilising force in agenda setting processes in the PIF, and in relation to SHRAs (Fong Toy, 2006).

Policy entrepreneurs

A policy entrepreneur is an “advocate for proposals or the prominence of an idea” who may be situated either inside or outside of formal government structures (Theodolou and Kofinis, 2004, p. 121). These actors then may include ‘official entrepreneurs’ such as politicians or the chief executives of government departments or agencies, or ‘public entrepreneurs’ that are not in formal positions of government (Oborn, Barrett & Exworthy, 2011; Roberts & King, 1991). These political actors invest substantial personal, financial and time resources into pursuing their interests and preferences (Mintrom & Vergari, 1996; Oborn et al., 2011). Policy entrepreneurs may identify issues, offer alternatives, and attempt to persuade and alter the perceptions of policy-makers and other policy actors (Boscarino, 2009; Keck & Sikkink, 1998; Kingdon, 2003; Koski, 2010; Mintrom & Norman, 2009; Nowlin, 2011; Page, 2000; Theodolou & Kofinis, 2004). The personal and professional resources they bring to the agenda setting process include: leadership or an ability to speak on behalf of others, expertise or authority, innovation, negotiating and facilitation skills, and persistence (Kingdon, 2003; Oborn et al., 2011; Ugur & Yankaya, 2008). Often a policy entrepreneur will push their proposal for many years before their ideas are seriously considered and may actively seek out policy problems to attach their solutions to (Kingdon, 2003; Princen, 2011). Several motivations for policy entrepreneurs have been identified:

1. They have identified a problem they wish to see resolved;
2. They have a proposal they want implemented;
3. They want to promote their own values in respect of a certain policy domain;
4. They are keen to promote their own personal interests in order to gain particular material or personal incentives;
5. They enjoy participating in the policy game (Jochim & May, 2010; Kingdon, 2003, p. 123; Peters, 1994).

Policy entrepreneurs will often undertake a process of ‘softening up’ or endeavouring to get both the public and policy-makers used to new ideas and possible solutions (Dudley & Richardson, 1996; Keck & Sikkink, 1998; Kingdon, 2003; Richardson, 2000; Stone, 1989). Common activities in this process include building awareness of their proposals in conferences, publications, speaking engagements, meetings, and the media. Kingdon refers to these activities as “trial balloons” with the proposals being tested out in a range of different venues (2003, p. 129). This may mean that the issue and alternatives have been through “a lengthy gestation period” and solutions have been carefully researched and developed to ensure the greatest chances of success for adoption (Kingdon, 2003, p. 142). Competing entrepreneurs may present a menu of options to decision-makers, each lobbying according to their own interests and thus creating a ‘honeycomb’ of preferences (Mazey & Richardson, 2006; Peters, 1994; Richardson, 2000). Whilst policy entrepreneurs desire to have their ideas considered, they may also seek to remove them from an agenda if it appears they are being interpreted or decided upon in a way not initially intended (Peters, 1994).

Policy networks

Various networks, or groups of interdependent actors, may also be operating in a policy domain with some groups wielding significant power during processes of policy change (Bevir, 2009; Hanf & Scharpf, 1978; Mendizabal, 2006; Michalowitz, 2007; Perkin & Court, 2005; Pierre & Peters, 2000; Rhodes, 1990, 1997; Robichau, 2011). Birkland (1998) suggests that in the majority of policy domains some type of network would be present, although levels of mobilisation and resources may vary. Rhodes (1990, p. 304) distinguishes between policy networks and policy communities with the latter being a type of network (1990, p. 304).²⁰ Networks have various levels of involvement, depending on membership, resources, and interdependence and may range from being informal to highly integrated (Rhodes, 2002). A policy community is a specific type of network in that membership is restricted and the community is often insulated from other networks and the wider public. Within this setting there is less opportunity for horizontal relationships with other state or non-state actors as the policy actors tend to be vertically interdependent (Rhodes, 1988, 1990, 2002).

²⁰ Rhodes’ extensive scholarship on public administration includes the theoretical development of policy networks. His initial work on networks in inter-governmental relationships conceptually shifted over time to one of ‘networked governance’ and the idea of the ‘hollowed out’ state (Rhodes, 1996, 1997, 2002, 2011; Wanna & Weller, 2011, pp. 9-10).

An example of a policy community is an epistemic community which is a closed group comprising 'knowledge elites', from any profession or discipline who have the authority to contribute to policy development in a specific area (Evans 2004; Evans & Davies, 1999, p. 365; Haas, 1992; Ladi, 2000). By generating knowledge and ideas in a multi-disciplinary, international and independent community, it seeks to influence processes of agenda setting (Adler, 1992; Haas, 1992; James, 1993; Radaelli, 1995). Think tanks, an example of an epistemic community, diffuse ideas and frames issues for collective debate. Its members advocate selected ideas and provide expertise on specialised policy issues (James, 1993; Stone, 2000a). An epistemic community affects the policy agenda by recommending ideas and examples from other political systems and influencing the perceived legitimacy of a policy idea (Dudley & Richardson, 1996; Kjaer, 2006; Stone, 2000a). Characteristics of epistemic communities include high trust relationships, interdependency, shared values and norms, cooperation, exchange of resources and diplomacy (Klijn, 2005; Rhodes, 2007). Epistemic communities within a policy domain may, however, have different responses to a particular issue thus creating a level of contest and competition as each group seeks to have their perspectives heard in the political arena (Jochim & May, 2010).

Other policy communities such as advocacy coalitions may also be active in the policy process. An advocacy coalition is composed of actors from both governmental and non-governmental organisations who share a set of policy beliefs and seek to realise them by influencing the behaviour and decision-making of governmental institutions (Sabatier & Jenkins-Smith, 1993). There is some suggestion that these coalitions are less likely to be as influential as epistemic communities as members may not have expert knowledge and thus may be perceived to be less important or able to give specialised knowledge to policy-makers (Haas, 1992; Radaelli, 1995; Richardson, 2006; Sabatier, 1988; Sabatier & Jenkins-Smith, 1993, 1999). Given that advocacy coalitions tend to operate within national political systems, the ability of policy entrepreneurs and epistemic communities, vis-à-vis an advocacy coalition, to transcend national boundaries may enable the first two arrangements to more easily access ideas from other jurisdictions (Richardson, 2006). The autonomy and expertise of policy entrepreneurs and policy communities in the (sub-) regional arena may increase their independence from political control in the nation state, thus allowing them to, at times, create a policy monopoly in

their attempts to influence the shape of policy agendas and outcomes (Baumgartner et al., 2006; Keck & Sikkink, 1998; Lindquist, 2001; Mazey & Richardson, 2006).

Political parties

Political parties in state systems often play an important role in mobilising ideas, managing agendas, and coordinating policy development (Bolleyer, 2011; Diamond, 1999; Peters, 1994; Post et al., 2010; Reilly, 2003; Rich, 2006). In the pursuit of their own political and policy interests, parties may cooperate with interest groups or entrepreneurs and, at times, compromise on their policy goals (Martin, 2004). Princen (2009) suggests that the integration of political parties is weak in the EU as their predominant focus is on national issues that align with constituent interests. Opportunities for other actors such as policy entrepreneurs and interest groups to play key roles in the agenda setting process in the EU are, therefore, increased (Peters, 2001; Princen, 2009). In sub-regional or regional contexts political parties in member states are also likely to primarily attend to national rather than sub-regional or regional concerns thus emphasising that the institutional context can significantly affect the role and power of the policy actors (Baumgartner et al., 2006; Breunig, 2006; Peters, 2001; Reilly, 2003; Reilly & Wainwright, 2005; Rich, 2006).²¹

Direct public involvement in agenda setting processes also differs across institutional contexts, especially in sub-regional or regional systems vis-à-vis national political systems (Peters, 1994, 2001). This is particularly evident in the EU where there is no substantial public space and it is mainly experts and the political executive who have ready access to agenda venues (Baumgartner et al., 2006; Peters, 1994; Princen, 2009). Public influence on agenda setting in the PIF may also be limited, although this is unknown at this point.

Agency in agenda setting

The ideological and political perspectives of policy actors can have a significant effect on agenda setting processes and outcomes (Bevir, 2011; Colebatch, 2006; Haas, 1992; Maddison & Dennis, 2009; Rhodes, 2011a; Theodolou & Kofinis, 2004; Wanna & Weller, 2011). As Rhodes states: “[p]olicy arenas are sites of struggles” and , therefore, conflict between policy actors may occur if they have different ‘frames’ or views on a

²¹ Also see Rich, Hambly and Morgan’s (2006) edited book which includes analysis of political party systems in several Pacific Island countries.

particular issue (Bleich, 2002; Joachim, 2003; Rhodes, 2011a, p. 207). Discourses or narratives are used to influence the thinking and meaning around a policy problem and these competing 'storylines' affect the formulation of issues and the shaping of alternatives (Bevir, 2011; Bevir & Rhodes, 2004, 2006, 2008; Rhodes, 2007, 2011, 2011a; Roe, 1994; Tenbensel, 2006). Causal stories can challenge or protect an existing social order, assign responsibility to particular actors, and may also legitimate certain individuals or groups to be 'fixers' or influencers of both a problem and subsequent solutions (Bevir, 2011; Considine, 1998; Joachim, 2003; Laking & Norman, 2007; Peters, 1994; Rhodes, 2011a; Richardson, 2006; Stone, 1989; Wanna & Weller, 2011). In this way issues and alternatives may be shaped by actors that were enabled or allowed to participate while other groups may have been blocked from having involvement (Immergut, 1998; Pralle, 2006). Which competing idea reaches a higher status on the pre-decision agenda may also depend on the abilities and resources of the actors rather than the sophistication or purity of their ideas (Howlett & Ramesh, 2003; Laking & Norman, 2007; Oborn et al., 2011; Rhodes, 2011a; Stone, 1989; Surel, 2000; Wilson, 2000).

A multitude of solutions may be available for any specific problem and actors will create a short list of ideas that may be considered viable by the decision-makers (Kingdon, 2003; Theodoulou & Kofinis, 2004). An emerging consensus or tipping process can occur through persuasion, negotiation, coalition-building, and diffusion, often by considering and building upon antecedent events or policies (Boin, 't Hart & McConnell, 2009; Oborn et al., 2011). All ideas have a history and thus a key consideration is not only where issues and alternatives have come from but who has been involved in the process of enabling them to take hold and grow at a particular point in time (Kingdon, 2003; Peters, 1994; Pierson, 2000a; Princen, 2009; Rhodes, 2011a; Stone, 1989). These ideas, according to Kingdon (2003), are floating in the 'policy primeval soup' referred to earlier, and policy actors will seek to consider, discuss, revise and develop ideas that can be available when an opportunity arises to present these to decision-makers. In this way a selection process allows some issues and alternatives to become prominent while others fade away or do not survive (Kingdon, 2003; Post et al., 2010; Stone, 1989). Through bandwaggoning processes actors may attempt to build a coalition of potential supporters and endeavour to demonstrate the worthiness of their proposal, potentially compromising on their original ideas in an

effort to gain additional support and a position on the pre-decision agenda (Ikenberry, 1990; Joachim, 2003; Kingdon, 2003; Laking & Norman, 2007; Oborn et al., 2011; Rhodes, 2011, 2011a; Tsebelis, 1994). Actors may also support the same or similar proposal but have different reasons for their involvement and views on its development and implementation (Peters, 1994). The values and perspectives of actors are also fluid and may be altered depending on discussions with other policy actors, related decisions that may affect the process or final outcome, and additional knowledge that actors may not have possessed at the outset of the process (Hay, 2002, 2011; Lindquist, 2001; Oborn et al., 2011).

Kingdon (2003) cautions against accepting that agenda setting is primarily personality driven but instead highlights the essential nature of structural factors such as elections, economic and social forces, and decision-making processes. Similarly, other agenda setting scholars draw on institutionalist perspectives which emphasise the importance of historical, cultural, and political contexts, and “governing norms” in the definition of issues and alternatives and the involvement of policy actors in agenda setting processes (Baumgartner et al., 2006; Howlett, 2009, p. 84; Joachim, 2003; Peters, 1994; Princen, 2009). The institutional context of the agenda setting process affects choices made by political actors including the access and levels of influence given to policy actors, the processes of engagement, the levels of legitimacy afforded to ‘outside’ policy actors, and the openness of decision-makers to considering specific issues and alternatives (Baumgartner & Jones, 1993; Hay, C., 2011; Hudson & Lowe, 2009; Immergut, 1998; John, 2006; Mazey & Richardson, 2006; Peters & Pierre, 1998; Princen, 2007, 2009; Rhodes, 2011a; Richardson, 2006; Thelen & Steinmo, 1998). Institutions, that is, rules, norms and organisations, do not act independently of ideas but rather interact with interests and issues so as to achieve change (Joachim & May, 2010; Lieberman, 2002; Thelen & Steinmo, 1998). The coherence of the policy-making body also affects the access and influence of policy actors (Howlett, Ramesh & Perl, 2009; Mazey & Richardson, 2006; Peters, 2001). Similarly, the behaviour of individual actors and networks modifies existing institutional structures such as the norms, rules and practices that shape policy-making (Baumgartner & Jones, 1993; Bevir, 2011; Bevir & Rhodes, 2008; Peters & Pierre, 1998; Rhodes, 2011a). Furthermore, while policy actors shape definitions and understandings of issues and alternatives, they are also influenced by the values of the structures rather than being completely autonomous (Hay, C., 2011;

Lowndes, 1996; Lowndes, Pratchett & Stoker, 2006; March & Olsen, 1984; Peters & Pierre, 1998; Rhodes, 2011a; Thelen & Steinmo, 1998).

In summary, the influence of policy actors during agenda setting processes is likely to be affected by their resources, the policy domain, and the institutional context. Whilst the political and administrative executives in both national and (sub-) regional jurisdictions have pivotal roles in determining the policy agendas, policy entrepreneurs and policy networks are also important actors due to their expertise, resources, and access to policy-makers (Baumgartner et al., 2006; Considine, 1998; Joachim, 2003; Kingdon, 2003; Pralle, 2006; Richardson, 2006). Policy actors operate and interact within particular institutional contexts which affect agenda setting processes, thus demonstrating the idea of a structure and agency duality (Camilleri, 2003; Hay, C., 2011; Lowndes et al., 2006; March & Olsen, 1984; Peters & Pierre, 1998). As Weller and Stevens (1998, p. 580) suggest: “the best policy is negotiated, [and] the outcome of a political process, rather than being determined by the edicts of experts.” In respect to my research, several questions can be posited: which policy actors can be identified as influencing agenda success for SHRAs in the Pacific, how is support for SHRAs being mobilised, what are the motivations of the policy actors, and what constraints and opportunities do they face?

The institutional context of the PIF as a venue for decision-making also requires consideration, especially in regards to how policy actors access decision-makers and the influence of particular policy actors in the agenda setting process.

Venues

Venues can be defined as the “institutions in society [which] will be granted jurisdiction over particular issues” (Baumgartner & Jones, 1991, p. 1047). Agendas may be set in a range of these national, (sub-) regional, and supranational environments, depending on the policy issues and alternatives being advocated. Therefore, policy actors may strategically push their proposals in several venues, seeking to find one in which they may get some traction on their issue (Dudley & Richardson, 1996; Howlett et al., 2009; Kingdon, 2003; Mazey & Richardson, 2006). As actors may not know in advance which institutional forums will inhabit policy actors and decision-makers receptive to their cause, their search may be of an evolutionary rather than a rational nature (Baumgartner & Jones, 1991; Princen, 2011). The institutional context is, therefore, critical for

ensuring issues are noticed and the potential for agenda success increased (Liu, Linquist & Vedlitz, 2009; Nagel, 2006; Peters, 2001). The concept of venue shopping, developed by Frank Baumgartner and Bryan Jones (1991, 1993) from their study on nuclear energy politics in the US, refers to the deliberate search by policy actors for a favourable venue for their policy proposals. Further, they emphasise that policy change frequently occurs when actors shift debates into a new venue that may be more conducive to the policy ideas they are advocating.

Whilst Baumgartner and Jones (1991, 1993) and Kingdon (2003) focus on the US federal government context, their arguments on venues are also accepted by Princen (2009, 2011) in respect of the EU institutions. Along with other agenda setting scholars, Princen contends that actors may attempt to shift their issue from the agendas of a nation state to the EU or supranational level if success is deemed more likely (Damro, 2006; Joachim, 2003; Mazey & Richardson, 2006; Peters, 1994; Princen, 2007, 2009; Sheingate, 2000). The fragmented nature of the EU, with several forums for decision-making, may allow policy entrepreneurs and other actors multiple opportunities to have their proposals considered in alternative venues (Peters, 2001). However, the issues and potential solutions being advocated must still be attractive to the administrative and legislative actors such as Commissioners, Director Generals, and political leaders who have considerable influence over which ideas are considered worthy of further examination (Peters, 2001; Princen, 2011).

Within the context of the PIF, actors who have not successfully achieved recognition for their proposals in a nation state may attempt to pursue their interests in this sub-regional setting. Alternatively, actors may try to access the sub-regional agenda if they believe their ideas are more conducive to this venue. The readiness of policy actors to respond at the time of key events affects their effectiveness in the agenda setting process. Also, if an individual or group is operating simultaneously across multiple venues then they may have increased opportunities to have their proposals considered (Dudley & Richardson, 1996; Pralle, 2006).

Motivations for moving issues from the national to the (sub-) regional level may thus be an attempt to circumvent constraints in the former venue, provide consistency, or demonstrate altruistic motivations. As Princen (2009, p. 30) notes, the venue needs to be considered in terms of what it can 'do' for the actor. By moving a proposal out of the

national context new actors may be able to become involved, the profile of the ideas may be increased, a domestic gridlock or barrier that may have occurred could be broken, or the support of other countries may pressure a resistant state into changing their current stance (Princen, 2009). Also, by bringing an issue or alternative onto a (sub-) regional agenda consistency in a specific policy sector across countries may eventuate and so nation state policies may become standardised across the (sub-) regional grouping (Stacy, 2009). In addition, policy actors may attempt to place an issue on the (sub-) regional agenda due to an idealistic position that all countries within the grouping should achieve particular policy outcomes (Princen, 2009).

The policy instruments available in a jurisdiction may also influence which venue policy actors choose to pursue their ideas (Howlett, 2009). For instance, if immediate legislative change at the national level is sought then a sub-regional body such as the PIF will be unsuitable as a venue. However, if aspirational statements, non-binding directives or new sub-regional institutional arrangements are considered appropriate by the advocates of an issue, then the PIF may be an appropriate venue in which to pursue the proposal. If the venue cannot deliver the type of change preferred by the policy actors then there is little point in wasting time and resources within that environment (Princen, 2009). Changing roles and functions of governmental or (sub-) regional bodies may also make some venues more or less appropriate at different times and effect the limits and extent of influence available within each venue (Howlett, 2009). Leverage may also be partly determined by the specific issue or alternatives with some policy fields being seen to be more aligned with the aspirations and values of the decision-makers and their jurisdiction (Keck & Sikkink, 1998).²²

The internationalisation of human rights is an example in which certain standards are deemed relevant to people across state borders, for which reason actors have sought acceptance in national, (sub-) regional, and international venues at various times (Princen, 2009). In the Pacific context, minimal attention has been paid to the promotion and protection of human rights at the sub-regional level, with leaders preferring to keep associated issues in the sphere of the nation state. However, as SHRAs are by definition and nature sub-regionally focused, then it may be more

²² Keck and Sikkink (1998, p. 202) refer to the example of the World Bank providing loans to the environmental movement but not to human rights organisations, who have had more success at leveraging support from US and European countries.

appropriate for this proposal to be raised primarily in the PIF rather than individual state jurisdictions. In contrast to the EU system, however, which has multiple institutional venues for each issue area, there may be limited avenues for policy entrepreneurs, policy networks, and the public to access the PIF agenda. The limited legislative and constitutional power of the PIF might also be a constraint, so policy actors may choose to raise their issues and alternatives simultaneously across national, (sub-) regional, and perhaps even international venues.

Policy windows

Although the framing of issues and alternatives, the work of policy actors, and the selection of venues are important, material factors such as resources and institutional circumstances are also influential in determining which issues and alternatives are accepted onto the pre-decision and decision agendas (Ladi, 2004; Pralle, 2006; Princen, 2011). Certain focusing events or political opportunities may create an environment which enables the promotion of new ideas and alternatives. However, these can only be taken advantage of if policy actors can mobilise support by being well organised, sufficiently resourced, and available to take immediate action (Birkland, 1998; Haas, 1992; Howlett, 1998; Joachim, 2003; Keck & Sikkink, 1998; Peters, 1997; Pralle, 2006). A policy window, which is the metaphor used to capture the point at which an issue moves onto an agenda for consideration or actioning, can open if there is an alignment between the recognition of an issue, an available solution, a political climate that will permit change, and no factors that might prevent action (Galligan & Burgess, 2005; Howlett & Ramesh, 2003; Hudson & Lowe, 2009; Kingdon, 2003; Theodolou & Kofinis, 2004). As Kingdon would say, “[g]ood ideas lie fallow for lack of an advocate. Problems are unsolved for lack of a solution. Political events are not capitalised for lack of inventive and developed proposals” (2003, p. 182). Nonetheless, a coupling between the political and problem streams is necessary if an issue is to be placed on the agenda. Open windows may also be limited due to institutional and resource constraints and only available for a short period of time (Dearing & Rogers, 1996; Howlett, 1998; Princen, 2011).

Four window types have been identified in the literature: (1) random problem windows; (2) routine political windows; (3) discretionary political windows; and (4) spillover

problem windows (Birkland, 1998, 2001; Howlett, 1998; Jones & Jenkins-Smith, 2009; Kingdon, 2003; Lindquist, 2001; Pralle, 2006).

Random problem windows

Random problem windows are caused by an unexpected occurrence that focuses attention on a new problem. For instance, a crisis or focusing event, defined by Boin et al. (2009, p. 84) as: “events or developments widely perceived by members of relevant communities to constitute urgent threats to core community values and structures,” may suddenly bring attention to a problem and stimulate policy change (Birkland, 1998; Jochim & May, 2010; Kingdon, 2003; Pralle, 2006; Wolman, 1992). In a study on the influence of non-governmental organisations on the UN agenda, Joachim (2003) cites the example of the end of the Cold War as a significant event or crisis that drew attention to policies that had previously been adequate and unquestioned. In his examination of natural disasters and industrial accidents as examples of focusing events, Birkland (1998) also found evidence that the dominant issues on the agenda were affected by such incidents. In the aftermath of a crisis, ‘frame contests’ or attempts at persuasion between actors vying to have their perspective heard, may ensue (Birkland, 1998; Blyth, 2007; Boin et al., 2009; Jochim & May, 2010; Pump, 2011). Policy actors actively promote their causal stories that implementing their solution(s) would positively affect or address the issues arising from the crisis (Birkland, 1998; Blyth, 2007; Jones & Jenkins-Smith, 2009; Princen, 2011; Stone, 1989). This view is illustrated in the following comment:

Disruptions of societal routines and expectations opens up political space for actors inside and outside government to redefine issues, propose policy innovations ... [t]hey create political opportunity windows for advocacy groups challenging established policies (Boin et al., 2009, p. 82).

Conditions, therefore, may need to deteriorate to crisis proportions before an issue achieves enough visibility to become an active agenda item (Peters, 1994). Potential issues and alternatives might “languish in the background for lack of a crisis that would push them forward” (Kingdon, 2003, p. 96).

The perception of a mood across the national or (sub-) regional communities may also promote or detract attention from certain ideas (Kingdon, 2003; Stone, 1989). Policy-makers may sense this changing mood of the public through meetings, the media, visits

from constituents, and interest group advocacy (Kingdon, 2003). A range of actors may have a sudden opportunity to present their proposals at this time, as Kingdon suggests:

Advocates for the newly viable proposals find a receptive audience, an opportunity to push their ideas. Advocates for the proposals currently out of favour must adapt to their unfortunate situation, present their ideas for consideration as much as is possible under the circumstances, and wait for the mood to shift once again in their direction (2003, p. 149).

Routine political windows

In a national context there are regular events on the political calendar that can enable the opening of predictable windows (Howlett, 1998; Kingdon, 2003; Peters, 1994). These include procedural occasions such as the annual budgetary cycle, elections, addresses by political leaders at the opening of Parliament/Congress, and regular renewal of particular programmes (Howlett, 1998; Kingdon, 2003; Peters, 1994). Prior to, and during these times, policy actors may have opportunities to raise issues and potential solutions with policy-makers and endeavour to have these considered and placed on an agenda. The institutional context though, will affect what opportunities policy actors may have to shape the agenda setting process. At the (sub-) regional level, predictable events may occur differently to those in the nation state. For example, while electoral processes do not occur within the structure of the PIF, the results of elections in the member states may affect the constitution of the political leaders group.

Discretionary political windows

Discretionary political windows may transpire due to the behaviour of individual political actors. Changing personnel or new political alignments in national or (sub-) regional jurisdictions may directly affect which issues are placed on the pre-decision and decision agendas (Jochim & May, 2010). A particular problem may be relegated or removed from an agenda if key political supporters are no longer available or if incumbent personnel have other priorities (Kingdon, 2003; Princen, 2011). Decision-makers may also be reluctant to address some issues if it may challenge their popularity, reputation or values, if an idea is not seen as relevant to their jurisdiction, or if they do not have the capacity for building consensus around a problem (Kingdon, 2003; Maddison & Denniss, 2009; Peters, 1994). In addition, budgetary constraints may be a limitation on pursuing particular issues. Cost-effective solutions may be sought and so potentially close an opportunity for some policy actors but open one to others (Keck &

Sikkink, 1998; Kingdon, 2003). Again, the institutional context will affect (a) which people may be influential in the agenda setting process; (b) the available fiscal and human resources; and (c) the stability of the policy-making body and its staff (Jochim & May, 2010; Peters, 1994).

Spillover problem windows

A spillover policy window refers to an instance in which an issue and/or solution is placed on an agenda as an outcome of a related policy issue (Jones & Jenkins-Smith, 2009). The linking of issues may provide policy actors with increased opportunities to advocate for their specific concern and associated alternatives (Howlett, 1998). Many policy areas overlap or affect other issues and the interconnectedness of policy domains may allow for instances of spillover during agenda setting processes. Policy actors may benefit from seeking issue correlations and adjusting the framing of their specific issue to allow for linkages between an issue already on an agenda and their own ideas or solutions. Being ready to take advantage of a spillover effect in multiple venues may bring a greater likelihood of success for agenda setting (Howlett, 1998; Jones & Jenkins-Smith, 2009).

Issues of timing

Windows may close for a range of reasons. Decision-makers may believe they have addressed the issue, taken appropriate action for the time being, no alternative is available, or the issue is too complex. Furthermore, decision-makers may believe that it is too difficult, time-consuming, or resource-intensive to pursue the proposal and, therefore, move on to other issues. Also, the events that precipitated the opening of the window may have ended or new personnel may not have an interest in pursuing the issues or alternatives (Kingdon, 2003; Princen, 2011). Delaying tactics may be used by opponents of a policy change so that pressure for the issue to be addressed subsides (Kingdon, 2003). The timing of a problem may also affect whether it can be joined to items in another stream such as when a window opens but a viable solution for the problem is not available. The window may then close without a coupling of the problem to a solution. In addition, solutions must also be appropriate and feasible (Howlett, 1998; Kingdon, 2003).

Howlett's (1998) study of policy windows in the Canadian federal system supports Kingdon's previous findings which suggested that the frequency of the window types

vary, with random windows being very rare, discretionary windows uncommon, spillover windows quite common, and routine windows frequent. The applicability of these findings to the institutional context of the PIF is untested although some scholars have, in contrast to Howlett's conclusions, highlighted the significance of crises as a policy window (Joachim, 2003; Princen, 2009; Princen & Rhinard, 2006; Pump, 2011). Being aware of which windows are more likely in particular circumstances and in certain institutional contexts may increase opportunities for policy actors to push their ideas and proposals (Oborn et al., 2011). Therefore, there is a need for further analysis of policy windows in different structures.

The timing and sequence of one or a series of events is also critical as the same event may have a different impact depending on when it occurred and what other variables were in play at that particular moment (Baumgartner & Jones, 2002; Howlett, 2009; Jervis, 2000; Pierson, 2000a; Pralle, 2006). Change, however, may be unlikely unless there is evidence of increasing returns which create an incentive for going down the path of a certain alternative (Pierson, 2000; Thelen, 1999). Advocates of a particular solution thus need to demonstrate the likelihood of policy success. While major 'critical moments' are important in understanding political events and policy changes, smaller, unintended moments may also have a significant impact on an agenda. Therefore, political or policy changes may occur either gradually or suddenly and thus are better understood as 'moving pictures' rather than just as snapshots in time (Pierson, 2000a).

Agenda setting research has, according to Pierson (2000a, p. 72), enabled a move towards "placing politics in time." Similarly, Pralle argues that a strength of the agenda setting and policy change research tradition has been its commitment to temporally based research, especially as "timing and sequence not only influence the relative impact of events but also shape the strategic opportunities available to political actors" (Pralle, 2006, p. 990). This emphasises a momentum that has built up both within and across particular policy domains (Bulmer et al., 2007; Kingdon, 2003; Pralle, 2006; Theodoulou & Kofinis, 2004). It also endorses a broader view on policy change whereby innovations will only succeed if they are the right institution or policy, in the right place, at the right time (Ladley & Gill, 2008). The opening of a policy window, whether related to an issue or a political situation, may enable advocates of SHRAs to have the opportunity to present their issues and proposed alternatives to Pacific leaders.

That is not to say that the leaders will necessarily be enamoured with these ideas, but it increases the possibility of having the concept of SHRAs placed on the decision agenda.

Receptivity of decision-makers

The interest of Pacific leaders is critical for agenda success. For decision-makers to place an issue or alternative onto an agenda there needs to be a significant level of interest and agreement upon the issue(s), a prospect of a solution for consideration, the issue(s) must be of sufficient consequence to warrant time and investment by policy-makers, and they must have some fit with the ideologies and motivations of the decision-makers (Dunlop, 2007; Kalu, 2004; Kingdon, 2003; Stone, 1989). The process of selecting the issues and alternatives that may appear on the agenda can also lead to a preference for those that can compete under the constraints of the political process (Stone, 1989; Theodolou & Kofinis, 2004). Four key criteria may affect the receptiveness of decision-makers:

1. Value acceptance: do the issues and solutions fit with the individual, societal and institutional values?
2. Tolerable cost: is the solution possible in the light of budgetary or political realities?
3. Anticipated acceptance: will the citizens of the jurisdiction find it acceptable?
4. Political acceptability: will it receive broad political support? (Kingdon, 2003)

In other words, decision-makers must be convinced not only of the worthiness of the solution to the identified problem but also its feasibility in regards to cost effectiveness, likely success, and justification it is the best alternative (Kingdon, 2003; Weimer, 2008). Whether an issue and its solutions are worked out and ready to be implemented is also an important consideration. Put simply, the proposal needs to be shown to be likely to succeed in addressing the problem in a timely fashion (Kingdon, 2003; Post et al., 2010).

Compatibility with the values and ideologies of the decision-makers is essential. Commonalities in policy debates and the values associated with these across member states may lead to increased attention on these issues at the (sub-) regional level (Princen, 2009; Stone, 1989). This may be a particular challenge in an institutional forum such as the PIF which consists of a number of countries with differing political,

cultural, and value systems. For instance, the contested and political issue of human rights may present a challenge for decision-makers within this venue to agree upon in respect of identification of issues as well as possible solutions (Baird, 2008; Hassall, 2008; New Zealand Law Commission, 2006). Kingdon (2003), however, argues that perceived imbalances may be a powerful argument used by policy actors in debates about proposals. Therefore, national differences could be harnessed in respect of (sub-) regional human rights issues. The adoption of proposals is more likely though, when they “coincide with dominant or emerging ideas about the appropriate shape of policy, particularly if these ideas are associated with the governing party, coalition or important faction” (Wolman, 1992, p. 44).

Decision-makers, whether at national or (sub-) regional levels, are generally constrained by limited resources, so proposals to address issues on the agenda must be perceived to be efficient in terms of delivery and outcomes (Kingdon, 2003; Post et al., 2010; Stone, 1989). The costs associated with a solution must also be considered acceptable to the wider society to ensure ongoing support for the political executive, although in a (sub-) regional setting this may be less critical due to the different political arrangements (Kingdon, 2003; Princen, 2009). Policy actors may, therefore, alter their proposals to address an anticipated budget, value constraint, or possible public resistance to ensure their ideas can gain the approval of the decision-makers. They may also discard or hold onto their ideas if they do not believe the political climate is favourable at that time. A change in administration, preferences, or the political, social or economic climate, may stimulate new opportunities at a later stage (Theodolou & Kofinis, 2004).

The idea of SHRAs may, therefore, not be considered at the national level if governments do not perceive them to be relevant or affordable to their state-level agenda. Ambivalence to an idea may also occur in the PIF if a consensus on either identified issues or cost-effective solutions cannot be established. Pacific leaders may be reticent about addressing human rights issues if they perceive these to be opposed to their cultural values or detrimental to their reputations or popularity in their home countries (Baird, 2008; New Zealand Law Commission, 2006). Constrained financial and human resources in the PIF may be a further limitation and the current priorities of PIF leaders also need to be considered by proponents of SHRAs as they frame the issues and alternatives and mobilise support. Whether an issue succeeds or fails in being placed on an agenda is significantly affected by issues of political risk, receptivity, and

subsequent commitment of decision-makers (Howlett, 2009; Post et al., 2010; Stone, 1989). Given their key role in the agenda setting process, if decision-makers, in particular, are open to the issue and/or potential solutions then the likelihood of agenda success is markedly increased.

Institutional contexts and agenda setting

While the early scholarship on agenda setting predominantly focused on national policy systems as the level of analysis, later work has included the examination of agenda setting in regional and supranational contexts, such as the EU, Africa and the UN (Cobb & Elder, 1972, 1983; Kalu, 2004; Kingdon, 2003; Peters, 1994, 2001; Princen, 2009; Robinson & Eller, 2010). There is, however, a dearth of literature on agenda setting in the Pacific with only one published work identified (Shibuya, 1996). Furthermore, the literature on policy-making more generally in the PIF is also scarce (Fong Toy, 2006).

Although the architecture of the agenda setting process is similar across national, (sub-) regional and supranational levels, it has been established in this chapter that specific institutional contexts both influence and are influenced by this process (Kingdon, 2003; Joachim, 2003; Peters, 1994; Post et al., 2010; Pralle, 2006; Princen, 2009). For instance, throughout all jurisdictions issues and alternatives are identified and promoted by policy actors who seek to have these ideas placed on relevant agendas. Decision-makers consider these ideas according to their priorities and the feasibility of the issues and alternatives at that particular time. The venue in which agenda setting occurs does, however, differ in its purpose, priorities, and institutional arrangements. This may affect accessibility for particular actors, what issues are considered to be of importance, who the decision-makers are, and how they will determine which ideas will be agreed to.

A critique of agenda setting

Before presenting the theoretical framework that shapes this research, some final reflections on agenda setting are pertinent. The agenda setting scholarship is well-established. However, it is important to note that much of this research has been conducted within particular national jurisdictions (for example, Baumgartner & Jones, 1991, 1993; Cobb & Elder, 1983; Dudley & Richardson, 1996; Kingdon, 2003). This has meant that the development of agenda setting models has primarily been pertinent to - and reflected the institutional characteristics of - national political systems. Thus, emphasis has been placed on governmental decision-making processes and the political

actors that operate within these confines. For instance, the influence of certain actors in the national environment, such as political parties, is greater than at the regional level. Conversely, other actors such as policy entrepreneurs may wield similar influence across national and regional jurisdictions (Oborn et al., 2011; Princen, 2011). In general there are limited venues in the nation-state hence limiting access points and strategic opportunities for policy advocates. Certain policy windows, for instance routine political windows such as elections and budgetary cycles, while commonplace in the nation-state occur less frequently in a regional political system, thus providing different, and perhaps more regular, opportunities for policy proponents operating in this type of venue. The institutional context, therefore, is significant.

Kingdon's Multiple Streams Model provides a strong foundation from which to examine the agenda setting process. However, limitations can be identified. One criticism of his work is related to his singular focus on the US political system. By using the context of the US nation-state as his level of analysis, Kingdon's model may be less suitable for other institutional contexts, and further application or adaptation of his model in a range of jurisdictions has been recognised as a necessary area for future research (Robinson & Eller, 2010; Zahariadas, 2007).

That said, Kingdon's model has increasingly been applied to other regional and supranational jurisdictions, at least in part in response to the growing importance of these forums as the site of much contemporary policy-making (Oborn et al., 2011; Princen, 2009, 2011). This emphasises that the core components of the agenda setting process are relevant to a range of institutional forums. The more recent work that has occurred in regional and supranational contexts has both drawn on Kingdon's model of agenda setting and enhanced his work to reflect different institutional milieu (for example, Joachim, 2003; Kalu, 2004; Princen, 2009, 2011). The findings from the regional and supranational research highlight the complexity of agenda setting in these contexts with numerous state and non-state actors, often from different countries, vying to promote, block or maintain competing policy ideas. Multiple venues are frequently available and policy actors attempt to effectively navigate these so as to mobilise support and facilitate their favoured policy outcomes. The dynamics of decision-making are also more complex with decision-makers having to balance both national and regional interests and consider the wider ramifications of policy implementation. Examining the agenda setting process in regional or supranational environments adds

value to the current agenda setting scholarship. In particular, it illuminates how ideas are placed upon agendas in these jurisdictions as well as how access is granted/inhibited to the actors involved in the agenda setting process. Furthermore, it elucidates which venues are available, the types of policy windows and their patterns of opening and closing, and the constraints and opportunities for policy advocates. It also enables comparative empirical work not only across similar regional or supranational institutions but also with national political systems (Robinson & Eller, 2010; Zahariadas, 2007). In sum, understanding of the agenda setting process and policy-making more generally, is increased.

Kingdon's work emphasises the role of policy entrepreneurs as individuals actively seeking policy change although this is based on limited empirical evidence (Oborn et al., 2011; Robinson & Eller, 2010). These entrepreneurs may be either within or outside of formal political structures and Kingdon draws particular attention to official policy actors such as politicians and the chief executives of government departments. In so doing limited attention is leveled at other policy actors who are also active, and influential, in agenda setting processes (Oborn et al., 2011). There is limited empirical scholarship on the role of political actors across subnational, national, regional and supranational political environments and further conceptual work on individual agency in agenda setting would certainly be of value (Oborn et al., 2011).

While Kingdon's work acknowledges a connection between structure and agency - that is, between the venues for policy change and the empirical strategies and influence of policy actors - the interrelationship between these two factors have been extended by other agenda setting scholars (Baumgartner & Jones, 1991; Joachim, 2003; Ness, 2010; Peters, 2001; Princen, 2009; Richardson, 2006). Joachim (2003) suggests:

The historical, cultural and political context matters in the definition of ideas and interests; institutions not only constrain social actors but also are empowering by providing a "tool chest" for action; and the way in which institutions are "selective" by privileging certain actors and issues while marginalising others (p. 270).

Although Kingdon (2003) briefly glances at institutionalism in his latest work on agenda setting he does not adequately consider the implications of this theoretical perspective. These implications may include how institutional constraints and opportunities affect policy actors, and specifically, decision-makers, in their choice of

issues and alternatives for consideration and implementation. Furthermore, venues are also shaped by norms and rules, thus affecting accessibility as well as the actual decision-making process (Robinson & Eller, 2010). As highlighted in more recent research, agenda setting processes are affected by historical and temporal factors and are shaped and constrained by both structures and individuals (Ness, 2010; Ness & Mistretta, 2009; Oborn et al., 2011). Kingdon (2003) largely confines institutional factors to the political stream; however, following the work of Princen (2009) in particular, the contention here is that the institutional context affects all aspects of the agenda setting model.

In Kingdon's later work he suggests the institutional concept of punctuated equilibrium has been offered as an alternative metaphor to policy windows in some agenda setting research. Punctuated equilibrium refers to disturbances which break old patterns and lead to the establishment of new institutional arrangements (Jervis, 2000; Kingdon, 2003; Pump, 2011; Wilson, 2000). While Kingdon notes this concept he does not apply it to his own empirical work which further highlights Kingdon's limited application of new institutionalist ideas. Kingdon does, however, acknowledge that while most policy subsystems change incrementally, occasionally certain issues come to the forefront and at these times windows of opportunity may become available for policy proponents (Kingdon, 2003).

Further analysis of what occurs during these moments when issue priorities are changing very rapidly would assist with understanding what may precipitate these periods of instability and how decision-makers are responding to these breakdowns in institutional or policy arrangements (Baumgartner & Jones, 1991; Baumgartner et al., 2006, p. 962; Dudley & Richardson, 1996; Hudson & Lowe, 2009). Examples of these sudden external shocks include climatic change, environmental disasters, economic crises, and war (Hudson & Lowe, 2009; Kingdon, 2003; Wilson, 2000). These 'turning points' or focusing events promote mobilisation and are often shepherded by policy actors who are aware of the coupling of divergent forces (Cobb & Elder, 1983; Jervis, 2000; Thelen, 2000; Wilson, 2000). According to Hudson and Lowe (2009), whilst these concepts enable some understanding of the success or failure of policy actors pushing their ideas through the windows of opportunities, little is yet known as to when windows may occur or how big they have to be to stimulate change. In addition, further

work could examine the role of policy entrepreneurs and other policy actors during these focusing events (Oborn et al., 2011).

In Kingdon's model the critical role of decision-makers as the final arbiters of policy decisions is also understated (Princen, 2009). Kingdon purports that within the policy stream ideas need to be seen by decision-makers as meeting certain criteria such as being politically and publicly acceptable. However, in his model, a policy outcome immediately follows the policy window and, therefore, the extent of the role of the decision-makers is hidden. Put another way, the capacity for agency on the part of decision-makers is unspecified. Yet decision-makers not only decide whether an idea or proposal is acceptable, they also determine whether it will be advanced once the opportunity for it to be considered has occurred (through the policy window). Before a policy outcome can occur it is the decision-makers that decide whether to ignore, dismiss or accept a policy proposal (Princen, 2009). It is this specific aspect of their role that is not clear in Kingdon's model. In sum, the work and influence of decision-makers is evident not only within the policy stream but also once an idea has moved through a policy window (Princen, 2009). Including the receptivity of decision-makers as an additional separate and specific element immediately prior to agenda success would better illuminate the agenda setting process.

Empirical studies on various aspects of agenda setting in different venues add depth and breadth to the literature on this component of policy change (Baumgartner et al., 2006; Birkland, 1998; Joachim, 2003; Princen, 2009; Shibuya, 1996). Approaches to agenda setting both in national jurisdictions and to a lesser extent at the regional level are well traversed, although, as noted, minimal literature on agenda setting, or even the broader policy-making process in the Pacific, and specifically in the sub-regional intergovernmental body of the PIF, has been identified (Fong Toy, 2006; Shibuya, 1996).

The theoretical framework

This thesis examines the prospects for agenda success of SHRAs in the Pacific, hence the emphasis on the agenda setting literature in this chapter. The scholarship on historical institutionalism also contains insights pertinent to a study of agenda setting, and is, therefore, woven into the theoretical framework which guides this research (and which is set out below). I am also mindful that there are other literatures - particularly

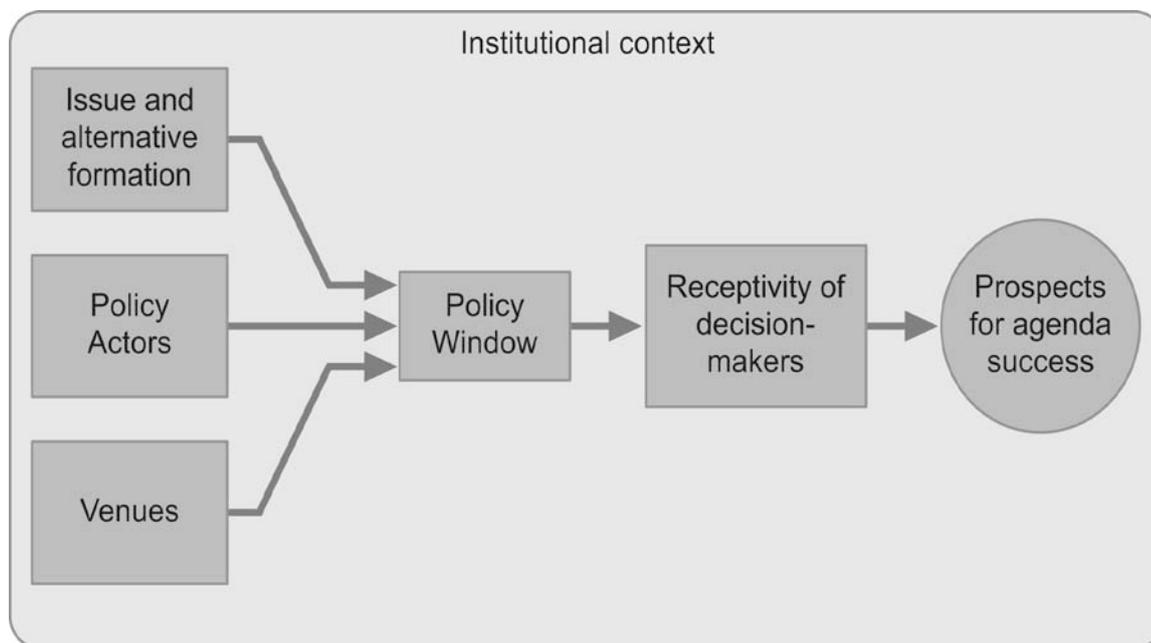
those concerning policy transfer and governance - which, while not the primary theoretical lens for this study, could certainly guide a different analysis of arrangements in the Pacific.²³

In the theoretical framework, the core elements of which have been distilled from the literature reviewed in this chapter, several factors are identified as increasing the prospects for agenda success (see Figure 2.2). The streams in Kingdon's model have been re-labeled so as to illuminate the central aspect of each stream. In addition, two further elements, drawn primarily from the work of Princen (2009), have been included in the framework. These elements are the receptivity of decision-makers and the institutional context. The institutional context affects all aspects of the agenda setting process and, therefore, is situated outside of the individual components. Finally, instead of leading to a policy outcome as in Kingdon's model, the framework for this research parallels Princen's model and has as its endpoint, prospects for agenda success.

²³ Relevant literature on the Pacific, policy transfer and governance includes Bryant-Tokalau & Frazer, 2006; Crocombe, 2001; Firth, 2000; Frazer & Bryant-Tokelau, 2006; Fry, 1994; Gani & Duncan, 2004; Graham, 2008; Graham & Hassall, 2008; Hassall, 2005, 2008; Herr, 2006; Larmour, 2001, 2001a; McDougall, 2005; Palmer, 1991; Powles, 2005, 2006; Pacific Islands Forum Secretariat, 2009; Yahuda, 1988.

In addition there is a significant wider literature (Bennett, 1991; Bennett & Howlett, 1992; Coleman, 1994; Common, 2001, 2004; Davies, Nutley & Smith, 2000; Dolowitz & Marsh, 1996, 2000; Dolowitz et al., 2000; Evans, 2004, 2004a, 2004b, 2006; Evans & Davies, 1999; Evans & McComb, 2004; Frederickson, 2005; Ikenberry, 1990; Jenkins-Smith & Sabatier, 1993; Kjaer, 2006; Klijn, 2005, 2008; Majone, 1991; Nedley, 2004; Page, 2000; Peters, 1997; Pierre & Peters, 2000; Rhodes, 1997, 2007; Richards & Smith, 2002; Rose, 1991, 1993; Sabatier & Jenkins-Smith, 1993; Stone, 2000; Wolman, 1992).

Figure 2.2 A theoretical framework for examining the prospects for agenda success of sub-regional human rights arrangements in the Pacific



(Source: Author, adapted from Kingdon, 2003 and Princen, 2009)

The core elements of this agenda setting framework both structure the generation and analysis of the empirical materials and the shape of this thesis. Most importantly, the framework enables the research question to be examined and answered. These elements can be categorised into six areas:

1. **Issues** and **alternatives** regarding SHRAs need to be formed and framed in a way that appeals to decision-makers. In order for these political actors to commit to an issue and/or alternatives being placed on the decision agenda, the options need to be shown to be salient and technically feasible.
2. For issues or alternatives to come onto a pre-decision or decision agenda there needs to be **policy actors** that are motivated to challenge existing policies or introduce new ideas. These people need to mobilise support and increase the profile of their proposals.
3. If actors want to challenge the status quo, then they will seek one or several **venues** in which their ideas have a greater likelihood of being addressed. An issue/alternative that is relevant to a number of member states in a (sub-) regional grouping may be better achieved at the (sub-) regional level than within national jurisdictions. Alternatively, policy actors may seek traction for their

ideas in multiple venues simultaneously. Actors will also consider whether suitable instruments are available within the selected venue(s) so as to ensure greater likelihood of not only agenda success but also successful implementation.

4. Taking advantage of **policy windows** related either to the issue(s) or the political context also influences agenda success. These windows may include crises or focusing events and other endogenous forces.
5. If the factors above converge through the policy window, then the issue will have a greater chance of being heard by the decision-makers. However, the **receptivity of the decision-makers** to issues/alternatives also affects whether they will be placed on the decision agenda and if agenda success occurs. The receptivity of decision-makers is likely to be affected by both temporal and situational factors.
6. Overarching all of the above factors is the broader **institutional** context in which the agenda setting process is occurring. This might incorporate the sub-regional identity of the Pacific and its position in the Asia-Pacific region as well as within the global environment, and the policy-making processes of the PIF as the primary intergovernmental body of the Pacific.

Summary

The purpose of this chapter has been to review the agenda setting scholarship and, on that basis, to propose a theoretical framework which guides this research. The work of Kingdon (2003) and Princen (2009) in particular, has been drawn upon to develop the theoretical framework for this research. As they contend, certain conditions must be in place to facilitate an issue and associated alternatives being placed on the pre-decision and decision agendas. These include: the way issues and alternatives are formed and framed, actors mobilising support for an issue, the availability and appropriateness of venues within which agenda setting can occur, and policy windows that enable proposals to be heard. Just as policy does not operate in isolation so these factors cannot in themselves enable agenda success, instead decision-makers must also be receptive to the ideas, and the institutional context must be conducive to policy activity in the issue area. These dynamics capture the key dimensions of this research, which addresses the question: what are the prospects for agenda success of SHRAs in the Pacific?

The current body of literature on agenda setting, whilst comprehensive in its examination of agenda setting in certain national, regional, and supranational contexts, has not to date included empirical research on agenda setting in the Pacific, and specifically in the institutional structure of the PIF. This research, therefore, seeks to contribute to existing knowledge on agenda setting by examining the prospects for agenda success in a sub-regional context. Before engaging directly in that process, however, the following chapter will explore and contextualise the idea of SHRAs at the international and regional levels.

Chapter Three

Situating sub-regional human rights arrangements

Introduction

Institutional human rights arrangements currently operate throughout the world at the international, regional, sub-regional, and national levels. These human rights systems have evolved from within the UN framework and are, in the main, founded on the universal human rights standards. Presently, the Asia-Pacific region remains the only UN-defined region without formal regional human rights mechanisms although some sub-regional developments have recently occurred.

This chapter will explore the institutional and historical context within which the idea of SHRAs in the Pacific is situated. The first section presents a brief overview of the development of human rights theories, with particular consideration given to the concepts of universalism and cultural relativism. The next section discusses the evolution of human rights instruments at the international level and is followed by a synopsis of the core characteristics and functions of the existing regional human rights arrangements. A summary of historical developments regarding human rights arrangements in the Asia-Pacific is then presented, with a particular focus on sub-regional developments in South-East Asia. The final section examines the idea of SHRAs in the Pacific. A chronology of relevant activities and the position of the PIF as the primary intergovernmental body in the sub-region are outlined in regards to the prospects for agenda success of SHRAs in the Pacific.

Theories of human rights

Contemporary discourses on human rights and associated institutional arrangements are influenced by a history of ideas, philosophies and theories. Three overlapping discourses, the philosophical, the legal and the political, add tension between the rhetoric and practice of human rights (Evans, 2001). These perspectives have been outlined in depth by many writers and provide the foundation for current views and expectations on human rights instruments at the national, regional, and international

levels (Camilleri, 1998; Donnelly, 2003; Evans, 2001; Farran, 2009; Forsythe, 2000; Freeman, 2002; Mahoney, 2007; Stacy, 2009). Institutional forms of human rights arrangements include national constitutions, parliamentary systems, governance structures, legal systems, active civil society, and international, regional, and sub-regional infrastructure (APF, 2008). It is the last category which is of particular interest in this research.

A number of theoretical approaches to human rights have been advocated and discussed at length in the literature (de Varennes, 2006; Farran, 2009; Forsythe, 2000; Stacy, 2009). A synthesis of the scholarship suggests that respect for the dignity of all human beings and their duty towards others is an age-old concept found in the writings of the Greek philosophers, and the religious traditions of Hinduism, Buddhism, Confucianism, Christianity, and Islam, which all recognise the “basic values of humanity and justice” (de Varennes, 2006, p. 75). The first ascribed human rights document was the Magna Carta (1215) which included provisions for the right to a fair trial and due process (Fleiner, 1999; Freeman, 2002). The development of human rights, as defined nowadays, can be traced back to the Treaty of Westphalia (1648) with the conception of sovereignty and the creation of the nation state as an attempt to protect people from the excessive power of absolute rulers (Freeman, 2002; Katsumata, 2009; Stacy, 2009).

The early history of rights is based on natural law, espoused by theorists such as Thomas Hobbes and John Locke, who promoted the idea that certain rights derive from being human and are, therefore, inherent to all people, regardless of class or status (Freeman, 2002; Mahoney, 2007). Natural rights were seen to be primarily individual rights, but respecting the rights of others was also deemed necessary for the realisation of one’s own rights (Farran, 2009). The role of government was one of protecting individuals’ rights and upholding the rule of law (including against the improper imposition of the authority of state institutions). While early natural law was influenced by Christian theology, in time it became more secularised and during the 18th century there was a significant shift toward a more radical use of natural law; that of revolutionary democracy (Farran, 2009; Langlois, 2009).

The revolutionary democracy movement was based on the social contract theories of Jean-Jacques Rousseau and Thomas Paine and was premised on the notion that state laws were a contract between the government and the governed (Farran, 2009;

Mahoney, 2007). Key documents emerging from this period include the American Declaration of Independence (1776) and the Bill of Rights (1791) as well as the French Declaration of the Rights of Man and the Citizen (1789) (Fleiner, 1999; Hunt, 2007). Under social contract theory, the state is responsible for upholding certain fundamental rights and ensuring the well-being of its citizens. While individual rights are emphasised, there is an assumption of a democratic form of law-making in which the state and the individual negotiate how rights are protected. Social contract theory then is upheld in states where constitutions and rights legislation have been debated and negotiated. If a written constitution has been imposed on a state, as has occurred in many Pacific states at the point of independence, then the social contract is undermined (Farran, 2009).

By the early 20th century the concern with these civil and political rights (first generation rights) was extended to include economic, social and cultural rights (second generation rights) (de Senarclens, 2003; Forsythe, 2000; Langlois, 2009).²⁴ Despite the introduction of international treaties concerning specific issues such as slavery and the protection of individuals during armed conflict, a systematic approach to human rights in the international domain was not considered until the conclusion of World War Two (Falk, 2009; Forsythe, 2000; Stacy, 2009).²⁵ At this point in history, the previous theories of human rights were perceived to be inadequate given the human atrocities that had occurred under the regimes of Lenin, Mussolini, and Hitler, as well as tragedies such as Hiroshima (Brown, 2001; Farran, 2009; Patman, 2000). Bringing the rights of the individual into the international arena was considered the next necessary step, however, in some countries and regions the issue of whether human rights standards are universal or culturally defined was, and continues to be, fiercely debated (Brown, 2001; Camilleri, 1994; Deklin, 1992; Farran, 2009; Freeman, 2002; Goodhart, 2005; Harrelson-Stephens & Callaway, 2007; Kobila, 2003; Siwatibau, 1989; Thaman, 2000; Toki & Baird, 2009).

²⁴ Civil and political rights are often referred to as first generation rights which inhibit the extent to which the state can interfere with citizens' everyday lives. Second generation, or positive and distributive rights, include economic, social and cultural rights. Third generation rights include collective rights and require states to cooperate so that the lives of peoples are improved. These rights include the right to development, the right to self-determination, and the right to emergency assistance and are often sought by groups or collectivities (Freeman, 2002; Harrelson-Stephens & Callaway, 2007; Kobila, 2003; Yasuaki, 2000).

²⁵ For example: the 1926 Convention to Suppress the Slave Trade and Slavery; the Geneva Conventions of 1864 and 1906; and the Hague Conventions of 1899 and 1907.

Debates on universalism and cultural relativism

The paradigms of universalism and cultural relativism are contentious. At the risk of oversimplifying, this section will summarise the key components of these views. Cultural relativist perspectives on human rights have been especially prevalent in the Asia-Pacific region, hence the importance of canvassing these ideologies here.

Advocates of a universal paradigm insist that human rights transcend national, cultural, political, and historical boundaries and, therefore, a set of core minimum standards can be applied in the international domain (Brown, 2001; Farran, 2009; Goodhart, 2005; Harrelson-Stephens & Callaway, 2007; Siwatibau, 1989; Toki & Baird, 2009). The concept of universalism is, to a large extent, an outcome of the development of international human rights standards with the UN Charter stating that human rights are “for all without distinction” (cited in Farran, 2009, p. 104).²⁶ At the World Conference on Human Rights in Vienna in 1993 (Vienna Conference), it was declared unequivocally: “All human rights are universal, indivisible and interdependent and inter-related” (World Conference on Human Rights, 1993, np). The Conference delegates also acknowledged that “national and regional particularities and various historical, cultural and religious backgrounds” need to be taken into account when considering the promotion and protection of human rights (1993, np).

Since this time many human rights activists and scholars have endorsed an approach to universality through diversity (Camilleri, 1998; de Varennes, 2006; Donnelly, 2003; Kobila, 2003). This approach, also labeled weak cultural relativism, strong universalism, or cultural sensitivity, indicates a spectrum along which debates on universalism and relativism lie (Donnelly, 2003; Duquette, 2005). The notion of cultural sensitivity incorporates the idea that universal standards may be adopted and implemented in a manner that takes into account and does not compromise local values and cultures (Alston, 1994; Cassese, 1990; Donnelly, 2003; Jalal, 2009; Yasuaki, 2000). Furthermore, culture, customs and views on human rights are not static and reflect societal realities at particular points in time (Chan, 2000; Houn Lee, 2006; Madraiwiwi, 2006; Wickliffe, 1998). The false assumption that ‘Western’ standards of human rights are identical to the international standards is also deemed unhelpful within this paradigm (de Varennes, 2006; Donnelly, 2003).

²⁶ The UN Charter can be accessed at <http://www.un.org/en/documents/charter/index.shtml>

There is reluctance, however, in some countries to fully engage with these universal standards due to the perception that they are a Western construct (Camilleri, 1989; Chiam, 2009; de Varennes, 2006; Stacy, 2009; Yasuaki, 2000). Critics thus purport them to be irrelevant to their own cultural, economic, and political contexts (Chiam, 2009; Kim, 2009; Thaman, 2000). Cultural relativists believe that human rights must reflect a particular time and circumstance and that divergence is necessary and appropriate (Farran, 2009; Harrelson-Stephens & Callaway, 2007; Hurrell, 1999). Therefore, not all states should be expected to, or can, protect human rights to the same extent, given the varying levels of economic, political, and legal development (Farran, 2009). Consequently, each specific human right may be altered or reduced. Cultural relativism makes human rights contingent on a person's cultural identity rather than on their status as a human being, which is at odds with the universal view that all people have rights due to the very fact they are human (Donnelly, 2003; Hoffman & Graham, 2006).

The cultural relativist position is especially evident in debates over Asian values, and to a lesser extent, African and Islamic values (Brown, 2000; Callaway & Harrelson-Stephens, 2007; Sen, 1997; Stacy, 2009). Proponents of 'Asian values' suggest it offers a critique and alternative to the Western view of human rights. In particular, this approach highlights the important values of Asian society including family, education, hard work, frugality, respect of law, and deference to authority and moves away from a focus on the individual to the needs of the community (Bell, 2000; Callaway, 2007; Diokno, 2000; Evans, 2001; Manea, 2008; Reilly, 2007; Zakaria, 1994). A fierce protection of state sovereignty reinforces a continuation of the Asian values paradigm, and the desire for law and order has led to a preference for reinforcing economic and social rights rather than civil and political rights (Callaway, 2007; Donnelly, 2003; Sen, 1997; Stacy, 2009). Several Asian leaders have also upheld the view that Asian values significantly contributed to their economic success in the 1990s (Callaway, 2007; Ghai, 2000; Kim, 2009; Sen, 1997).

Critics of the concept of 'Asian values' have argued that the size and diversity of Asia does not enable a consensus on what might constitute Asian views on human rights (Chiam, 2009; Kim, 2009). The attributes outlined above, including duty to family, that are said to be unique to the Asian context, may be found in other societies throughout the world which do uphold universal standards of human rights (Callaway, 2007;

Camilleri, 1994, 1998; Ghai, 2000; Kim, 2009; Manea, 2008; OHCHR, 2001). Asian advocates of international human rights standards have also argued that cultural relativist stances are attempts to avoid responding to human rights violations, especially in regard to civil and political rights (Chiam, 2009). Cultural relativist views have been seen to legitimate authoritarian regimes and thus be a vehicle for political control (Kim, 2009). Protection of state sovereignty has also been used as an argument by some Asian states to prevent the establishment of institutional arrangements which may require them to front accusations, by their citizens, civil society organisations or other countries, of human rights abuses (Aqorau, 2006; Kim, 2009; Stacy, 2009).

Within the Pacific, the perception that ‘human rights’ is a Western construct which emphasises individual rights and duties over collective rights and is thus largely irrelevant, is still pervasive in some sectors (Huffer, 2006; Powles, 2006). In particular, many Pacific peoples perceive human rights and custom to be mutually exclusive, and the universal concept of human rights as a threat to Pacific ways of living, individual freedom and justice (New Zealand Law Commission, 2006). Some Pacific scholars have argued for increased engagement in these debates around traditional culture, custom and human rights at all levels of society (Houng Lee, 2006; Huffer, 2006; Madraiwiwi, 2006; New Zealand Law Commission, 2006; Tuilaepa, 2006). The work of the New Zealand Law Commission on custom and human rights in the Pacific provides a persuasive argument for the harmonisation of the two areas:

... the dignity of all persons, caring concern for all persons, robust debate, respect for other beliefs and the desire to free people from fear and want, point to aspirations shared by custom law and human rights law. These areas of commonality provide a basis on which custom and human rights can work together (New Zealand Law Commission, 2006, p. 76).

In addition, the Law Commission research concluded that the values underlying ‘Western’ human rights and ‘Pacific values’ express similar aspirations (New Zealand Law Commission, 2006, p. 12). Theories of human rights and the associated issues of universalism and relativism continue to be debated. Alongside these deliberations and advancements, significant institutional developments in the human rights domain occurred during the previous century at the international, regional, and state levels. Human rights arrangements in the first of these arenas shall be considered in the following section.

Human rights arrangements at the international level

The development of an international human rights framework was first attempted in 1919 when Japan drafted an amendment to the League of Nations Covenant which proposed equality and the prohibition of discrimination in international law (Cassese, 1990; de Varennes, 2006; Forsythe, 2000). The amendment was strongly opposed by Australia, Britain, Greece, Poland, and the US, demonstrating that Western states have not always been the initiators or supporters of international human rights standards, as they exist today. Japan's proposal was largely rejected on the grounds that it imposed on state sovereignty which was considered to be more important than the legal concept of international human rights (de Varennes, 2006; Forsythe, 2000). However, by the conclusion of World War Two there was an emerging consensus, amongst Western countries in particular, that individual human rights should be incorporated into an international legal system (Camilleri, 1989; Cassese, 1990; Patman, 2000). Nevertheless, the ongoing concern was the question of how states might protect and uphold their sovereignty whilst including international standards of human rights into their state jurisdictions (de Varennes, 2006; Donnelly, 2003; Forsythe, 2000; Freeman, 2002; Harrelson-Stephens & Callaway, 2007; Stacy, 2009).

The Universal Declaration of Human Rights (UDHR), the cornerstone of the international human rights system, was adopted on 10 December 1948 by the fifty-eight members of the UN General Assembly (Baehr, 2005; Stacy, 2009).²⁷ The UDHR outlines human rights standards that represent common ideals drawn from the world's diverse religious, humanist, political, and cultural beliefs (APF, 2008; Mahoney, 2007). The non-binding Declaration was negotiated by forty-six members of the UN, with eight countries, including South Africa, the Soviet Union, and Saudi Arabia, abstaining from this process (Forsythe, 2000). Drafting of the agreement was swift and relatively straightforward as the values in the Declaration largely reflected the intentions of the nation states involved (de Varennes, 2006; Forsythe, 2000).

Little debate occurred at that time on the more contentious issues of cultural relativism or the implementation and monitoring of the standards (Forsythe, 2000). Whilst non-Western countries were involved in the development of the UDHR the involvement of

²⁷ Further information on the UN human rights system can be accessed at <http://www.ohchr.org/EN/HRBodies/Pages/HumanRightsBodies.aspx>

some of these countries, including on the continents of Africa and Asia, was limited due to their colonial status at the time (Forsythe, 2000; Harrelson-Stephens & Callaway, 2007; Stacy, 2009). The gaps in the UDHR, such as the right to self-determination and its non-binding legal nature, were also outcomes of strong resistance from Western states who sought to ensure their liberal values, such as individual fundamental rights, were strongly represented (de Varennes, 2006; Forsythe, 2000). Since 1948, the rights contained in the UDHR have inspired over sixty treaties and conventions that are the international benchmark for the promotion and protection of human rights. Instruments include the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant for Economic, Social and Cultural Rights (ICESCR) as well as a large number of subject-specific instruments (Baehr, 2005). While the UDHR sets out the fundamental rights and freedoms it is not legally binding on states, in contrast to the Covenants which do bind states that have accepted them through ratification or accession (Baehr, 2005; Cassese, 1990).

The core international treaties are often regarded as founded on the Western liberal concepts of individualism, egalitarianism, tolerance, democracy, and the rule of law (Farran, 2009; Stacy, 2009).²⁸ The liberal economic and political agenda of the US, as the dominant global leader after World War Two and the Cold War, has generally been viewed as the determining force behind the international human rights system (Evans, 2001; Forsythe, 2000). However, the principles underpinning the socialist and non-Western states that were involved in the drafting of the international treaties are also somewhat evident especially in regard to the economic and social rights (Cassese, 1990; de Varennes, 2006; Harrelson-Stephens & Callaway, 2007). Contemporary human rights discourse, then, is not firmly grounded in a particular theory and this is problematic in that not all states share the same value systems or commitment to human rights ideals.

The politics of the Cold War also significantly delayed the implementation of the UN treaties into the legislation of some states, as the UN resisted enforcing human rights

²⁸ The seven core treaties are: International Covenant on Civil and Political Rights; International Covenant on Economic, Social and Cultural Rights; Convention on the Elimination of All Forms of Racial Discrimination; Convention on the Elimination of All Forms of Discrimination against Women; Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; Convention on the Rights of the Child; Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

standards; in part because several of the key perpetrators of human rights violations during this period were UN member states (Baehr, 2005; Dunne & Hanson, 2009; Freeman, 2002; Patman, 2000). Nonetheless, during the post-Cold War era human rights have become firmly entrenched in national, regional and international domains (Farran, 2009; Hurrell, 1999; Stacy, 2009). To some extent then, the universal standards have been interpreted in all regions, and given local effect through a range of institutional and legal arrangements.

There are concerns that the UN, as an intergovernmental body founded on principles of non-intervention and sovereign equality, is limited in its mandate to fully implement its human rights standards (Evans, 2001). It has, however, been effective in spreading the 'idea' of human rights throughout the world, especially through international law on human rights, and by assisting in establishing bodies that can monitor and promote human rights concepts. Being responsive to the demands of states, however, does not necessarily ensure responsiveness to individuals and their human rights (Evans, 2001). In sum, the activities of the UN in respect of human rights includes norm-setting, standard-setting, and to a limited extent implementing these ideals through monitoring and investigation (Cassese, 1990; Forsythe, 2000). Also, the UN has actively supported the establishment of regional human rights arrangements since the end of World War Two as shall be explored in the following sections.

Regional human rights arrangements

The Vienna Conference concluded with an affirmation that, “[r]egional arrangements play a fundamental role in promoting and protecting human rights. They should reinforce universal human rights standards, as contained in international human rights instruments and their protection” (World Conference on Human Rights, 1993, np).²⁹ Regional arrangements may, therefore, complement international instruments and ideally reflect the highest human rights standards (Kobila, 2003; OHCHR, 2001).

Regional arrangements are now established in Europe, the Americas, and Africa, and similar institutions are in the initial stages of development in the sub-regional arenas of the Arab League and the ASEAN (Chiam, 2009; Deklin, 1992; Drinan, 2001; Forsythe,

²⁹ See [http://www.unhcr.ch/huridocda/huridoca.nsf/\(Symbol\)/A.CONF.157.23.En](http://www.unhcr.ch/huridocda/huridoca.nsf/(Symbol)/A.CONF.157.23.En)

2000; Kim, 2009; Peebles, 2005; Robertson & Merrills, 1992; Stacy, 2009).³⁰ These systems operate in a manner broadly complementary to the universal human rights framework of the UN and are all based on regional or sub-regional treaties (Donnelly, 2003).³¹ Their core characteristics include:

A legislative instrument, such as a Charter, defining the content and scope of applicable human rights norms; a judicial-type body, such as a Court, with vested monitoring/enforcement jurisdiction to resolve disputes arising from breaches of the applicable regional human rights norms; an intermediate, executive-type body, such as a Commission, with a range of responsibilities for activities to develop and promote human rights in the region (Sydney Centre for International Law, 2008, p. 6).

Being regionally situated, these institutions arguably bring the promotion and protection of human rights nearer to individuals and their communities (Hashimoto, 2004; Heyns, Padilla & Zwaak, 2006; Leary, 1987; Peebles, 2005; Smith, 2005; Tucker, 1983; United Nations, 1996). Governments too, may find it easier, more economically viable, and convenient to deal with a mechanism that is in its immediate vicinity (Hashimoto, 2004). There is also some evidence that governments may be more favourable towards the adjudication of human rights cases by regional judicial bodies with powers to make binding decisions, rather than by UN institutions (Castan Centre, 2008; Smith, 2005; Stacy, 2009).

Several other advantages for regional institutional arrangements have been identified:

- They allow for norms, institutions and processes to be designed to fit the distinctive characteristics of the region, can provide specialised resources, and promote the development of valuable region-specific expertise;
- Localised knowledge and legitimacy means that regional mechanisms are uniquely placed to identify and respond to human rights abuses;
- A regional mechanism can support national engagement in the international human rights system by providing resources and knowledge that may not be

³⁰ The purposes, functions and distinguishing features of both regional and sub-regional human rights arrangements are considered to be aligned. The primary difference is that their jurisdiction extends across either a regional or sub-regional grouping. For the purposes of this section, regional arrangements incorporate sub-regional mechanisms.

³¹ For example, the European Convention on Human Rights, the American Convention on Human Rights and the African Charter on Human and Peoples' Rights.

available in individual countries, often due to financial and human resource constraints;

- If properly funded, regional arrangements can facilitate human rights promotional activities which are not otherwise viable; and
- Regional mechanisms provide a forum independent of government in which the implementation of human rights objectives may be pursued in a transparent environment less susceptible to political interference than national human rights bodies (Human Rights Law Resource Centre, 2008, p. 35; see also, Castellino, 2005; Hashimoto, 2004; Stacy, 2009).

These positive views are further articulated by Louise Arbour, former UN High Commissioner for Human Rights:

The importance of a regional mechanism lies in the fact that it is designed to articulate a common approach to a complex problem, an approach that will assist states, from a position of shared regional values, to address shortcomings in their national frameworks so as to allow individuals the means to enjoy their rights in full, and to obtain effective redress when those rights are denied (Arbour, 2005, np.).

Some limitations of regional arrangements have also been noted. Although the European, African, and the Inter-American mechanisms have the UDHR as their benchmark and so are founded upon the international standards, there is a view that regional arrangements are haphazard and may diminish the role and importance of the UN human rights system (Drinan, 2001). Regional arrangements differ significantly according to the context in which they are situated, and, as these procedures need to be accepted by the particular group of states for which they are intended, different agreements may be reached according to any number of geographical, social, cultural, and political reasons. This may lead to varying levels of adherence and commitment to the international human rights standards (Drinan, 2001; Peebles, 2005; Stacy, 2009). Ensuring equivalence for the interpretation and implementation of human rights standards across the regional and universal systems is, therefore, a critical issue. Different interpretations of rights may be a consequence of cultural diversity, however, a common standard could still be pursued and this may occur more effectively at the international level (Robertson & Merrills, 1992).

UN instruments such as the Charter and the ICCPR, however, expressly support the resolution of human rights issues at a regional level thus emphasising the UN's endorsement of the establishment of regional arrangements (Robertson & Merrills, 1992). Therefore, these institutions cannot be seen as inconsistent with the UN system, providing that the regional arrangements are based on UN directives such as the UDHR (Robertson & Merrills, 1992). Nonetheless, not all regions have heeded the call to establish human rights arrangements, and, thus the universal system is also seen to be necessary and important. The UN system may also deliver another avenue for redressing human rights violations if options at the local, national, and regional levels have been exhausted.

Regional arrangements in the UN regions

To date, the European, Inter-American, and African human rights systems are the most well-established regional institutional arrangements throughout the UN-defined regions. The mechanisms operating in these regions, as well as developments in the sub-region of the Arab League, will be briefly outlined below. Less extensive institutional developments have also occurred in the sub-regional grouping of ASEAN as described in the next section on the Asia-Pacific region. While each configuration will be examined below, Table 3.1 synthesises the primary functions of each arrangement and the extent of its powers.

Table 3.1 Functions and powers of regional human rights arrangements

	Charter	Commission	Court	Powers
European human rights system	✓	✗	✓	Individual and inter-state complaints are made directly to the Court. Court decisions are binding.
Inter-American human rights system	✓	✓	✓	Commission: Reporting, investigating, diplomacy. Individual complaints are brought by the Commission or state to the Court. Court decisions are advisory or binding but limited to full members.
African human rights system	✓	✓	✓	Commission: promotion, advice, hears individual submissions. Individual and inter-state complaints are made directly to the Court.
Arab League human rights system	✗ <i>(not ratified)</i>	✓	✗	Commission: promotion, protection but mainly focused on Israeli policies and human rights violations.
Asia-Pacific human rights system	✗	✗	✗	No regional mechanism.
ASEAN human rights system	✓	✓	✗	Charter provides mandate for Commission and includes standards of human rights.

(Source: Author, adapted from Boyle, 2009; Frémont, 2009; González, 2009; Robertson & Merrills, 1992)

The European human rights system³²

The European human rights system, a well-developed regional structure, has sophisticated judicial procedures and a high level of state compliance with its decisions (Boyle, 2009; Forsythe, 2000). Countries bound by the European system belong to the Council of Europe, a recognised international organisation with legal personality, which was founded in 1949 by several Western European states and sits in Strasbourg, France (APF, 2008; New Zealand Ministry of Foreign Affairs and Trade, 2003). The Council was established to foster cooperation, strengthen democracy, and protect human rights within its member states (Boyle, 2009; Mahoney, 2007).³³ It is responsible for the

³² See <http://www.coe.int> for further information on the European human rights system.

³³ The Council includes forty-seven member states. There are fifty countries in the European continent (www.coe.int downloaded 14/12/10)

European Convention on Human Rights and the European Court of Human Rights which bind the members of the Council to a Code of Human Rights. The European system is upheld as an example of an effective regional system given that many of its member states have committed to the Convention and its binding requirements, even if they have not ratified all the UN treaties or the optional protocols (Boyle, 2009; Robertson & Merrills, 1992).

The Council was established in the aftermath of World War Two which was the key impetus for greater political union between European states (Boyle, 2009; Drinan, 2001; Kim, 2009). The communist regimes in Eastern Europe also created momentum for the Western European states to consider their shared values and potential for a political union. Historical events, therefore, acted as a driver for the development of regional human rights arrangements in Europe (Stacy, 2009).

The main instruments in the European system include the:

European Convention for the Protection of Human Rights and Fundamental Freedoms (1950)

The Convention is primarily concerned with civil and political rights enabling citizens to bring complaints of human rights violations against their governments (Boyle, 2009). Inter-state complaints, also able to be invoked, are rare (Boyle, 2009). The Convention included the establishment of both a Commission and a Court although restructuring in 1999 has meant only a Court remains functional, thus simplifying the tribunal structure (Boyle, 2009; Drinan, 2001; UNHCHR, 2001).³⁴

European Court of Human Rights (1959)

The Court is fully independent and supervises and advises on state compliance with the Convention. Individuals or groups must exhaust all domestic or internal remedies for addressing a complaint before the Court is approached (Boyle, 2009; Marshall, 2009). The Court presides over cases where individuals allege that their human rights have been denied or violated and its decisions are adversarial, public, final, and binding on state parties (Boyle, 2009; RRRT/SPC, 2008; UNHCHR, 2001). The Court has played an important role in influencing law-making at the national level and also requires states

³⁴ Many European countries apply the Convention in their state legislature and this has contributed to the development of jurisprudence from cases tried both at the national level and in the European Court of Human Rights (UNHCHR, 2001).

to afford damages when they have been found guilty of breaching their rights' obligations under the Convention (Farran, 2009; Kim, 2009).

European Social Charter (1961, revised 1996)

The ideological differences between East and West Europe are reflected in the two categories of civil and political rights and economic, social and cultural rights. The latter rights are contained in the European Social Charter (Boyle, 2009; New Zealand Ministry of Foreign Affairs and Trade, 2003; Wright, 2005). Periodic reports on state progress in implementing and ensuring these rights are required by the Council if they have contracted to the Charter. The Charter also provides for collective complaints and has its own system of adjudication and enforcement in the European Committee of Social Rights (Boyle, 2009; Kim, 2009).

The European human rights system is based on the international human rights standards. The system is noted for its responsive and effective work, in particular on addressing individual complaints of human rights violations. A vast jurisprudence on the rights contained in the European Convention influences the legal order of both the EU and its member states (Boyle, 2009). The most significant challenge is the volume of work undertaken by the Court which significantly increased from the 1990s. It has been said that the Court is "literally drowning under its case load" (Boyle, 2009, p. 12; Drinan, 2001; Kim, 2009). Seen to be a victim of its own success, the Court is attempting to prioritise cases and implement new approaches to address its overwhelming workload, including encouraging member countries to try more cases within the national legislature and ensure their legislative procedures are consistent with that of the regional system (Boyle, 2009).

The Inter-American human rights system³⁵

The Inter-American human rights system was developed during the 1940s and 1950s as an ideological response to perceived threats of communism and in an effort to defend democracy (Kim, 2009). The system is situated within the Organisation of American States (OAS), an intergovernmental organisation with a membership of the thirty-five

³⁵ See http://www.hrea.org/index.php?doc_id=413 for further information on the Inter-American human rights system.

independent American states (Shelton, 2005). The primary objective of the OAS is to promote and maintain peace and security within the Americas.³⁶

The main instruments in the Inter-American human rights system include:

The American Convention on Human Rights (1969)

The Convention, modeled on the European Convention, protects mainly civil and political rights, although economic, social and cultural rights are to be given due regard (González, 2009; New Zealand Ministry of Foreign Affairs and Trade, 2003). Both an inter-state and individual complaints process exists. The individual complaints procedure is compulsory for all states that have acceded to the Convention, although remedies within the state where the alleged violation occurred must have been exhausted (New Zealand Ministry of Foreign Affairs and Trade, 2003). The Convention does not, however, provide measures to ensure the Inter-American Court of Human Rights' decisions is respected (Kobila, 2003).

The Inter-American Commission on Human Rights (IACHR) (1959)

The Commission is an autonomous permanent body that represents all member states of the OAS. In contrast to the European system, the Inter-American Commission was not originally based on an international instrument and preceded the Convention (Kobila, 2003). Its purpose is to promote the observance and defence of human rights and examine allegations of human rights violations. Members working in the Commission are elected on individual merit, not as states' representatives (González, 2009).

The IACHR performs the following functions:

- Investigates individual petitions against member states which allege human rights violations;
- Publishes special reports on specific states, as issues are identified;
- Recommends to member states the adoption of measures that would assist human rights protection;
- Thematic rapporteurship work;

³⁶ Three main documents underpin its work: the OAS Charter (1948), the American Declaration of the Rights and Duties of Man (1948), and the American Convention on Human Rights (1969) (González, 2009).

- Submits cases to the Inter-American Court of Human Rights;
- Advocacy and promotion of human rights (Forsythe, 2000; González, 2009).

Concerns have been raised about the Commission's apparent reluctance to undertake on-site investigations and issue critical reports despite their extensive investigatory powers (Hurrell, 1999). The use of country reports, however, raises public awareness on specific issues which has at times led to action against countries seen to be contravening international human rights standards (Kim, 2009). The Commission is, therefore, an authoritative but non-binding institutional setting for the rights and duties of the Convention and the American Declaration to be addressed (Drinan, 2001; González, 2009).

The Inter-American Court of Human Rights (1978)

The Court has limited consultative and litigious authority (González, 2009; New Zealand Ministry of Foreign Affairs and Trade, 2003). It offers opinions on legal matters, advises on treaty obligations, enforces and interprets the provisions of the Convention, and rules on specific cases of human rights violations from other OAS bodies or member states. The jurisdiction of the Court is limited as cases can only be brought by the Commission or the state that was involved in an investigation in the Commission. Also, the Court can only hear cases concerning states that have signed both the Convention and the Court's optional protocol which further limits the extent of its powers.

A chronic lack of funding is a critical issue for the Commission and Court. Constant efforts to attract external funding inhibit the work of both institutions and create uncertainty for long-term planning and developmental work (González, 2009). The US, while a member of the OAS, has not ratified the Convention (and also rejects the principles of the UN Charter) and there appears to be little interest in the US in having involvement in the Commission or the Court (Chomsky, 2003; Drinan, 2001; Forsythe, 2000). This is perhaps because of a fear that actions to claim damages would come from Latin American countries against the US (Drinan, 2001).

The African human rights system³⁷

In 1963 the independent African states adopted the Charter of the Organisation of African Unity (OAU). This was succeeded by the African Union (AU) in 2001 and currently consists of fifty-three African states. The African human rights system, situated within this organisation, evolved from several geopolitical realities including safeguarding independence, collective security, territorial integrity, and promoting solidarity (Kim, 2009). In the 1970s, international legitimacy of African states was shaken by the repressive regimes in Uganda, Zaire, and Equatorial Guinea, and thus the OAU sought to counteract this by commissioning the drafting of an African Charter of Human Rights. It seems somewhat incongruent that several of the leaders calling for, and those later adopting the Charter, were neither freely nor fairly elected in their own countries (Mutua, 1993). Changes in US foreign policy, primarily the linking of aid to a recipient country's human rights record, also provided impetus for the development of regional human rights arrangements (Mutua, 1993).³⁸

The main instruments in the African system include:

The African Charter on Human and People's Rights (1981)

Better known as the Banjul Charter after its place of signing, the African Charter was adopted unanimously on June 27, 1981 at the OAU Assembly, following some two decades of UN-sponsored debate amongst African heads of state (Frémont, 2009; Robertson & Merrills, 1992). The Charter is considered unique in its recognition of characteristics of African culture and its emphasis on the duties individuals owe to each another and the wider society (African Charter of Human Rights, 1981; Butler, 2005; Frémont, 2009; Haas, 2008; Heyns, 2005; Mahoney, 2007). The African Charter has been upheld as a progressive document that incorporates all three generations of rights and addresses universal rights whilst attempting to meet regional needs (Butler, 2005; Frémont, 2009; Kim, 2009).

³⁷ See <http://www.africa-union.org> for further information on the African human rights system.

³⁸ This is somewhat ironic given that the US has not ratified several UN treaties including the International Covenant on Economic, Social and Cultural Rights, the Convention on the Rights of the Child, or the Convention on the Elimination of All Forms of Discrimination Against Women, amongst others.

A central concern with the Charter is the inclusion of claw back clauses which effectively restrict human rights to what is written in national law (Kim, 2009; Mutua, 1993; Robertson & Merrills, 1992). As most legislation in African states date back to colonial times, laws are frequently repressive and do not contain adequate human rights protections for individuals (Butler, 2005; Mutua, 1993). The Charter also assumes that 'African culture' is static rather than socially and historically constructed and, therefore, the duties imposed in the Charter subjugate individuals to authoritarian rule (Mutua, 1993). Significant concerns have been raised as to the effectiveness of the Charter in protecting human rights in the AU states.

The African Commission on Human and Peoples' Rights (1987)

The Commission was established after a lengthy germination period due to distrust between some African countries and concerns about a lack of political homogeneity in the region. Disagreement over its possible functions and a dismissive attitude towards civil society organisations working in the human rights arena also contributed to its slow development (Kobila, 2003; Robertson & Merrills, 1992). Eleven members of different AU member states sit on the Commission, in a personal and independent capacity. The inaugural commissioners, however, all had close political ties to their own countries which challenged its independence (Mutua, 1993).

The Commission's major functions are to promote and protect human rights in the AU states, interpret the Charter, and consider individual complaints of violations of the Charter. The Commission may also prepare submissions for the Court. The focus on promotional work has been criticised as too limited, especially as the Commissioners have not fully utilised their powers to raise levels of awareness (Mutua, 1993). Individual submissions against a state, for instance, can be made to the Commission although the number of complaints is very low compared with the level of human rights violations in the region (Kim, 2009; Mutua, 1993). The lack of political will in the Commission, the continuing authoritarian rule in many African states, and limited resources, all impact on the Commission's effectiveness (Forsythe, 2000; Kim, 2009; Mutua, 1993).

African Court of Human and Peoples' Rights

The Charter did not originally provide for a Court due to its emphasis on negotiation and conciliation (Drinan, 2001; Forsythe, 2000; Haas, 2008; Kim, 2009; Kobila, 2003). However, an additional protocol enables the development of a Court to hear cases of human rights violations. In July 2004, the AU Assembly determined that the future Court will be integrated with the African Court of Justice. This institution will also assume the duties of the Commission, in addition to being the Supreme Court of the AU. Fifteen countries are required to ratify the Court of Justice Protocol although at this point only two countries have committed to the protocol, thus stalling progress.

Despite concerns as to the effectiveness of both the Charter and the Commission, these regional arrangements are significant in a continent in which democratic rule, development and human rights are often of low priority for individual states (Kobila, 2003). However, the African human rights system remains fragile and the extensive political, social, and cultural problems in Africa and limited commitment to human rights standards both nationally and regionally, are considered by some commentators to be too complicated to be dealt with by a weak regional system (Drinan, 2001; Forsythe, 2000).

The Arab human rights system³⁹

The League of Arab States was founded in 1945.⁴⁰ While many of its twenty-two member states are part of the UN-defined Asia-Pacific region, membership of the League is defined by Arab culture (Chiam, 2009; New Zealand Ministry of Foreign Affairs and Trade, 2003). It was only in the 1960s that the League began to interest itself in human rights matters (Mahoney, 2007; Robertson & Merrills, 1992). During this decade, three UN-led meetings led to significant developments in the League in respect of human rights.⁴¹ The primary purpose of these sessions was to exchange

³⁹ While <http://arableagueonline.org> is the official website of the Arab League, information is only available in Arabic.

⁴⁰ The League includes: Algeria, Bahrain, Comoros, Djibouti, Egypt, Iraq, Jordan, Kuwait, Lebanon, Libya, Mauritania, Morocco, Oman, Palestine, Qatar, Saudi Arabia, Somalia, Syria, Sudan, Tunisia, the United Arab Emirates and Yemen.

⁴¹ Firstly, in August 1966 an invitation was extended by the UN for the League, the Council of Europe, the OAS and the OAU to attend sessions of the UN Commission on Human Rights. Secondly, in 1967 the UN Commission on Human Rights invited the League to offer its views on the establishment of new regional arrangements. The third meeting was the International Conference on Human Rights in 1968 (the Tehran Conference).

information about human rights activities at the regional level and consider implementing new institutional arrangements. By the end of 1968, the League confirmed its decision to establish a permanent Arab Commission on Human Rights.

The main instruments in the Arab League System include:

The Arab Commission on Human Rights (1968)

This Commission differs to the Inter-American and European arrangements as its Commissioners are government officials, one from each of the member states, and not independent persons serving in a personal capacity (Robertson & Merrills, 1992). Its functions, primarily concerned with the promotion rather than protection of human rights, include drafting agreements and proposals, the provision of advice, and assisting member states at conferences and the UN sessions. To date, its main concern has been focused on the occupied territories (Forsythe, 2000). The Human Rights Committee of the Arab League has now replaced the Commission (New Zealand Ministry of Foreign Affairs and Trade, 2003).

The draft Charter of Human and Peoples' Rights in the Arab World (1994)

This draft Charter was not ratified by any Arab states and so it has no official status (Chiam, 2009; Robertson & Merrills, 1992). Although the draft Charter included civil and political, economic and social rights as well as a set of 'Collective Rights for Arab peoples' it was criticised as failing to meet international human rights standards. In 2004 a revised Charter was adopted by the Council of the League of Arab States. This version is considered to be an improvement on the original text especially in recognising the rights of women and people with disabilities. However, aspects of the Charter are still inconsistent with international human rights standards, for example, the provision of the death penalty. Once ratified by seven member states, the Charter will come into force and potentially enable the development of further human rights institutional arrangements for Arab states (APF, 2008). A further criticism of the Arab human rights system is its lack of enforcement mechanisms such as a court or an independent commission that can make binding decisions (Al-Midani, 2005).

The human rights arrangements in Europe, the Americas, and Africa, are the most advanced and entrenched regional mechanisms, although their effectiveness in promoting and protecting human rights within their regions varies (Forsythe, 2000). The

final UN region to be discussed is that of the Asia-Pacific. The next section will examine the history of the idea of human rights arrangements in this region with a particular focus on the Asian countries and their sub-regional affiliations. Following this, attention will be given to the idea of SHRAs in the Pacific.

Regional arrangements in the Asia-Pacific

As a region, the Asia-Pacific experiences a wide range of human rights issues with many countries facing internal and external conflicts as well as post-conflict transitions (Katsumata, 2009; Kim, 2009; Yasuaki, 2000). Military rule has overturned democracy in some countries whilst others are working through political and institutional post-colonial processes. One-party state regimes are common and challenges associated with poverty, gender inequality, migration, and discrimination are endemic (Kobila, 2003). While many countries have constitutionally entrenched human rights provisions, the realisation and implementation of these are frequently difficult (Castellino, 2005; RRRT/SPC, 2008).

The heterogeneous nature of the countries in the Asia-Pacific region makes the standardisation of human rights norms extremely challenging (Castellino, 2005; Deklin, 1992; Kobila, 2003). Throughout the region, some governments are reluctant to cooperate with the international human rights system, as evidenced in the low levels of ratification of international human rights treaties. At the national level, civil society and NHRIs are often weak, non-existent, or constrained by governments (Arbour, 2007; RRRT/SPC, 2008). Arguments over so-called 'Asian' values vis-à-vis 'Western' rights also create challenges in some countries (Camilleri, 1998; Castellino, 2005; Donnelly, 2003).

The UN call since the 1980s for the establishment of human rights mechanisms within the Asia-Pacific region has not been given significant attention from state leaders (APF, 2008; Chiam, 2009; Davis, 1998; Farran, 2009; Kausikan, 1994; Kim, 2009; Manea, 2008; Muntarbhorn, 2005; Pritchard, 1996; United Nations, 1996; United Nations

General Assembly, 1986).⁴² Several factors are seen to be hindering the development of human rights institutions in the Asia-Pacific including: the geographical vastness of the region, a lack of political will, different values systems, religious and cultural perspectives, issues of state sovereignty, economic disparity among states, limited ratification of international human rights treaties, and inadequate space for participation from stakeholders other than governments (Chiam, 2009; Kim, 2009; Muntarbhorn, 2005; Mutua, 1993; Peebles, 2005). While across the Asia-Pacific region there are currently no regional human rights instruments to promote or protect human rights, sub-regionally a small number of initiatives are apparent (Chiam, 2009; Deklin, 1992; Poole, 2010; Secretariat of the Pacific Community, 2010).

The ASEAN human rights system⁴³

ASEAN was established in 1967 by the ASEAN Declaration.⁴⁴ In 1993, the ASEAN Inter-Parliamentary Organisation (AIPO) agreed to “consider the establishment of an appropriate regional mechanism for human rights” (ASEAN Inter-Parliamentary Organisation, 1993, p. 4). In 2005, the Kuala Lumpur Declaration on the Establishment of the ASEAN Charter outlined the purpose of the Charter as a legal and institutional framework to promote human rights and obligations, transparency, good governance, and the strengthening of democratic institutions (ASEAN, 2007). An Eminent Persons Group created the Charter which was signed by the ten ASEAN member states on 20 November 2007 (Australian Human Rights Centre, 2008; Chiam, 2009; Katsumata, 2009; Poole, 2010). The UN High Commissioner for Human Rights at that time was optimistic about the potential for the ASEAN human rights mechanism to be “an inspiration and model for further progress within the other sub-regions of this broad and diverse Asia-Pacific region” (Arbour, 2007a, np).

⁴² Multiple meetings, mainly led by the UN, have occurred during this time. Since 1990, for example, the OHCHR has organised regular Regional Workshops on Cooperation for the Promotion and Protection of Human Rights in the Asia-Pacific region. These Workshops have consistently discussed taking an incremental approach for the development of regional or sub-regional human rights arrangements (Kim, 2009; Pritchard, 1996; United Nations, 1996). The adoption of a number of declarations from these meetings may be considered symbolically meaningful as they express an aspiration from states to develop regional mechanisms, however, no substantive action has occurred (Kim, 2009).

⁴³ See <http://www.aseanhrmech.org/> for further information on the ASEAN human rights system.

⁴⁴ The ASEAN states include: Brunei, Cambodia, Indonesia, Laos, Malaysia, Myanmar, Philippines, Singapore, Thailand and Vietnam.

Article 14 of the Charter provided for the establishment of an ASEAN human rights body (HRB) to work in concert with the principles and purposes of the Charter, (ASEAN, 2007; Poole, 2010). Work on the HRB was undertaken by a High Level Panel during 2008-9. Several concerns were raised during this period. As the ASEAN Charter does not specifically mention the UDHR, it was questioned whether the HRB would be based on universal standards. There were also concerns whether the HRB would be able to have any influence on the internal affairs of member states as it would not be able to impose sanctions or to seek the prosecution of human rights violators (ACTU, 2008; Fuller, 2009).⁴⁵ Other factors potentially restricting the effectiveness of the HRB include: a state-centric resistance to interference in domestic affairs, a lack of recognition that the HRB should reflect the sub-region's particularities, concerns about state sovereignty, issues of accessibility, uncertainty as to the independence of officials in the HRB, and the readiness of states for this type of human rights institutional arrangement (APF, 2008, p. 23; Australian Human Rights Centre, 2008; Chiam, 2009; Poole, 2010). The functions of the HRB incorporated the monitoring and investigation of human rights violations by ASEAN member states on individuals, organisations, or states, reporting to ASEAN bodies, legal advice, promoting the ratification of international treaties, human rights education and training for officials, civil society, and members of the public (Amnesty International, 2009).

Progress on human rights arrangements for the ASEAN states is now well-advanced with the establishment of the ASEAN Inter-governmental Commission on Human Rights under the ASEAN Charter occurring in 2009. The Commission is currently drafting an ASEAN Human Rights Declaration and developing a five-year plan to guide its work (ASEAN, 2010).

South Asian Association for Regional Cooperation

While the South Asian Association for Regional Cooperation (SAARC) has not attempted to establish any formal sub-regional human rights arrangements it has taken a cooperative approach and developed two treaties that link with specific human rights

⁴⁵ A majority of ASEAN member states indicated that the HRB would not have the power to impose sanctions for human rights violations but instead be mandated to monitor minor violations and to offer advice on the prevention or intervention of such abuses.

issues (Chiam, 2009).⁴⁶ The treaties, adopted in 2002, are the SAARC Convention on Preventing and Combating Trafficking in Women and Children for Prostitution and the SAARC Convention on Regional Arrangements for the Promotion of Child Welfare in South Asia. In 2004 SAARC adopted a Social Charter which encompasses many social, cultural, and economic rights. However, despite these initiatives there seems to be little impetus at this point for further development of SHRAs in the SAARC (Chiam, 2009).

Civil society in Asia

In addition to the state-led activities in the Asian sub-region, some civil society organisations have, since the mid-1990s, been proactive in their attempts to develop or lead the way for the establishment of SHRAs (Bangkok NGO Declaration, 1993; Manea, 2008). For example, in 1998 the Asian Human Rights Commission, a non-governmental organisation based in Hong Kong, drafted 'The Asian Human Rights Charter: Our Common Humanity' for discussion by governments and non-governmental organisations (Camilleri, 2003; Chiam, 2009). The Charter incorporates the views of individuals and over two hundred civil society organisations. The Charter is dissimilar to the regional human rights charters as it includes sections on specific human rights domains such as the rights of women, older persons, peasants, and fisher-folk, in an attempt to closely reflect the Asian context. It is intended to be used for human rights promotion and education throughout Asia (Chiam, 2009). The Association of Asian Parliaments for Peace considered, but did not adopt 'The Asian Human Rights Charter: A Peoples' Charter' in 2001, after a consultation facilitated by the UN Development Programme (Chiam, 2009).

The lobbying and promotional work of the informal 'Working Group for an ASEAN Human Rights Mechanism', set up by LAWASIA in 1995, was instrumental in the development of the ASEAN human rights commission (Manea, 2008). The Working Group continues to dialogue with ASEAN and supports other sub-regional human rights mechanisms including a set of human rights principles and a human rights court. In 2001, the ASEAN People's Assembly, a civil society forum, was configured into the ASEAN structure allowing more effective dialogue between state and non-state actors within the ASEAN institutional framework (Manea, 2008).

⁴⁶ The SAARC member states include: Bangladesh, Bhutan, India, Maldives, Nepal, Pakistan and Sri Lanka.

The sub-regional grouping of the Pacific, within the wider Asia-Pacific region, has also had some, albeit limited, activity in regards to the development of SHRAs. The final section of this chapter will outline a chronology of this action and comment on the position of the PIF in respect of the idea of SHRAs in the Pacific.

Moving towards SHRAs in the Pacific?

While most Pacific Island countries have entrenched bills of rights in their constitutions and have also acceded to some international human rights instruments, at this point Pacific leaders have not committed to establishing human rights institutional arrangements at the sub-regional level (Durbach, Renshaw & Byrnes, 2008; Hay, 2009; Jalal, 2006, 2008, 2009; Liddicoat, 2009; OHCHR & PIFSec, 2009; RRRT/SPC, 2008; Secretariat of the Pacific Community, 2010). Furthermore, Fiji, Australia, and New Zealand are the only Pacific countries with NHRIs, with the Fiji Commission's independence compromised under the current military regime. While debate on SHRAs in the Pacific has significantly increased in the past five years, as yet there is no political consensus on whether there should be an institutional mechanism; let alone its potential form, function and mandate.

Progress towards Pacific human rights arrangements

In 1985, under the direction of Judge Kishor Govind and Australian and New Zealand law experts, LAWASIA began discussions on a draft Pacific Charter of Human Rights (LAWASIA, 2006). Drawing on international human rights norms and, in particular, the African Charter of Human and Peoples' Rights, the draft Charter was tabled and adopted by LAWASIA in 1989 (ASEAN Inter-Parliamentary Organisation, 1993; Deklin, 1992; Hay, 2009).⁴⁷ The Charter included the full range of economic, social, cultural, civil, and political rights (Deklin, 1992). In addition, it combined existing human rights provisions from Pacific constitutions and legislation and attempted to address individual and collective rights and duties as well as the rights and responsibilities of Pacific governments (Butler, 2005; Farran, 2009). The Charter also proposed the future establishment of a Pacific human rights commission to implement the Charter and receive complaints about human rights violations (Deklin, 1992). Although LAWASIA lobbied Pacific governments to agree to the draft Charter the

⁴⁷ See 'Appendix 1: Report on a proposed Pacific Charter of Human Rights prepared under the auspices of LAWASIA, May 1989' (1992) 22 VUWLR 99.

project failed to get significant support (Australian Human Rights Centre, 2008; Butler, 2005). Significantly, the draft Charter was perceived to be initiated and developed by New Zealanders and Australians, with minimal support, input or consultation with Pacific peoples (Jalal, 2008, 2009; Wickliffe, 2000). Consequently, there was little sense of Pacific ownership of the Charter, or an agreement that it was needed by the small island countries (Australian Human Rights Centre, 2008; Farran, 2009; Thaman, 2000). Ultimately, Pacific leaders did not believe the Charter would improve the livelihoods or economic situation of most Pacific peoples (Angelo, 1992; Butler, 2005). The absence of a mandate for the Charter, the perceived clash between 'Western' and Pacific values, minimal recognition of human rights and especially the international instruments at the time, by both governments and the public, and negligible involvement from civil society, all influenced the process (Farran, 2009; Jalal, 2008, 2009). Since then, little interest has been shown from either Pacific states or civil society, outside of LAWASIA, for pursuing the re-development of a Pacific charter. Although Judge Kishor Govind has purportedly begun to rewrite the draft charter, wider discussions have been minimal compared with those on a sub-regional human rights commission (Secretariat of the Pacific Community, 2010).

Several meetings over the past ten years have promoted either national or sub-regional human rights initiatives in the Pacific (Muntarhorn, 2005; RRRT/SPC, 2008; Secretariat of the Pacific Community, 2010). In 2004, a Pacific Human Rights Consultation was attended by over eighty representatives from Pacific governments, civil society organisations and NHRIs. Participants agreed to:

[e]ncourage Pacific Island governments to establish an independent Pacific Islands' human rights mechanism that could undertake such activities as: coordinating the outcome of Pacific human rights consultations; overseeing a Pacific Islands human rights plan of action; undertaking appraisals of the national, legal and political human rights frameworks; and monitoring human rights, particularly in countries which have no independent national human rights institutions (Pacific Islands Human Rights Consultation, 2004, np).

In 2005, a Pacific Members Regional Workshop on National Human Rights Mechanisms stimulated several recommendations including the undertaking of research on NHRIs, custom and human rights, and the ratification and implementation of international human rights treaties and conventions. The PIF Secretariat played a lead

role in advancing these recommendations and research on all three of these areas had been completed by 2009 (Liddicoat, 2007; New Zealand Law Commission, 2006; OHCHR & PIFSec, 2009). Broad support for a Pacific human rights commission was also given at the Pacific Regional Civil Society Organisations Forum in October 2006.

In 2007, at a meeting of Pacific Islands Members of Parliament (MPs) and also a human rights training session for Pacific Islands Judges and Magistrates, an endorsement was given to RRRT to explore the possibility of setting up a Pacific regional human rights commission (RRRT, 2007; Secretariat of the Pacific Community, 2010).⁴⁸ The MPs, Judges and Magistrates agreed that this course of action should be led by an indigenous regional organisation of Pacific Islanders to ensure ownership by Pacific governments and peoples. It was acknowledged this would be a long-term process requiring technical and financial support from outside agencies such as the Australian and New Zealand governments, the OHCHR, other donors and development agencies. Sub-regional non-government organisations had also agreed with an exploratory process earlier that year.

In April 2008, the 'Strategies for the Future: Protecting and Promoting Human Rights in the Pacific' Symposium was held in Samoa.⁴⁹ The Symposium was attended by representatives of Pacific governments, civil society organisations, academe, NHRIs, and international and regional human rights organisations. The aim of the symposium was to identify a) key human rights challenges in the Pacific and b) strategies for strengthening national, regional and international mechanisms for enhanced protection of human rights in the Pacific. The concluding statement outlined several recommendations to Pacific governments and the PIF and SPC including to:

- Translate commitments in the Pacific Plan into practical action by demonstrating the necessary political will to develop a regional human rights mechanism;
- Embrace the need for a regional human rights mechanism and, in cooperation with civil society, to start working on its conceptualisation, including to enhance the capacity to advance human rights (Lee, 2009, p. 411).

⁴⁸ RRRT was established in 1995 as a project of the UN Development programme. On July 1 2008, RRRT joined the Secretariat of the Pacific Community (SPC) for an initial three year period. RRRT provides human rights training, technical and policy advice and advocacy to civil society, government services, law students and legal practitioners in eight Pacific countries.

⁴⁹ I attended and presented a paper at this Symposium.

Also, participants endorsed the importance of Pacific states upholding international human rights standards whilst respecting Pacific cultural identity (Hay, 2009; Jalal, 2009; Lee, 2009; Liddicoat, 2009; Toki & Baird, 2009). One of the key outcomes from the Symposium was support for the establishment of a Working Group to undertake scoping work on a Pacific human rights mechanism. It was anticipated the group would report to the PIF leaders meeting in August 2009 (Lee, 2009, p. 412).⁵⁰

After the Symposium, SPC/RRRT and the PIF Secretariat, in consultation and cooperation with other organisations such as Amnesty International, sent a funding proposal to the EU for the establishment of the Working Group. A relationship of cooperation, formalising the arrangement between SPC/RRRT and the PIF Secretariat, was established, however, due to a delay in the appointment of a senior Human Rights Advisor to the Secretariat as well as limited funding, progress on the establishment of the Working Group stalled (Secretariat of the Pacific Community, 2010). The likely membership of the Group would have included a small number of Pacific Island representatives and supranational organisations such as the APF and OHCHR. Representatives from the Australian and New Zealand Human Rights Commissions as well as other key stakeholders may have been granted observational status.

On 3 September 2008, the then Australian Minister for Foreign Affairs, the Hon Stephen Smith MP, asked the Joint Standing Committee on Foreign Affairs, Defence and Trade to inquire into and report on *Human Rights Mechanisms and the Asia-Pacific* (Australian Government, 2009). The terms of reference for the Inquiry were to inquire and report on international, regional, and sub-regional mechanisms currently in place to prevent and redress human rights violations, with a view to providing options on possible models that may be suitable for the Asia-Pacific region, with a focus on:

- the United Nations human rights system;
- regional mechanisms; and
- roles for parliaments (Australian Government, 2009a).

Although the brief extended across the Asia-Pacific, the majority of the submissions (twenty-eight in total) focused on the Pacific sub-region. Many of the submissions

⁵⁰ Also see <http://www.asiapacificforum.net/news/call-for-pacific-human-rights-mechanism.html>, downloaded 5 October 2010.

broadly supported the establishment of SHRAs in the Pacific but with several caveats. These included that any institutional arrangements should derive their functions from a combination of universal human rights principles and national considerations, comprise independent experts rather than government officials, exercise investigatory and monitoring roles with powers to enforce determinations and award redress, be properly resourced, be accessible to victims of human rights violations, be led by people from the small island states of the Pacific (ACTU, 2008; Amnesty International, 2009; Australian Baha'i Community, 2008; Australian Human Rights Centre, 2008; Charlesworth & Harris Rimmer, 2008; RRRT/SPC, 2008; World Vision Australia, 2008). The final report from the Inquiry endorsed the idea of a human rights arrangement at either the sub-regional or wider regional level, acknowledging it could complement existing mechanisms (Australian Government, 2010).

Throughout 2009 and 2010 the idea of SHRAs in the Pacific was canvassed in several forums, particularly by SPC/RRRT.⁵¹ Overall there appears to be support for the concept of SHRAs by Pacific MPs, lawyers, judges and some non-government organisations, and agreement to further conceptualisation of how this idea might be realised.

The position of the PIF, and in particular the Pacific leaders, is critical for the advancement of SHRAs in the Pacific. Since the inception of the Pacific Plan in 2005 there has been limited progress within the PIF in regards to the human rights objectives. In November 2006, for instance, the PIF Secretariat indicated that the “establishment of a regional ombudsman and human rights mechanism” objective required further analysis (Pacific Islands Forum Secretariat, 2006, np). While the regional ombudsman initiative was advanced by the following year, the idea of a human rights mechanism was not. Nor was it mentioned in the 2007 Progress Report. It is not clear from the communiqués why this occurred. The call for a sub-regional human rights mechanism was renewed at the end of 2007 by the Secretary-General of the PIF (Urwin, 2007). In addition, the PIF Secretariat Regional Strategy Paper and Regional Indicative Programme for the period 2008-2013 specified a commitment to further analysis of a regional ombudsman office and human rights mechanisms. The 2009 Pacific Plan

⁵¹ These forums include, amongst others, APF meetings, the Australia and New Zealand Society of International Lawyers Conference, PIF Leaders meeting in Cairns, OHCHR Asia Pacific Regional meeting in Bangkok.

Annual Progress Report indicated that work had been undertaken to “strengthen Ombudsman functions” however, again there is no mention of the idea of human rights mechanisms (Pacific Islands Forum Secretariat, 2009, p. 20).

The Pacific Plan also endorsed the strategic objective of “where appropriate, ratify [ing] and implement[ing] international and regional human rights conventions, covenants and agreements; and support[ing] ... reporting and other requirements” (2007, p. 19). To achieve this objective a sub-regional support mechanism was to be established by 2007 and the full implementation of the treaties and conventions by individual Pacific states was to occur by the end of 2008. To date, neither of these goals has been achieved.

In 2010, Mr. Filipino Masaurua was appointed to the PIF Secretariat as a senior Human Rights Advisor. This position, funded by the APF and the PIF and supported by the New Zealand Human Rights Commission, is expected to complement and provide additional capacity to the existing human rights expertise at the Secretariat under the Political Governance and Security Programme (APF, 2008). The role of the Advisor is to offer policy advice, increase coordination, and capacity building in the human rights domain across the Pacific. The Advisor and other PIF Secretariat staff will also work with SPC/RRRT on a scoping exercise that was mandated both by the Governing Council of SPC as well as through the PIF Regional Security Committee in 2009. During 2010-2011 the concept of SHRAs in the Pacific will be explored, together with an examination of existing models in other regions and their effectiveness as well as applicability to the Pacific (Bernklau, 2010). By committing to this activity, the PIF leaders have placed the idea of SHRAs onto their pre-decision agenda (as defined in Chapter Two) which enables consideration to be given to the concept. The leaders have not, however, further advanced the idea of SHRAs onto their decision agenda and so the question as to the prospects for agenda success of SHRAs in the Pacific remains a live one.

Summary

This chapter has set out the institutional and historical context in which the idea of SHRAs in the Pacific is situated. The concept of regional and sub-regional human rights arrangements is founded on theories of human rights and the international framework of human rights. Significantly, the UN-defined region of the Asia-Pacific is now the only region without an overarching human rights system. While the effectiveness of each

mechanism is subject to some debate, overall the European and Inter-American systems are arguably the most effective in delivering decisions that are adhered to by member states. The effectiveness of more recent institutional developments, especially in the ASEAN, is yet to be seen.

Although there is an absence of formal human rights arrangements at the sub-regional level, the PIF leaders have shown some interest in the idea of SHRAs within the past five years. Of particular note, the leaders have more recently endorsed a scoping exercise to be undertaken by SPC/RRRT, with the support of the PIF Secretariat. However, the leaders have not, as yet, committed to placing the idea of SHRAs onto their decision agenda. Therefore, the primary question of this thesis: ‘what are the prospects for agenda success of SHRAs in the Pacific?’ remains. The way in which the research was designed so as to answer this question is canvassed in the following chapter.

Chapter Four

Methodology

Introduction

This chapter outlines the methodology that shapes this doctoral research on the prospects for agenda success of SHRAs in the Pacific and enables the overarching research question to be answered. The chapter begins with a summary of my research journey and thereby traces the evolution of the thesis. This is followed by a detailed discussion of the key features of the research design and the generation, management, and analysis of the empirical materials. An evaluative criterion for qualitative research is then explored. Finally, reflections on the research strategy are discussed prior to the concluding comments.

The research journey

When I embarked on my doctorate in mid-2006 I was interested in examining how public policy in a specific policy domain may be transferred between states. With a personal interest in the Pacific sub-region and, in particular, the relationships New Zealand has with other Pacific Island countries, I was especially curious as to the process of policy transfer between New Zealand and a Pacific Island state. As New Zealand has had a long and generally close connection both politically and diplomatically with Fiji I chose to focus on the transfer of a specific policy from New Zealand to Fiji. Interested in governance and the policy process, I wanted to examine how the key political actors, both state and non-state, may be involved in the chosen policy case as well as the primary reasons underpinning the transfer. When Fiji experienced a military coup in December 2006, New Zealand immediately imposed sanctions on Fiji and it quickly became apparent that continuing my research in the direction I had begun was impractical.

While reading literature on policy transfer and governance I realised that regional governance, especially within the Pacific sub-region, had been minimally researched. This was in spite of considerable impetus towards developing models of regionalism over the past two decades and a significant and growing number of sub-regional

mechanisms and policies being implemented within the Pacific. The concept of SHRAs, and more specifically a Pacific charter of human rights, had been proposed in the 1980s but had not gained traction with Pacific leaders. I became intrigued as to why this situation had occurred. Drawing on governance theory, I wondered about the influential state and non-state actors involved in this policy decision-making and what key factors had inhibited, or might in the future, potentially influence the development of SHRAs. I also wondered about the role of Australia and New Zealand in this area of policy decision-making given the strong rhetoric about their dominant size, wealth, and power within the Pacific. In addition, I was interested in whether there were possible pre-conditions before policy transfer might occur between regional or sub-regional institutions which might in turn affect the shaping of SHRAs in the Pacific, should momentum for such a development increase. At this point, the overarching research aim was to examine the institutional factors that were shaping SHRAs in the Pacific.

During the interviewing process and subsequent management and analysis of the empirical materials, it became clear that the idea of SHRAs in the Pacific had not progressed onto the Pacific leaders' agenda as readily as I had anticipated. Given its presupposition that some transfer has taken place, the theoretical paradigm of policy transfer seemed unable to explain the factors that may be affecting the establishment of potential SHRAs in the Pacific. After considerable reflection I decided that as the idea of SHRAs had yet, at that time, to be firmly placed on the pre-decision or decision agendas of the PIF, models of agenda setting could best illuminate the research question (see Chapter Two). Whilst still focused on the factors that may be shaping the development of SHRAs in the Pacific, the research question was altered and became: 'what are the prospects for agenda success of SHRAs in the Pacific?' Although the overall focus of the thesis has remained constant, the research questions and theoretical frameworks have clearly changed throughout the research process and this is reflected in the choice of research design.

Research design

A research design enables a researcher to move from questions to answers (O'Leary, 2010) and thereby offers a "flexible set of guidelines that connect theoretical paradigms first to strategies of inquiry and second to methods for collecting empirical materials"

(Denzin and Lincoln, 2005, p. 25).⁵² This section and the one following will explore these areas in relation to this doctoral research.

The theoretical perspectives that inform a research strategy are commonly categorised as:

- *The relationship between theory and research*, and especially whether a deductive (theory precedes the research) or inductive approach (theory emerges from the research) is employed.
- *Ontological issues*, which focus on what there is to know about the world and the nature of reality.
- *Epistemological issues*, or a concern with ways of knowing and learning about the social world.
- *Quantitative and qualitative methods*.
- *Ethical issues* that may impact on the research process (Bryman, 2004).

Inductive and deductive logic: the relationship between theory and research

Consistent with an inductive logic, this research proceeds from the particular to the general. While this approach may eventually lead to the generation of theory it is founded on the perspective that not all knowledge can be known from the outset or before the generation of empirical materials begins (Gillham, 2000, p. 15). An inductive approach stands in contrast to a deductive logic which applies the principles of a theory to a particular case to see if the observations fit the predicted hypothesis (Patton, 2002). In other words, a deductive process starts with a theoretical hypothesis and then seeks to test this proposition.

While in reality most research is neither purely inductive nor deductive, research designs usually lean towards one type or the other (Bryman, 2004). In a general sense, most quantitative research draws heavily on deductive logic while qualitative research is usually inductive (Creswell, 2003; Davidson & Tolich, 2003). My doctorate primarily takes an inductive approach, through the use of qualitative methods and analysis, due to

⁵² Denzin and Lincoln (2005) note: “Empirical materials is(sic) the preferred term for what traditionally have been described as data” (p. 28).

the limited available knowledge on the research topic. However, the research question was informed by a familiarity with the existing literature as outlined in Chapters Two and Three. Rather than establishing a hypothesis at the outset, the research began with a series of questions and moved toward a descriptive and critical understanding of the issue under examination (Davidson & Tolich, 2003). It was, therefore, premised upon the view that the research question could be best illuminated by interviewing people that were, in some way, connected to the research area. It was anticipated their considerable knowledge of the topic could elicit greater understanding of the factors affecting the development of SHRAs in the Pacific (Davidson & Tolich, 2003; May, 1997). In this way the perceptions of the participants were seen to be most important instead of starting with preconceived ideas or possible answers to the research question. The material generated from the interviews and the use of secondary sources enabled the development of explanations, consideration of implications for Pacific leaders, and critique of the selected theoretical framework on agenda setting.

Ontological considerations

Ontology is concerned with the nature of existence or beliefs about what we can know about the world (Hay, C., 2011; Marsh & Stoker, 2002; Snape & Spencer, 2007). In particular it is focused upon whether social entities are seen to exist externally to social actors (an objectivist ontology) or whether individuals are perceived to be socially constructed and dynamic and construct their own meanings of events or situations in the world (a constructivist ontology) (Bryman, 2004; Denzin & Lincoln, 2005). The ontological position of objectivism claims that social phenomena such as organisations exist independently of the individuals who occupy it. Rules and structures provide constraints that individuals must abide by otherwise negative consequences may eventuate (Bryman, 2004). Constructivism, in contrast, is an ontological position that maintains that social phenomena and their meanings are being continually produced and revised by social actors (Bryman, 2004).

In this thesis I have taken the ontological position of constructivism as there may be multiple perspectives by individuals on the phenomenon of SHRAs in the Pacific. While the interviewees all work in the wider fields of governance, education, or human rights, it was anticipated they would have a range of viewpoints given their different

institutional and philosophical positions.⁵³ Although the participants were purposefully selected because of their expertise, due to their own interactions and understanding of the world it was expected they might attribute different meanings to the research topic (Snape & Spencer, 2007). These differing opinions would, in turn, be further interpreted by me as the researcher as I managed and analysed the empirical materials through my own interpretive lens and the application of the theoretical framework of agenda setting. In regards to my research, this diversity adds richness to the understanding of the phenomenon under examination. Other research in the field of political science has also acknowledged the dynamic and socially constructed environment in which state and non-state actors operate and influence policy development (Carstensen, 2011; Hay, C., 2011; Peters & Pierre, 1998; Rhodes, 2011, 2011a; Wanna & Weller, 2011).

Epistemological considerations

Epistemology is concerned with what we know and how we know it, or what may be regarded as legitimate knowledge in a discipline (Bryman, 2004; Marsh & Stoker, 2002). The central tenet of epistemology is how understanding of the nature of knowledge can be acquired. Epistemology can be separated into two main stances, positivism and interpretivism (Sarantakos, 2005). A positivist epistemology asserts the social world can be studied as if it was the natural world and, therefore, independent, objective and value-free research is possible (Snape & Spencer, 2007). In contrast, the interpretivist branch affirms the necessity of studying the social world in a way that interprets and understands behaviour from the viewpoint of the social actors (Bryman, 2004; Hay, C., 2011; Travers, 2002). The epistemological stance of positivism is generally linked with an objectivist ontological approach, whilst interpretive epistemology is associated with the constructivist perspective (Sarantakos, 2005).

The interpretivist approach was pertinent to my study as I was concerned with how an aspect of society, in this case, institutional human rights arrangements at the sub-regional level, may be interpreted, understood, experienced, and/or produced by individuals or organisations that are associated with or have knowledge of the situation (Marsh & Stoker, 2002; May, 1997; Rhodes, 2011a; Travers, 2002). The assumption

⁵³ Participants have been identified according to their occupational position which enables the reader to consider the participant comments within this construct. See Appendix C for a list of the participants according to their assigned code, country of abode, and occupation at the time of interviewing. The codes are also mentioned below.

behind an interpretive methodology is that social reality is constructed and negotiated through interactions, relationships and value systems and thus lends itself to an inductive method. Therefore, as mentioned, insight and knowledge was sought from a limited number of participants in order to gain an in-depth appreciation of what these individuals perceived to be the factors shaping the development of SHRAs in the Pacific and the likelihood of agenda success.

Whilst a significant proportion of research conducted in the political science domain follows a positivist approach, there is space for the utilisation of interpretive methodologies (Bevir, 2011; Bevir & Rhodes, 2004, 2008; Hay, C., 2011; Rhodes, 2011, 2011a; Wanna & Weller, 2011). For instance, Mathur and Skelcher (2007) incorporated an interpretive method in their study of governance in public administration as it enabled tacit meanings to be revealed and explained. Bevir and Rhodes (2004), in their examination of governance in Britain, argued that an interpretive approach enabled a rich understanding of the particular situation and the respondent's frame of reference.⁵⁴ They comment:

We develop the argument that people can engage in a practice only because they hold certain beliefs or concepts. So, political scientists can explore that practice by unpacking the relevant beliefs and explaining why they arose. ... When political scientists interpret beliefs in this way, they provide insights into the behaviour of particular individuals (Bevir & Rhodes, 2004, p. 131).

Thus, in my research and in agreement with an interpretive methodology, the participants' experiences and subjective reality are accepted as valid data and as contributing to the meaning and understanding of the research area (Bevir, 2011; Rhodes, 2011a; Sen, 1977). Consistent with this interpretive approach, as the researcher I acknowledge my influence in the research process (Locke, 2001; Snape & Spencer, 2007). For example, I have actively shaped both the process and conclusions of the research through my determination of the research questions, selection of participants, methods of enquiry, management and analysis of the empirical materials, interpretation of the findings, and choice of theoretical framework.

⁵⁴ See also Rhodes (1997) and Wanna & Weller (2011) for further examples of the application of an interpretive approach in political science research.

Quantitative and qualitative research

Quantitative research tends to be premised on a positivist epistemology which generally draws on a deductive method and is associated with objectivist ontology (Bryman, 2004). It is usually equated with a ‘scientific’ approach which emphasises hypothesis testing, prediction, and causal explanations arrived at through statistical or other quantification procedures (Ritchie, 2007; Strauss & Corbin, 1998).

A qualitative approach, however, aligns with the interpretive paradigm and constructivist ontological perspectives which were applicable for this doctoral research. Qualitative research is “especially effective for studying subtle nuances in attitudes and behaviours and for examining social processes over time. As such, the chief strength of this method lies in the depth of understanding it permits” (Babbie, 2004, p. 307). Similarly:

Qualitative research is a situated activity that locates the observer in the world. It consists of a set of interpretive, material practices that makes the world visible. ... At this level qualitative research involves an interpretive, naturalistic approach to the world (Denzin and Lincoln, 2000, p. 3).

Secondly, qualitative research tends towards the use of more general research questions and the use of non-numerical data (Punch, 2000). The research method, explained in detail below, followed this strategy. Thirdly, qualitative research is largely descriptive and so by focusing in detail on one specific case a wealth of detailed or ‘rich’ data can be generated (Miles & Huberman, 1994; Patton, 2002). As the research was exploratory I was not seeking to test a hypothesis but rather to gain a ‘thick description’ of the ways people understand and attach meaning to the issues at the heart of the research topic (Bryman, 2004; Denzin & Lincoln, 2005; Geertz, 1973; Lewis & Ritchie, 2007; Minichiello, Aroni, Timewell & Alexander, 1996). Qualitative research is appropriate when collecting information from experts given their specialist perspectives and the complex nature of the subject area (Ritchie, 2007). Examining the participants’ responses to the interview questions allowed for an in-depth understanding of their views on SHRAs in the Pacific and the prospects for agenda success. Fourthly, by taking a constructivist perspective, I was aware that people can see different things, examine them through different lenses, and come to different conclusions (Rubin & Rubin, 2005). It was, therefore, anticipated the participants might respond differently to

the research questions. For these reasons adopting a qualitative approach was considered most appropriate.

Ethical considerations

Ethical principles are commonly divided into four main areas of concern: harm to participants, lack of informed consent, invasion of privacy, and deception (Bryman, 2004, p. 509). All of these areas were taken into consideration during the doctoral process.

While it was not anticipated that any harm would befall the participants, I was aware of the sensitive nature of human rights both as a contested concept and actuality throughout the Pacific region. In particular, during the period of interviewing in Fiji the political situation was still very tense as a consequence of the 2006 military coup. This particular circumstance impacted on my research. For example, I was aware that some of the participants in Fiji had publicly attempted to discredit the views of other people whom I was interviewing. Subsequently, some of the interviews with these individuals contained slanderous material. I was, however, aware that during elite interviewing personal animosities and factions may become apparent (Woliver, 2002). Although I had chosen to speak with people from across the Fijian political spectrum and I did not have specific questions about the coup or the interim regime, significant amounts of material on the political situation was provided by all of the Fiji-based participants. In addition, one contributor arranged for me to interview two prominent people working for the military regime, neither of whom were on my list of possible participants. Only one of these individuals allowed me to audio record the interview and agreed for me to use the interview material in my thesis.⁵⁵ On reflection, it seemed that the initial participant had wanted to ensure I did not ‘stack’ the interviews in favour of people opposed to the interim government.

The use of Framework (discussed below) as a tool to organise, manage, and analyse the empirical materials enabled me to determine what material was pertinent to the research question. The defamatory material did not emerge in the thematic categories as it was not directly related to the research topic and so it has not been included in the thesis.

⁵⁵ This individual is counted as the 22nd participant although no material from the interview with this person is included in the thesis.

Information pertaining to the political situation in Fiji was also only noted if it was linked to the subject of SHRAs in the Pacific.

The contributors were fully informed as to the purpose of the research and the interview questions before they consented to an interview.⁵⁶ They were all given the opportunity to withdraw from the research and also determine the location for their interviews. The rationale for the research was reiterated before interviewing commenced as this could have affected the interviewees' decisions to consent and divulge particular information (Lewis, 2007). Prior to the interviews I discussed the issues of anonymity and confidentiality. All participants, except one, agreed to named attribution of their comments. Initially I thought this would be beneficial, however, during the analysis process I realised that attaching names to quotes would not significantly enhance the meanings conveyed. In addition, I did not want future readers of the thesis or publications arising from it to dismiss certain comments because they were made by someone with opposing political or personal views. Several participants held reservations about the use of quotes in the final dissertation and requested that the quotations be sent back to them in the context of the chapters for checking prior to publication. Clearly this created a practical issue as it was unknown how long a participant might require before agreeing to the inclusion of a comment. The participants had each checked, edited, and agreed to the transcript of their interview, and so it seemed that keeping the quotes confidential, by using a descriptor instead of actual names, would be appropriate as well as practicable. To every extent possible the participants' privacy has been protected and the clarity and extent of information given to the interviewees during the research process has ensured that deception has not occurred. Ethical approval was granted by the appropriate research body prior to the interviews.⁵⁷

Studies aiming to generate knowledge either by describing a social problem or conceptually mapping it may have indirect influence on policy-makers and it is hoped that my research will provide significant knowledge for future Pacific policy

⁵⁶ All participants received an information sheet and the interview questions prior to agreeing to the interview and signed a consent form at the beginning of the interview (See Appendices A and B).

⁵⁷ The Massey University Human Ethics Committee granted ethics approval for the research on 5 September 2007. This process involved a peer review panel to explore the potential ethical issues as well as a written application to the Committee.

developments in the domain of sub-regional human rights arrangements (Marsh & Stoker, 2002). A summary of the findings of the research will be available to participants and relevant sub-regional and national human rights organisations. In this respect there may be an element of reciprocity to the individuals and agencies involved in the doctoral research if the findings contribute in some way to their ongoing work (Scheyvens, Nowak & Scheyvens, 2003).

The generation, management and analysis of empirical materials

This section will explore how empirical materials were generated, managed, and analysed during the research and discuss the process of triangulation which assisted with checking the integrity of the inferences drawn from these materials (Bryman, 2004; Ritchie, 2007; Snape & Spencer, 2007).

The generation of empirical materials

A case study approach can be utilised when the research questions seek explanation (why and how and what) and when linkages need to be made within and between cases (Yin, 2002). The term ‘case study’ has been used in a variety of ways and is strongly associated with qualitative research (Ritchie & Lewis, 2007; Yin, 2002). A case study might involve one or several cases (Bryman, 2004), multiple data collection methods (Creswell, 2003; Yin, 2002), a detailed and intensive study (Bryman, 2004), and be studied in a context (Creswell, 2003; Yin, 2002). The value of a case study as a research method has been widely debated (Creswell, 2003; Locke, 2001; Stake, 1994, 1995; Yin, 2002). Stake (1994, p. 236), for example, argues that a “case study is not a methodological choice, but a choice of object to be studied.”

A case study can be viewed as an exploration, over a period of time, of a bounded system (Creswell, 2003). The defining characteristics of this approach include a focus on one instance of a naturally occurring phenomenon, an in-depth study, and an emphasis on relationships and processes (Denscombe, 2007; Yin, 2002). Case studies are typically divided into single-case and multiple-case designs. The rationale for single-case designs may be when the case represents the critical case for testing theory, when it represents a unique or extreme case, or when it represents a revelatory case (Yin, 2002). In regards to my research, the case study is representative of both a unique case and a critical case. It is unique in that the research context and subject are

distinctive. That is, the agenda setting processes pertaining to SHRAs in the Pacific are inimitable and cannot be replicated in full elsewhere in the world. In addition, with the Asia-Pacific now being the only region in the world without a regional human rights arrangement, and the Pacific a sub-region of this broader configuration, the context of the case is also unique. As the case study also seeks to build upon theory, namely agenda setting in a sub-regional context, it can also be categorised as a critical case (Yin, 2002). The research was an examination of perceptions on a phenomenon in a real-life and bounded context over a specified time-period, and so a case study approach was applicable (Creswell, 2003; Locke, 2001).

For Lewis (2007, p. 52) the defining features of a case study include the “multiplicity of perspectives which are rooted in a specific context (or in a number of contexts if the study involves more than one case).” The perspectives may derive from multiple empirical material generation methods or from a single method used with people who have different perspectives. In this project a single method approach, seeking the perspective of a number of individuals with expertise but with potentially different views on the research area, was engaged. The qualitative case study approach allowed for an in-depth examination of the views of the research participants.

Qualitative researchers drawing on the case study approach might utilise several methods for generating empirical materials. These may include the study of documentation and archival records, interviewing, direct observation, and the examination of physical artifacts (Denzin & Lincoln, 2005; Sarantakos, 2005; Yin, 2002). Empirical materials generated in this research included semi-structured interviews and the use of secondary sources. An extensive literature review traversed the agenda setting, governance, and policy transfer literatures as well as contextual and historical issues regarding human rights in the Pacific and other parts of the world (see Chapters Two and Three respectively). This information underpinned the choice of strategies taken to generate the empirical materials, in particular the selection of participants, development of the interview schedule, and the choice of the secondary sources.

Due to the research topic and design, the non-probability sampling method of purposive sampling was engaged. This approach involved ‘hand picking’ the participants as described by Denscombe (2007):

The term is applied to those situations where the researcher already knows something about the specific people or events and deliberately selects particular ones because they are seen as instances that are likely to produce the most valuable data (p. 17).

As mentioned earlier, I interviewed two individuals who were not on my original participant list. The opportunity to interview these people arose through another participant and is an example of ‘snowballing’, wherein one contributor recommends other potential participants (Ritchie, Lewis & Elam, 2007). In this instance the original participant actually contacted the individuals and arranged the interviews on my behalf.

Information gleaned from the literature review and attendance at a conference⁵⁸ enabled the identification of key actors or ‘elites’ in the research area.⁵⁹ A number of these people had published or spoken publicly about the topic, others had been involved in previous attempts to develop SHRAs in the Pacific, and a small number worked for non-government or UN organisations in the human rights domain throughout the Pacific. Whilst not seeking representation from all PIF countries, I wanted to include participants from a range of jurisdictions and institutional contexts throughout the Pacific so as to gain a variety of perspectives.

The interviewees originated from Fiji, Vanuatu, Solomon Islands, the Cook Islands, Australia, New Zealand, Germany, and the US, and all of them were living in a PIF member country at the time of the interviews. Whilst sought, permission was not given to interview people from the New Zealand Agency for International Development, the New Zealand Ministry of Foreign Affairs and Trade, and Australia’s Department of Aid and International Development. In total twenty-two people were interviewed, although the material from one of these interviews has not been included in the thesis in accordance with the request of the interviewee.

The interviews took place in Fiji, Vanuatu, New Zealand, and Australia over a period of approximately eight months. In addition, several informal conversations, mainly with government officials and academics in Vanuatu, Samoa and Fiji, and observations by the researcher also provided excellent background information and increased my

⁵⁸ ‘Strategies for the Future: Protecting rights in the Pacific’ Conference, 27-29 April 2008, Apia, Samoa. I comment further on this conference later in this chapter.

⁵⁹ Elites may be “loosely defined...as those with close proximity to power...or with particular expertise. This can include corporate, political and professional elites” (Morris, 2009, p. 209).

understanding of the Pacific context and the perspectives of some small island country governments on their place in the Pacific. While it may have had some bearing on my analysis of empirical materials, this material has not been explicitly included in the thesis. The interviews all occurred prior to the decision by the PIF leaders to request a scoping exercise on SHRAs in the Pacific.

For the purposes of data management and analysis, the participants were placed in one of six categories that referred to their primary occupation: academic (Aca), supranational, that is, working for a cross-national organisation such as the United Nations (Supra), executive member of government (Exec), member of the judiciary (Jud), civil society representative (CSO), and lawyer (Law). This process of categorisation adds depth to the research findings as a level of attribution is made possible. It also allows the reader to gain more information as to the occupational position of the person making particular comments.

Three types of interviews are identified in the methodological literature: structured interviews, semi-structured interviews, and unstructured interviews (Bryman, 2004; Denscombe, 2007). The first of these involves the interviewer maintaining a tight control over the format and administering of predetermined questions. Each participant is given identical questions to which they may offer 'limited-option' responses (Denscombe, 2007, p. 175). This type of interview, with its use of pre-coded questions is especially suitable for quantitative research from which aggregated data is ascertained (Bryman, 2004). During an unstructured interview the interviewer will attempt to be as unobtrusive as possible and allow the participant to talk about their own views on a theme or topic. Semi-structured interviews fall between these two extremes. While the interviewer has a list of questions there is flexibility in terms of the order these are asked and the extent of the participant's replies (Aberbach & Rockman, 2002; Denscombe, 2007). Elaboration and clarification can be used to gain further insight into the views of the participant (May, 1997). A semi-structured interview is usually conducted over a limited period of time, for example up to two hours, using a set of research questions to guide the interview (Berg, 1998; Lewis, 2007). In the case of my research, each interview lasted between fifty minutes and two hours. Semi-structured interviews were selected as they enabled the use of wide-ranging questions, and an opportunity to "get at the contextual nuance of response and to probe beneath the

surface of a response to the reasoning and premises that lie underneath it” (Aberbach and Rockman, 2002, p. 674).

The semi-structured interviews could be further defined as expert or elite interviewing as the participants were selected due to their expertise on the research area (Gillham, 2000; Sarantakos, 2005). Some of the interviewees demonstrated extensive knowledge of key documents, activities, and resources, while others offered suggestions as to potential contributors. “Elite interviewing is characterised by a situation in which the balance is in favour of the respondent” (Burnham, Gilland, Grant & Layton-Henry, 2004, p. 205) and I was acutely aware of the challenges in securing access to interviews as well as conducting these in a manner that respectfully elicited the participants’ views on the research area. One person was explicit about his distaste of the research topic, the interview questions, and that a white person from New Zealand was undertaking research in this area. Interestingly, the participant and I were of the same ethnicity. The participant did, however, agree to participate and made further comments and changes on the interview transcript.

In elite interviews the power differential between the interviewer and the interviewee might also affect participation levels and the depth of knowledge shared (Burnham et al., 2004; Leech, 2002; Morris, 2009). The time constraints of the participants were evident in some of the interviews, one of which was interrupted by officials on several occasions. Overall it seemed that, apart from the person mentioned above, the participants were interested in the research area, willing to engage in the interview process, and keen to read the results at the conclusion of the research.

Secondary sources of empirical material were gathered throughout the research process. The secondary sources included documents from the PIF and NHRIs, newspaper and radio items mainly from the Fiji Times and Radio New Zealand International, submissions to an Australian Government Inquiry on Human Rights, and archival material from LAWASIA that related to the draft Pacific Charter of Human Rights. A substantial amount of this material was easily available either on-line or in libraries, however, the LAWASIA documents were archival material held only at their Brisbane office. I was given the opportunity to read the material and select which documents I wanted copied for my ongoing records. This privileged access was invaluable for gaining a greater understanding of the evolution and development of the draft Pacific

Charter. In addition, one participant requested I drew on his/her published material to supplement the interview material.

Several advantages for the use of secondary sources have been identified (Bryman, 2004).⁶⁰ Of relevance to this research were the limited associated costs and ability to access high quality material in a small amount of time and the utilisation of existing material for new purposes. Drawing on secondary data enabled triangulation which is further discussed below. To ensure my engagement with the secondary materials was robust and comprehensive in order to mitigate any overly partial interpretation, material was gathered from known sources and was as complete and up-to-date as possible thereby assisting to validate its authenticity (Bryman, 2004; May, 1997; Sarantakos, 2005; Scott, 1990; Shipman, 1997). It was also recognised that the secondary data had not been created specifically for the purposes of the doctorate and thus aspects of the documents were not relevant or comprehensive in addressing the research area. Conversely, some of the documentation provided additional details, for example, on historical events that were not revealed in the interviews. While the secondary sources contributed to the final analysis phase as discussed in Chapter Seven, it was not included with the interview material in the Framework approach to the management and analysis of empirical materials. It is to this model which we now turn.

Management and analysis of empirical materials

There are many approaches to managing and analysing empirical materials (Denzin & Lincoln, 2005). Given the qualitative approach and decision to use semi-structured interviews, I chose to utilise a thematic model known as 'Framework', which was developed by the National Centre for Social Research in the United Kingdom (Ritchie & Lewis, 2007). Framework includes several stages that are common to other qualitative analysis approaches, and extends across "managing the data and ... making sense of the evidence through descriptive or explanatory accounts" (Ritchie, Spencer & O'Connor, 2007, p. 219). Framework may be used for descriptive analysis, developing typologies, and explanatory analysis, and is "relevant to qualitative analyses concerned with understanding and interpreting substantive meanings" (Spencer, Ritchie and O'Connor, 2007, p. 209).

⁶⁰ Bryman (2004, pp. 204-205) notes the advantages of secondary data analysis include: cost and time, opportunity for longitudinal analysis, opportunity for cross-cultural analysis, more time for data analysis, the offering of new interpretations.

During the first step of managing empirical materials in the Framework process a sample of seven interview transcripts were reviewed and emerging themes or ideas in each of the transcripts were identified. The selected transcripts covered all of the occupational groupings identified earlier. A thematic index was developed to display the initial labeling, sorting and categorising of this interview data.⁶¹ Examples of these initial themes included factors that might prevent any future development of SHRAs, actors who are working towards the development of SHRAs, timing, and views on human rights and culture in the Pacific.

The next stage involved refining the original categories so that the index was succinct but extensive in its coverage of the identified themes. The index was then applied to all of the transcripts and index numbers were assigned to every sentence or paragraph of the raw data. At this point the original interview material was synthesised into the refined index categories and by ordering similar content across the transcripts eight thematic charts were developed.⁶² During this process it became apparent that some of the categories in the index were being used more often than others and some categories became redundant as overlapping or interlinked categories emerged. Critically, up until this point the words of the participants were used although through necessity these were summarised.

Following on from managing the empirical materials, I began the analysis process. This included an abstract classification of the data through the use of the identified categories. At this time I moved away from only using the interviewee's own words, made linkages within the themes, and began to group these under higher order labels that connected with my theoretical framework, for example, policy actors, alternatives, and venues. It was possible to detect patterns and associations within the categories and across the interviewees due to the highly structured nature of the Framework and the in-depth categorisation of the interview material. The identified themes informed a description of the key dimensions of the interview material which in turn led to an

⁶¹ See Appendix D for the index.

⁶² The titles for these thematic charts were: 1. The utility of SHRAs; 2. International factors; 3. Geographical factors; 4. Political factors; 5. Social/cultural factors; 6. Types of institutional arrangements; 7. Process for development; 8. Other key issues. Appendix E shows a partial example of the thematic charts.

examination of the empirical materials in light of the theoretical framework of agenda setting (Davidson & Tolich, 2003; Spencer, Ritchie & O'Connor, 2007; Stake, 1995).

An advantage of Framework is that the ideas and concepts within the empirical materials, in this case the interview transcripts, are maintained. The original meanings, thoughts and views of the participants are assured, the material can be usefully analysed, and patterns, themes and associations are identifiable (Ritchie, 2007). The thorough methodical approach also meant the volume of material generated was manageable and no vital material was omitted (Ritchie, Spencer & O'Connor, 2007). The explanatory account of the data, as presented in Chapter Seven, contributes to theoretical development and to the consideration of a wider application of the doctoral research (Ritchie, Spencer & O'Connor, 2007). While a criticism of Framework is that it is time-consuming and this was certainly true, I found it to be a reliable analytic tool that enabled the original interview material to remain grounded in the processes of labeling, conceptualising and analysis. Furthermore, it allowed the 'voices' of the participants to be kept at the forefront of the management and analytical processes.

Triangulation

The use of two major sources of data in my research, that is, interviews and documentary sources, enabled triangulation which assisted with checking the integrity of inferences drawn from the empirical materials (Ritchie, 2007). It also ensured greater validity (based on sound reasoning) and reliability (based on sound examples) within the case study approach (Yin, 2002). There are four types of triangulation which Patton (2002) describes as being: of data sources (data triangulation), among different evaluators (investigator triangulation), of perspectives on the same data set (theory triangulation), and of methods (methodological triangulation).

Drawing on only one source of data can limit the amount, depth and usefulness of the generated data whilst the value of triangulation can be seen in the extension of understanding through the use of multiple perspectives (Creswell, 2003). In this research triangulation is evident in the interviewing of experts from a range of institutional and professional backgrounds and with a variety of views on the selected policy domain (Ritchie, 2007). While interviews are an essential part of case study research they are verbal reports only and are, therefore, subject to problems of bias and inaccurate articulation or interpretation (Remenyi, Williams, Money & Swartz, 1998).

As described above, to counter this concern the material generated from the interviews was supplemented with relevant documentary evidence.

Data triangulation was most germane as the empirical material was generated from key informants and pertinent documentary sources. In contrast, investigator triangulation uses different researchers to explore the same phenomenon with the aim of reducing the bias of individuals. This was inappropriate within the context of this doctoral research. Theory and methodological triangulation enables the researcher to approach the data from different theoretical perspectives, or using a variety of methodological approaches, and given the size and subject of the research these approaches were also not viable.

Evaluative criteria for qualitative research

The challenge of ensuring research is trustworthy must be addressed by qualitative researchers. Criteria traditionally utilised in quantitative research may be inappropriate or irrelevant for assessing the standard of qualitative methods (Lincoln & Guba, 1985; Robson, 2002). Robson (2002) suggests: “there is considerable debate about the applicability of concepts such as reliability and validity, and the possibility and appropriateness of objectivity when assessing the trustworthiness of flexible qualitative research” (p. 109). Four alternative criteria proposed by Lincoln and Guba (1985, pp. 294-301) include credibility, transferability, dependability, and confirmability. While these terms are congruent with the quantitative standards of internal validity, external validity, reliability and objectivity they are considered more relevant to qualitative enquiry (Bryman, 2004) (see Table 4.1). To ensure trustworthiness in the research the qualitative criteria of Lincoln and Guba (1985) were employed.

Table 4.1 Quantitative and qualitative criteria and methods for ensuring trustworthiness

Quantitative paradigm	Qualitative paradigm	Methods for ensuring trustworthiness
Internal validity	Credibility	Data triangulation; participant validation; multiple accounts of reality
External validity	Transferability	Thick description of context and significance of the research
Reliability	Dependability	Audit trail (problem formulation, selection of participants, fieldwork notes, interview transcripts, data analysis decisions)
Objectivity	Confirmability	Audit and reflexivity of researcher

(Source: Adapted from Bryman, 2004; Lincoln and Guba, 1985)

Credibility

As noted, credibility may be ensured through the use of “multiple accounts of social reality” (Bryman, 2004, p. 274). Feasibility or credibility is more likely to be accepted if several sources provide similar positions or points of view. The Framework approach to the management and analysis of empirical materials allowed a thorough and transparent examination of the interview transcripts and the elucidation of common categories or themes. The use of documentary sources corroborated aspects of the interview findings and contributed to the process of triangulation.

In addition, credibility is premised on the researcher demonstrating good research practice. This was secured by fulfilling the ethical approval processes, proceeding under supervision, and establishing a chain of evidence or audit trail as discussed below. I also endeavoured to be open to the beliefs, views and preferences of the participants. Credibility may also be established through participant validation so that there is confirmation that their reality is correctly understood by the researcher. The participants, therefore, had the opportunity to review and edit their interviews so their responses could accurately portray their individual perspectives. All but one of the participants returned their edited transcripts which were then utilised in the data

management and analysis stages of the research.⁶³ Publication of part of my thesis material during the period of my doctoral research, including in an internationally recognised journal, also provided evidence of external review of the findings and analysis (Hay, 2009, 2010, 2011).

Transferability

Qualitative research usually entails an intensive small-scale study and thus the “findings tend to be oriented to the contextual uniqueness and significance of the aspect of the social world being studied” (Bryman, 2004, p. 275). In this respect it differs from quantitative research which is typically preoccupied with the generalisation of research findings to other contexts. As I was undertaking qualitative research I did not seek to generalise but to comprehend as fully as possible the emerging answers to the research questions. This approach was outlined earlier in regards to the research strategy and is what Geertz (1973) has called ‘thick description’. An in-depth examination of this case is, therefore, valuable in its own right and through examination and explanation will illuminate the policy domain.

However, depending on the findings of the research it was possible that theoretical generalisation might occur (Lewis & Ritchie, 2007). This concept refers to using “theoretical propositions, principles or statements from the findings of the study for more general application” (Lewis & Ritchie, 2007, p. 264). As an example, from the findings of my research I was able to elicit certain key factors that limit the likelihood of agenda success for SHRAs in the Pacific including tensions between culture and human rights, issues of state sovereignty, and the receptivity and political will of Pacific leaders. In turn these factors may also inhibit agenda success for other issues and alternatives due to the current contextual and institutional nature of the Pacific sub-region.

Dependability

The concept of dependability parallels the positivist concept of reliability and is concerned with ensuring methods are systematic, consistent and well documented

⁶³ The participant who did not return their transcript was contacted by email on four occasions and an acknowledgement of my email was received after the second email. After the fourth email notification it was indicated that due to time constraints their transcript would be considered accepted by them for inclusion unless I heard otherwise. No further response was received from the participant and the interview material was included in the Framework process.

(Bryman, 2004; O’Leary, 2010). To this end Lincoln and Guba (1985) recommend the use of ‘auditing’ to guarantee dependability. The researcher, for example, documents all phases of the project and allows this material to be readily accessible and readable for a peer or supervisor (Bryman, 2004). Throughout the research I have kept notes on topic formulation, selection of the participants, fieldwork notes particularly during and after interviews, data management, and analysis. The interviews have also been transcribed verbatim and given to the participants to verify and edit. Although I have not been audited, the notes are available to my supervisors and other people as appropriate and demonstrate transparency and dependability in my work.

Confirmability

The concept of confirmability recognises subjectivity in qualitative research and thus researchers are expected to have acted in a manner wherein their values and preferences do not overtly affect the research process (Bryman, 2004). Researchers should be aware of their personal values or theoretical preferences which will influence the conduct, findings or conclusions of the research. In other words a reflexive approach should be taken which “acknowledges how a researcher’s [characteristics] ... influence the choices made within the study, such as the research question itself and the methods of data collection” (Kuper, Lingard & Levinson, 2008, p. 689). As mentioned above, comprehensive notes were taken at all stages of the research. I have also endeavoured to be aware of my own preferences throughout the doctoral process. As an example, one participant was particularly dismissive of the research topic and interview questions. Although I did not agree with these sentiments I applied the same management and analysis techniques to the interview transcript and so treated this person’s comments in an equitable way to the other empirical material.

Reflections on the research strategy

In keeping with the interpretive approach it is appropriate to offer some reflexive comments on my experience of undertaking this doctoral research:

Reflexivity entails a sensitivity to the researcher’s cultural, political and social context. As such, ‘knowledge’ from a reflexive position is always a reflection of a researcher’s location in time and social space (Bryman, 2004, p. 500).

Serendipitous events have been notable throughout my research. The first of these moments had perhaps the greatest impact. During the first interview, held in New

Zealand, I was told about an invitation-only conference that was to be held approximately five months later in Samoa. The focus of the conference was on the concept of regional human rights mechanisms in the Pacific. The conference had been in the making for a considerable length of time and was being organised by Victoria University of Wellington Law School and InterRights, a United Kingdom-based non-governmental human rights organisation. It was certainly fortuitous that my first participant was a key organiser of the conference and at the end of our interview invited me to not only attend the conference but also present my (very) preliminary findings. Before going to Samoa I conducted another four interviews in Vanuatu and Canberra which, together with the first interview, became the basis for my conference paper.⁶⁴ In Samoa I met several people from throughout the Pacific whom I had already identified as experts in my research area and, therefore, wished to interview. Although I did not conduct any formal interviews while in Samoa, I heard several critical presentations and had numerous informal conversations. I also used the opportunity to build connections, arrange seven interviews and build on my existing knowledge of the research area. The conference itself was also critical in my research as an example of an opportunity for policy actors to mobilise support for the idea of SHRAs in the Pacific.

Another serendipitous moment occurred when an individual I wanted to interview but was unsure of how to appropriately approach, was invited to speak at an event in New Zealand. I planned to attend the event and then a colleague offered, as a relative of the prominent individual, to introduce me. As the individual was well-known, highly respected, and from a culture different to my own, I had been unsure firstly as to the protocols of access and secondly, whether s/he would show any interest in my research or be willing to be interviewed. My colleague, following appropriate cultural protocols, introduced me after the event, and I had a few seconds to mention my research. The individual immediately indicated s/he was interested in the research area and offered to speak with me about this in her/his home country. I was able to undertake the interview a couple of months later. Without the introduction from the colleague I am doubtful that I would have been able to access this individual and interview them for the research.

⁶⁴ The conference paper was later revised and published in the *Victoria University of Wellington Law Review*, Vol 40 (1), 195-214.

The military coup in Fiji in December 2006 significantly affected my research. Firstly, it led to a complete change in research focus. Access to Fiji in 2008 to undertake interviews was also a little precarious due to the new regime that had instigated new entry regulations that seemed to be unfavourable towards researchers. It eventuated that I was not questioned about my research on arrival and my interviews occurred without any difficulty whatsoever. In fact one of my participants was in a significant position of power in the new government. As mentioned earlier, the participants in Fiji all commented on the impact of the military regime on Fiji society and offered different perspectives on the current societal and living conditions. Perhaps I would also not have been given the opportunity to interview two prominent political figures if the former government had been in power.

Overall, I believe I achieved my goal to interview experts outside of the political executive of PIF member countries who had been publicly associated with the concept of SHRAs in the Pacific. However, even though I interviewed one person who had been involved in the writing of the draft Pacific Charter of Human Rights it may have been beneficial to interview three other individuals who had all been involved in this development. Although I informally spoke to one of these people while in Fiji, a formal interview may have also led to the inclusion of further interesting material. I also had email contact with another of these individuals although contact was limited and the answers to my questions were somewhat unclear. The third individual I was unable to locate. Interviewing people from the law fraternity was at times challenging and I sought to clarify terminology and meaning as required. This was certainly a learning area for me although I do not believe that my lack of knowledge in this area affected the representation and analysis of their material.

My knowledge and understanding of the Pacific context, especially in respect of political infrastructure and human rights, increased throughout the research process. This positively affected the interview questions which became more honed in the later interviews. One of the benefits of undertaking semi-structured interviews was the level of flexibility in adjusting the research questions or emphasising certain aspects over others. A further strength of the methodological approach was that as the interviewer I was able to ask questions for further clarification.

I chose at the outset of the research not to solicit the views of Pacific leaders in part believing, perhaps wrongly, that I would not be granted access. I was also concerned that the funding I had received would not allow me to travel to the necessary countries and that time constraints would limit whether I could interview all of the leaders, should they have agreed to meet with me. After speaking with a government official from a small island country very early on in the research I also became uncertain as to whether many PIF leaders had even considered the idea of SHRAs and so be able to offer significant comment.

Overall, I was satisfied with my selection of participants, that the interview material was of high quality, that I sourced valuable secondary information, and that the empirical materials enabled me to address the research question.

Summary

A qualitative (interpretive-constructivist) research approach was utilised to explore the perceptions of the participants on the prospects for agenda success of SHRAs in the Pacific. Using a case study strategy, data generation occurred through semi-structured interviews and secondary sources. Participants were purposefully selected for their expertise in the research area. A rigorous method of analysis was employed by means of Framework which enabled the findings to be managed, meaningfully analysed, and interpreted (Ritchie and Lewis, 2007). Steps were taken to ensure that the evaluative criteria of qualitative research were adequately met, including triangulation, seeking affirmation of the interview transcripts by participants, maintaining extensive research notes, ethical conduct, and transparency throughout all phases of the thesis. Having thus set the scene, the following two chapters outline the findings which emerged from the empirical materials.

Chapter Five

Issues, Alternatives and Policy Actors

Introduction

This doctoral research seeks to answer the question: what are the prospects for agenda success of SHRAs in the Pacific? In order to address this question a model of agenda setting, as outlined in Chapter Two, is employed. This theoretical framework focuses on: the issues and alternative solutions that are connected with the idea of SHRAs in the Pacific; the policy actors that are involved in the policy domain; the venues in which decisions may be occurring; the windows of opportunity that may be available; and the receptivity of decision-makers. The institutional context may affect each of these elements and thus will also be examined as part of the agenda setting process. It is anticipated that if these identified areas converge, and constraints are overcome in each of the categories, then the prospects for agenda success are increased.

As explained in the previous chapter, the Framework method of analysis was applied to the empirical materials which were primarily generated by means of semi-structured interviews. The findings drawn from the interviews are presented in this chapter and the one following. The first section of this chapter outlines the views of the participants on the key issues pertaining to the idea of SHRAs in the Pacific and how these issues may be being formed and framed. Three primary alternatives for SHRAs in the Pacific were identified by the contributors and these are explored in the second section. The final section examines the policy actors that may be involved in processes of agenda setting relating to SHRAs in the Pacific. To follow, Chapter Six explores the participants' perspectives on suggested venues for discussion and decision-making, windows of opportunity, the receptivity of Pacific leaders to the idea of SHRAs, and possible processes for increasing agenda success in this policy domain.

Issues

The issues raised by participants in this research that pertain to the development of SHRAs in the Pacific can be grouped into five categories. The suggestion was that SHRAs may, at least to some extent, be able to ameliorate or address each of these. The

following section outlines the issues of: awareness and prioritisation of human rights in the Pacific; addressing human rights violations; the limitations of NHRIs; international requirements; and geographical and economic challenges in the Pacific. Participant views on how each of these issues are being formed and framed in respect of SHRAs are also presented.

Awareness and prioritisation of human rights

One issue identified by many participants was that awareness and understanding of human rights is extremely limited across the Pacific countries, as summarised in the following extract:

We are [still] a way off from getting general acceptance where everybody will say human rights: that is a fundamental right. We are still in that role of education. And the one that always comes up, about Pacific cultures are communal they are not individual; we are saying no, it is about rights and responsibilities. It is not just about rights. ... [A]nd I suppose in the Pacific too when you are a developing country and your focus is about fundamental things like education and sanitation and housing, those are human rights, but people don't see that as human rights (Supra1, 2008).

Similarly, an interviewee from a small island jurisdiction questioned whether there is currently any consensus on definitions of human rights in the Pacific. The core question as she put it is: "What rights are we talking about? ... There will be a lot of problems in trying to get everyone to accept the correct combination of rights" (Exec3, 2008). Associated with this issue was the lack of demand for human rights institutional arrangements, at the national, sub-regional and regional levels, and limited interest in human rights matters by both governments and the public. The establishment of SHRAs was suggested as one way that these issues could be effectively addressed (Aca1, 2007; Jud1, 2008; Law2, 2008; Supra3, 2008).

Awareness and understanding of human rights was, according to several participants, intricately connected with these low levels of demand (Aca5, 2008; Jud1, 2008; Jud2, 2009; Law1, 2008; Supra3, 2008). It was suggested that if people were more aware of human rights then they might demand institutional mechanisms such as SHRAs to address concerns. As one contributor succinctly observed: "people must be aware that something has gone wrong with humanity [and] we need to be aware that there are human rights abuses. ... There has to be that awareness first, that there is a need for it"

(CSO2, 2008). A Pacific-based academic reiterated the link between awareness and demand:

You have to look at where the demand is and if there is not awareness at grassroots level, a heartfelt feeling that their interests are being trampled, and they want to advance their rights, there is no big demand, there is no big call. Where do those rights come from? Who is demanding? There is a great supply offering frameworks and mechanisms but there is not much demand for it (Aca5, 2008).

However, a lawyer believed awareness of human rights is increasing, as evidenced by:

[A] greater use of human rights standards by the courts, greater use of the language of human rights by politicians and PICT [Pacific Island countries and territories] governments, [and] ... a gradual thawing of hostility towards the notion of human rights, and a gradually growing appreciation of it. One of the reasons for this is that human rights are being taught, disseminated, used, and acted upon by Pacific Islanders themselves (Law2, 2008).

Others endorsed the idea of increasing people's awareness of human rights and the view that SHRAs could further progress this (Aca2, 2007; Aca3, 2007; CSO1, 2008; Law1, 2008):

I agree there is definitely a need for a human rights commission or framework definitely in the region, right now, to look at some of the competing and some of the interesting problems we are facing with regard to trying to develop the region and the rights that need to be protected, the need for education, the need to promote wide understanding and awareness for what are [the] rights that need to be protected vis-à-vis demands of political governments as to have their political agenda carried through (Jud1, 2008).

The low priority currently placed on human rights by some Pacific governments was also highlighted (Aca3, 2007; CSO1, 2008; Supra1, 2008). These sentiments are summarised in the following two extracts:

One thing that can prevent countries from the Pacific coming together is that unless they share human rights as a priority there will always be people dragging their feet. ... [A]nd from Melanesian countries what I know for sure is that human rights is not often the priority or the second choice or the third choice. Usually the first priority is staying in power and then probably the second priority is economic considerations (Aca3, 2007).

Human rights I think are looked at as something very political and very controversial and confrontational and that's just not the Pacific way. Generally speaking it is not something that most of the leaders, [or] governments, have a big interest in and there is also the underlying factor that a lot of governments here think that it doesn't fit within their traditional ways (Supra1, 2008).

However, another participant suggested that Pacific leaders who say “they have other more pressing priorities such as a young population who need to find jobs, economic growth, [and] development” need to see “that human rights is part of all that and it needs to be made or incorporated and integrated in policies generally” (Law1, 2008). A civil society representative also cautioned against human rights being viewed as simply a Western or foreign construct and accused Pacific leaders of wrongly using culture as a rationalisation for abuse of human rights (CSO2, 2008). This idea of human rights being “interminably foreign” (Aca3, 2007) was mentioned in other interviews and there was certainly a sentiment that while awareness of rights may be increasing there is still tension between human rights, Pacific culture, and tradition that may hamper efforts towards the development of SHRAs (Aca3, 2007; Aca5, 2008; CSO1, 2008; CSO4, 2008; Jud1, 2008; Supra2, 2008). Also, since it was expected Pacific people would be employed in any SHRAs that might be established, the perception of human rights as a Western construct that has little relevance might to some extent be addressed (Law2, 2008). In this way SHRAs could help foster a culture of human rights in the Pacific (Aca3, 2007; Jud2, 2009).

SHRAs were considered to be a mechanism for creating “a much more nurturing and creative environment for the promotion and protection of human rights; that you will provide a greater regional focus and relationship-building amongst the states and non-governmental organisations so that you have got a sustained momentum” (Supra3, 2008). Moreover, they could help keep human rights on the political agenda and ensure human rights issues remained visible (Aca2, 2007). From a Fiji perspective, one participant hoped one of the outcomes of SHRAs could be to:

[L]ift the whole country's acceptance and adherence to, for example, broader governance. That if you have a country that understands what human rights are and the importance of human rights, there is also a flow-on effect about democratic principles in a rule of law. That is what I would hope (Supra1, 2008).

Addressing human rights violations

A second issue was related to alleged human rights violations in Pacific states and, most recently in Fiji, with several contributors suggesting SHRAs could play a role in both redressing human rights violations and potentially preventing further human rights abuses (CSO1, 2008; CSO2, 2008; Law2, 2008). SHRAs might also support national institutions as illustrated in the following extract:

I think there are a lot of opportunities ... because as I have said earlier there is a gap, we don't have the higher level court system in the Pacific, we haven't had tribunals to address the massive human rights violations that took place during political crisis and civil war types of situations (CSO1, 2008).

A few participants believed the impetus for SHRAs in the Pacific has stemmed from the occurrence of security issues and human rights violations in Fiji, Tonga, Bougainville, Papua New Guinea, and the Solomon Islands, and the way these incidents have been addressed internally and sub-regionally (CSO2, 2008; Exec1, 2008; Exec2, 2008; Exec3, 2008; Jud2, 2008; Law2, 2008). One judge bluntly exclaimed:

I daresay if we'd had this Pacific Supreme Court and we'd had a regional human rights commission up and running back in September of 2006 when Bainimarama and Qarase first got the public daggers drawn ... you could have referred their very public debate out for an opinion of either the Commission or the Supreme Court and Fiji wouldn't be in the mess it's in today. That's the reality. ... [I]t's a real practical demonstration of how effective regional bodies could have assisted in that situation (Jud2, 2008).

An official also reflected on the Fiji coup and calls for sub-regional arrangements:

I understand why there are groups, for example the Fijian advocacy, on that question [of developing SHRAs]. My perception is that it comes very much from their own experience of a particular arrangement in their country and they can see from their perspective how it would be valuable to have a next layer of a complaints mechanism to go to because of their perception of the lack of effective mechanisms at the national level in that country. So I can see why they're calling for it (Exec4, 2008).

These political situations may be seen as 'enabling factors' for the development of SHRAs which could offer an alternative strategy for assisting with the resolution of national problems (Exec1, 2008).

Limitations of National Human Rights Institutions

Thirdly, as noted in Chapter Three, there are only two independent NHRIs in the Pacific, although the Fiji Human Rights Commission is still operational. It was noted throughout several of the interviews that SHRAs were perceived to be more practical and cost-effective than establishing NHRIs in the smaller states of the Pacific. It was also suggested they might complement or reinforce the work of existing NHRIs and provide a mechanism for those countries without a national institution (CSO1, 2008; Exec4, 2008; Jud2, 2009; Law1, 2008; Law2, 2008; Supra2, 2008; Supra3, 2008). One lawyer stated:

I think setting up human rights commissions in each of the countries obviously is not feasible for resource and financing purposes, so it probably makes more sense to have some sort of sub-regional organisation that deals with these issues (Law1, 2008).

Therefore, SHRAs might not replace NHRIs but rather be a complementary mechanism (Jud1, 2007; Law1, 2008; Law2, 2008).

Several factors that may limit the development of NHRIs are explored below and emphasise the sentiment that SHRAs might be a better alternative for some Pacific countries. The small size of many of the Pacific Island countries and territories was cited as a key factor that could hinder the establishment of NHRIs:

Some of them are very very small and have very small populations so may not necessarily have the inclination nor the resources to establish something fully compliant with the Paris Principles. ... [Y]ou have seen a lot of debate over the last few years around how can small island states maintain independence. For a national institution that is working in a very small tight environment there are a lot of issues around that (Supra3, 2008).

Resourcing of NHRIs was seen to be a significant limiting factor (Aca1, 2007; CSO4, 2008; Jud2, 2008; Law1, 2008; Law2, 2008; Supra3, 2008). Difficulties with institutional arrangements in small countries, such as impartiality and independence, were also widely noted and it was thought SHRAs may be better placed in regards to these issues (CSO1, 2008; Jud2, 2009; Law2, 2008). The following extracts are indicative of respondent comments:

In countries such as Fiji, which has its own national human rights body, the additional advantage of a regional body is that it may provide redress where the national system is

unable to deliver justice. ... [R]ecent criticism of the Fiji Human Rights Commission for its stand in human rights abuses by the interim regime is an example of the vulnerability of national institutions to political influence in small countries (Law2, 2008).

In Fiji we have a high level of court cases going on and because we are a small country people are always questioning the impartiality of the judges. [I] think a [Pacific] court could address a lot of high level cases and the judgements would be treated as more impartial (CSO1, 2008).

In a small society like Tuvalu or Cook Islands, with 8,000 or 9,000 people, arms-length decision-making is almost impossible. It is a challenge for all decision-making structures in terms of accountability and transparency and having a [sub-] regional commission means that arms-length decision-making can be made (Law2, 2008).

In contrast to these views some participants emphasised the importance of NHRIs over sub-regional mechanisms (CSO2, 2008; CSO4, 2008; Exec2, 2008; Exec4, 2008). The words of an executive representative reflect these opinions:

Can't we strengthen the sovereign or the internal individual country mechanism that exists within that country because after all there is no point having mechanisms which aren't going to deliver to the groups or individual[s] who may be the actual complainants? ... [I] would really suggest to people who are advocating a Pacific rights mechanism: let's strengthen the individual countries first (Exec2, 2008).

Overall, while many interviewees saw considerable value in NHRIs, concerns about budgetary feasibility and independence were raised. SHRAs were largely viewed as a complementary mechanism to NHRIs and that Pacific governments and citizens would benefit from having both of these institutional arrangements available (Jud1, 2008; Jud2, 2009; Law1, 2008; Law2, 2008; Supra3, 2008).

Meeting international requirements

Fourthly, several participants thought SHRAs could assist Pacific states in meeting international requirements regarding human rights, such as the ratification of international treaties and the Universal Periodic Review (UPR) process. SHRAs might also have a role in increasing transparency and accountability in national governance processes which are a commonplace requirement by donors (Aca1, 2007; CSO1, 2008; Jud1, 2008; Jud2, 2009; Supra2, 2008).

All Pacific countries are required to meet certain international human rights obligations. As noted by one informant: “the whole issue of human rights is an international issue. It is something that the United Nations expects” (Exec3, 2008). However, it was also noted that the Pacific has low levels of ratification of international human rights treaties and an overall sense that the UN and its expectations are “all too far away” (Law2, 2008; Supra2, 2008). A participant from a New Zealand university suggested the following explanation for this current situation:

It is too laborious [and] we do not have the resources to comply with the compliance mechanism. And the other is the cultural aspect, well what does Geneva know about the Pacific? (Aca1, 2007)

Fulfilling UN reporting requirements as well as supporting individual state ratification and implementation of treaties was recommended as functions of SHRAs (Aca1, 2007; Law2, 2008; Supra2, 2008). Many states within the Pacific currently rely on consultants to provide advice, monitor, and write reports pertaining to international treaty obligations. This is expensive and time-consuming and SHRAs might enable institutional expertise to become centralised and more accessible; thus Pacific governments could become less reliant on “parachute drops” (Aca1, 2007; Jud1, 2008; Jud2, 2009). A supranational representative highlighted the potential utility of SHRAs in this area:

So fulfilling their international obligations, the [sub-] regional commission could help build the capacity internally of these countries on human rights ... on ratification, implementation, reporting, obligations, so the same people would be continually liaising with the same people rather than someone coming in randomly and every time having to figure it out again (Supra2, 2008).

The UPR process was considered an important development in terms of national and sub-regional engagement with human rights issues:

I think it is part of the process of decentralisation of human rights obligations. I don't know whether people realise it but it really is the second wave of human rights. We've reached that natural conclusion of the uptake of the raft of human rights agreements and methodologies that happened in the 20th Century [which] clearly didn't work. The second wave which has been started by the UPR will really see human rights decentralised and brought back to the regional and national level (Jud2, 2009).

Accordingly, the UPR process might enable “opportunities for really productive dialogue with Pacific politicians [which] might open up dialogue about the benefits of establishing a [sub-regional] charter” (Jud2, 2009). Supporting Pacific countries in the UPR process was also considered a possible role for SHRAs especially due to its compulsory nature:

There are certain procedures now where it is in the interest of governments frankly to participate and they have an obligation to participate now with this new Universal Periodic Review. All countries have to participate by schedule. It is not that they can keep putting it off which is what some of these countries have done here (Supra2, 2008).

In contrast, an executive member of a Pacific Island country claimed the UPR process could render SHRAs unnecessary:

... [b]ecause every state is restoring power back to itself and reporting to the United Nations directly. A [sub-] regional mechanism may be something of the past. The obligation and responsibility has now been put back on the state without all the middle layers of the [sub-] regional commissions (Exec3, 2008).

According to some participants, if SHRAs were involved with assisting Pacific states to meet their international obligations in a timely manner this may lead to several positive outcomes including increased stability in the sub-region, increased donor funding, and improved status of the Pacific in the international community (Aca3, 2007; Exec1, 2008; Jud2, 2009). The following extract summarises these views:

The opportunities: of course that such a body is both seen to help promote human rights and is able to achieve that in substance as well. And I think that would be very positive both for individuals in the [sub-] region, [and] it'd be positive for governments as well. But I think it would be positive more broadly for the [sub-] region's image. I think that it would be a tremendously exciting thing that would attract a lot of interest in the [sub-] region but also around the world (Exec1, 2008).

Geographical and economic challenges in the Pacific

Many participants noted that the Pacific has specific geographical and economic elements that may restrict some states in meeting the needs of their people. For example, the small state nature of the Pacific presents challenges in terms of establishing appropriate national institutional arrangements. Limited human and financial capacity may also be a constraint, particularly for the small islands. The development of SHRAs may assist in addressing these issues (Aca5, 2008; CSO4, 2008; Jud1, 2008; Jud2, 2009; Law1, 2008):

It [SHRAs] is an idea well worth pursuing [particularly] in the Pacific which is far-flung and we are a collection of relatively small communities. ... [I]t is something that the Pacific as a whole given its size and relative economic weakness needs to look at (Law1, 2008).

The two judges also indicated the establishment of SHRAs would be worthwhile given the issues associated with being a sub-region of predominantly small states:

One of the reasons why this [sub-] regionalism makes sense to me is not because Fiji needs it really, it is because there is [sic] thirteen countries out there whose smallness is in itself a major, major, major hurdle for any form of development. So some of the things that they need to do internally which they will never be able to resource can be done at the [sub-] regional level for them. ... [T]he issue of setting up a body like this in the [sub-] region is magnified because of the problem of smallness (Jud1, 2008).

There may be a case for saying some of the smaller states might find it more convenient and certainly more productive to become good citizens by being in a small alliance that has a [sub-] regional human rights commission (Jud2, 2009).

One academic spoke at length of the conservatism associated with the small island state character of the Pacific. This participant asserted the conservative social structure may have a direct effect on the promotion and protection of human rights as people “might be very aware that their rights have been trampled in some way but have to continue to live in these societies and so they have to make some accommodations there” (Aca5, 2008). Consequently there may be some reluctance to access SHRAs:

It is a matter of small states, where if you make a wrong move it could be the end of our society. Basically those ways of life that have proven sustainable in the past are those that are known to be sustainable in the future, this is the conservative mentality. And

any move away from that is a potential danger rather than a creative innovation. ... There's not 800,000 people living together, there's a few thousand living on islands and then sub-communities within that, so very small groups of people. So maybe the incentives are to move along with the whole society rather than try to stand out in any way (Aca5, 2008).

A representative from a civil society organisation echoed this opinion:

Approximately 75-80% of the Pacific still lives in rural areas, they still engage in subsistence economies, that what goes on outside of their village, outside of their tribal units is so remote from their realities that it means very little to them, let alone this thing called human rights, which to them is just another foreign concept. Their human rights are about how they feed their families, what their traditional obligations are for the coming week, for the coming year (CSO4, 2008).

Although it was noted: "there is a conservatism in Pacific culture that is a reality and human rights will only grow at the rate that culture can receive it and embrace it," it was also thought that SHRAs may contribute to furthering understanding and knowledge of human rights and be a forum in which issues of human rights, culture, law and tradition could be grappled with (Aca3, 2007; Aca5, 2008; Jud2, 2009). The small state nature of the Pacific was, however, also seen as a hurdle in regards to accessing SHRAs and perspectives on this issue will be outlined in the following chapter.

Limited financial and human resources in the Pacific were highlighted as another factor that might both encourage and impede the development of SHRAs. In respect of issue formation, several participants insisted SHRAs may create efficiencies for Pacific countries as "[the sub-region] could then pool its resources as well as its expertise" (Exec1, 2008; Law1, 2008; Supra2, 2008). This view was reiterated by a member of a supranational organisation:

[SHRAs] could be quite efficient for the region, saving resources whereby you have a small country that maybe they don't have to go out and research or reinvent this new decision whereby another country in the region has already done it. ... [I] think the institutional expertise that would be accessible to Pacific Island countries, and New Zealand and Australia too, would be extremely important (Supra2, 2008).

One participant suggested creating "a better economic platform for states in the [sub-] region [which will] feed back into greater prosperity in the end which is ultimately what

people want in their daily lives. They want to be respected, they want their dignity intact and they want to be able to feed their children” (Supra3, 2008). Furthermore, as SHRAs would be “home grown” it may hold greater relevance to Pacific peoples (Supra3, 2008). It was anticipated that SHRAs would be developed by, managed, staffed, and utilised by Pacific peoples (Aca3, 2007; Law2, 2008; Supra 2, 2008; Jud1, 2008; Jud2, 2009). Individual countries might directly benefit from the skills that their people develop whilst working in a sub-regional institution as “it’s going to allow an opportunity for a lot of Pacific Island lawyers or Pacific Island technical people to specialise and generate more work in human rights” (Aca3, 2007). Pacific leaders might also see advantages in having some difficult issues resolved by a sub-regional body (Jud2, 2009).

Alternatives

The specific arrangements consistently identified by the majority of the participants as means of addressing the issues described above, included a sub-regional charter of human rights, a sub-regional commission of human rights, and a sub-regional court or legal facility with a human rights component. Whilst these mechanisms are not considered mutually exclusive and could thus be developed either consecutively or simultaneously, they were discussed as discrete institutional arrangements.

A Pacific Charter of Human Rights

Over half of the participants commented on either the LAWASIA draft charter (see Chapter Three) or the idea of a new charter of human rights for the Pacific. While none of these people were opposed to a charter, concerns were raised as to whether it should proceed or follow other SHRAs, what human rights standards it could be based on, and the timing of such a development.

According to one interviewee any sub-regional work on the protection of human rights in the Pacific should begin with the development of a charter, as “you [will] have to be able to define what the rights are in order to be able to protect them” (Supra2, 2008). Two other people were also resolute that a charter should be established prior to and as the basis for other institutional arrangements (Aca3, 2008; Exec3, 2008). An official insisted:

We need to have a human rights convention first, or a charter where everyone agrees on the framework, then you can bring in a commission that will monitor the charter and a court that will enforce it (Exec3, 2008).

Deciding on the content of a charter, however, is likely to be complex and one judge cautioned that a charter “is not a silver bullet” that would solve all human rights issues in the Pacific (Jud2, 2009). A charter might embody “a Pacific expression of international human rights standards” (Exec5, 2008) or “guiding principles” (Law1, 2008). It could be binding or non-binding and should “be able to take account of what is happening in that particular region” (Aca1, 2007). One of the participants touched on the standards underpinning a charter:

Ultimately the Pacific Islands Forum leaders would need to wrestle with whether you have a human rights treaty that is drafted specifically for the Pacific or you simply largely use the UN covenants. ... [I] personally favour using the UN instruments so in a sense you’re using global standards (Exec1, 2008).

The undermining or dilution of the international standards of human rights was highlighted by several other participants as a significant risk factor in the development of a Pacific charter (CSO1, 2008; Exec5, 2008; Law2, 2008; Supra1, 2008). A typical response was the following:

If we are going to have a [sub-] regional mechanism it can’t derogate from what has already been set as international human rights standards. And then if it isn’t, then it isn’t going to be worth anything. So that is a huge risk and it is something that has to be managed and monitored (Supra3, 2008).

It was also questioned as to whether it is currently the right time to develop a Pacific charter and especially one that meets international standards:

If one wanted to reach a charter that didn’t fall within minimum standards it would take a very, very long time and could collapse the whole process. ... [I] think that there needs to be basically a much greater effort first of helping people here understand what human rights are before you have them jumping into writing a charter (Supra2, 2008).

I am just not sure whether we are at the stage yet in the Pacific of having a charter that is of international standard. ... [I]f you were to go for a charter at what level would that charter be acceptable and at what level of detail, so I think there are risks in that. If you

had a charter that was ‘motherhood and apple-pie’, that would probably be acceptable but is that really acceptable to human rights specialists? (Supra1, 2008)

Overall, while several participants agreed with the concept of a Pacific charter it seemed that consensus for such an institutional mechanism throughout the Pacific would be difficult to secure (Jud1, 2008). The relevance of a charter to people at the grassroots of Pacific society was also questioned:

A Pacific charter? I don’t know how useful it will be. I don’t think it would be of much use until all the Pacific countries are vibrant democracies. ... [U]ntil the Pacific populations understand about democracy and know about human rights themselves a Pacific charter will be useless; it will just be a document which has no meaning for the grassroots level (CSO1, 2008).

Beginning with a different alternative might be a better option:

I think again a charter could also be something that would scare and would take a long time to develop. I know that in other regions of the world normally you start with a charter and then you have a commission that helps carry it out but I do believe that it could be done the other way (Supra2, 2008).

A final point that success is not measured just by the development of an institutional arrangement but its effectiveness is noted:

If people want to have a charter just so they can say they have a charter, you know in the Forum we have so many declarations you get to the stage where you say it may make somebody feel good to say I have got a declaration on this, but it is the implementation that is critical (Supra1, 2008).

A Pacific Human Rights Commission

Support for a Pacific human rights commission was forthcoming. A judge from a small Pacific Island country, for example, supported the establishment of a sub-regional commission “to articulate and advocate” especially in regards to environmental rights due to changing climatic conditions (Jud1, 2008). Other contributors suggested a commission could reinforce and monitor a Pacific charter, be a complementary mechanism to a sub-regional court by having an adjudication and conciliation role, and promote human rights education (Exec1, 2008; Exec3, 2008; Jud2, 2009; Law2, 2008).

An official summarised the general thinking on the functions of a commission:

It might be a hub which offers promotion and advocacy services to Forum countries. So in other words it is a secretariat of services for governments who want to look at human rights in their own countries and how to promote and protect them. And it might do education related work, it might do promotion work, it might have collaborative projects with governments and relevant non-government organisations as any other national institution would, and it might be no more than that, as opposed to some other sort of overarching structure presumably sitting at least alongside if not above the Forum Secretariat itself. So there are all sorts of ways a human rights commission could operate within a [sub-] regional framework, depending on your model of regionalism basically, and how you want it, and what leaders thought would help them the most (Exec5, 2008).

However, as noted in the following comment and endorsed by other contributors (CSO1, 2008; CSO4, 2008; Supra2, 2008), discussions as to the role of a potential sub-regional commission are at an early stage:

I think maybe a lot of the people who are talking about it [a commission] haven't broken down the different roles that can be played. ... [W]hether a human rights commission could spend more time on advocacy and citizen awareness or awareness of leaders or awareness of people in positions of responsibility, as compared to hearing cases and making some sort of judgement. And I think those different roles of a commission need to be more clearly delineated and discussed. So that the fundamental question becomes, well what do we mean by a [sub-] regional human rights body? (Aca5, 2008)

Possible advantages of a sub-regional commission were identified by a supranational representative:

Pacific countries [could] have accessible expertise on human rights to fulfill their international human rights obligations ... build the capacity internally of these countries on human rights ... take human rights complaints ... help in the development of national human rights commissions or something akin to that depending on the size of the country ... advise on laws and practices within a country on human rights issues (Supra2, 2008).

Developing the functions of a commission over time might also be appropriate so as to build both the support and capacity of the institution (Law2, 2008). This view was endorsed by a contributor who recommended a stepped approach:

What you have to do is to have a commission that is probably about advocacy and education and getting everybody on board and then you build towards a [court]. ... [I] think if you start off with a facility that is about advocacy and education and assistance, I think you have more chance for success and I think we can't be too ambitious. If you start off with a [sub-] regional facility that is, for example, about monitoring and reporting then I think your chances of success are less (Supra1, 2008).

A lawyer also endorsed the idea of an incremental development and commented: "I think just at least to start off with [it would be a good idea] having some sort of organisation or structure that looks at how human rights can be protected and enhanced and using the courts in the respective countries" (Law1, 2008).

The issue of whether New Zealand and Australia would be included as members of the commission was also raised alongside the suggestion that a sub-regional institution might be more appropriate for countries where independence of decision-making may be questioned (CSO4, 2008; Exec3, 2008; Law2, 2008). One lawyer, an advocate for a commission, commented:

[H]aving a [sub-] regional commission means that arms-length decision-making can be made. And, you know if you are living in a small society and half the people you are related to or you wantok to, having a [sub-] regional body means you can still access justice from a human rights violations point of view (Law2, 2008).⁶⁵

The idea of a sub-regional human rights commission was the most widely supported alternative solution discussed by the participants. The potential role of a commission was also seen to be more wide-ranging than the other two institutional arrangements.

A Pacific Human Rights Court

There is a precedent for the concept of a sub-regional human rights court in the Pacific as the Western Pacific Court of Appeal previously sat in Fiji in the 1960s and serviced many of the northern Pacific countries (Jud1, 2008; Jud2, 2009). Two of the participants were involved in rejuvenating the idea of a sub-regional court or legal facility, however, only a small number of other interviewees were aware that work had recently begun on building support for this idea (Aca2, 2007; Jud1, 2008; Jud2, 2009). The concept advocated was not a stand-alone sub-regional human rights court but an overarching

⁶⁵ The Melanesian term 'wantok' refers to the people within a clan or village/group of villages who speak the same local language.

Pacific Supreme Court, within which might sit a human rights division (Jud2, 2009). Campaigners for a Pacific Supreme Court also envisage a cluster of mechanisms or functions that could support and supplement the court (Jud2, 2009). A Pacific law centre, for example, might incorporate a court, mediation, teaching and training in law, resource distribution, and have strong connections with the civil society sector (Jud2, 2009). It was proposed that:

[O]ne of the functions of the Pacific law centre will be to provide Pacific law drafting and revision services. They [small island countries] can't afford to have Law Commissioners so their law tends to get very stale over time, quite quickly and they're reliant on parachute drops of consultant aid to cobble on new bits and pieces of law, often without context and certainly not with sustainability (Jud2, 2009).

It would be intended for the court to reflect its Pacific context as described in the following interview extract:

It has to be a Pacific-based solution and that plays out in very practical ways, for example, you may end up with a Supreme Court that has a jurisdiction to resolve matters by talking about issues rather than making judgements because talking about difficult issues is the way in which the Pacific tends to resolve difficult issues. We do need a particularly Pacific looking and sounding and acting court for it to be acceptable to all of these Pacific Island countries (Jud2, 2009).

Some Pacific judges are currently active in pursuing the harmonisation of Pacific law, and a sub-regional court and/or law centre could build upon this approach, and thereby address the tension between the older colonial system, customs and traditions (Jud2, 2009). A sub-regional court might have other specific benefits, as suggested by two civil society representatives:

I think in terms of resources it makes a lot of sense. When you look at the appeal courts, for instance in Fiji and some of the other countries, they are often peopled by expatriate judges from New Zealand and Australia and around the [sub-] region. It is obvious it is difficult for the Pacific to people its own courts at the moment (CSO3, 2008).

If you are a very tiny little country they probably don't have a high court, maybe, so I think a [sub-] regional court could address a lot of high level cases and the judgments would be taken, would be treated as being more impartial maybe and ... it would probably be given more weight, carry much more weight (CSO1, 2008).

An academic from a small island state saw value in the concept of a sub-regional court and utilising it as an appellate court which Pacific peoples could access once they had exhausted legal processes in their own countries (Aca3, 2008). The interviewee did, however, caution against an open door policy as “the court could end up having a backlog straightaway ... because there are a lot of political issues in the Pacific” (Aca3, 2008).

In contrast to these supportive stances, two participants questioned the relevance and necessity of a sub-regional court:

I think there are things that can be done on a [sub-] regional basis to strengthen the judiciary [but] that doesn't mean a court. ... [Y]ou could have a [sub-] regional law commission or some kind of legal foundation, or a legal think tank on a [sub-] regional level that could be inter-governmental ... different things like that that could actually be quite efficient for the [sub-] region, saving resources (Supra2, 2008).

I just don't know if we necessarily need it. I would say our courts are already functioning quite well. Why do we need this? I just personally think it would be a waste of resources (Aca2, 2007).

The timing of a sub-regional court development was also questioned (Jud1, 2008; Supra2, 2008). As one participant noted:

I think that it is probably a long-term objective although I am not aware that any of the countries have actually taken a position on it. I think that it is something that would probably require further discussion but I think it is a concept worth pursuing. A court would be perhaps something in the medium term (Law1, 2008).

Of the three institutional responses identified by participants to the challenges discussed earlier in this chapter, a Pacific human rights commission received the most favourable attention. Few contributors were aware of the recent activity in regards to a Pacific court and support for a Pacific charter was not widespread. Many participants spoke frankly of their views on who might be advocating for SHRAs in the Pacific and from which sectors of the sub-region support might be necessary, so as to increase the prospects for agenda success of SHRAs in the Pacific. The work of policy actors is explored in the following section.

The work of policy actors

A range of policy actors, either acting as individuals and/or in a collective sense, may be active during agenda setting processes. These actors may include individuals advocating for a specific idea, policy networks or communities, members of the political and administrative executive within governments, and sub-regional, regional, or supranational decision-making bodies. The participants mentioned several policy actors that were either known to be advocating for SHRAs or whom they thought would need to show support for such an idea if it was to achieve agenda success.

A small number of people were named as advocating for specific institutional arrangements, and the idea of champions was raised in more general terms. Opinions were frequently offered on the importance of people from small Pacific Island countries and their governments taking the lead role in any development of SHRAs, rather than having actors from the Asia-Pacific, Australia, and New Zealand dominating these processes. The role and influence of civil society as policy actors throughout the Pacific were highlighted. Several participants also spoke of the motivations of policy actors during their interviews.

Policy advocates

Several contributors spoke of the importance of having the ‘right’ people championing the concept of SHRAs for it to be able to gain traction amongst Pacific leaders. As one person expressed: “it comes down to a person who has to be able to lead it, and like a canoe will sail when the wind is right, pull back a bit but make sure at the end of the day you are going in the general direction and moving” (Jud1, 2008).

The people named in interviews as being advocates of SHRAs included Justice Kishor Govind, Ms Imrana Jalal, Ratu Joni Madraiwiwi, and Justice Gerard Winter. It was suggested that Justice Govind was redrafting a Pacific charter of human rights, the next two people were associated with the idea of a sub-regional human rights commission, and both Justice Winter and Ratu Joni Madraiwiwi were known to be supporters of a sub-regional court (Aca5, 2008; CSO2, 2008; CSO3, 2008; Exec3, 2008; Jud2, 2008; Law1, 2008; Law2, 2008; Supra1, 2008).

Having people championing the idea of SHRAs was mentioned, with an emphasis on having respected Pacific peoples introducing the concept to leaders (Aca2, 2007; Exec3, 2008; Law2, 2008):

One way of doing it is for example to get a [sub-] regional person, I mean a Pacific Islander and let him deal with this thing at the Forum. [Someone] who commands personal respect among all the leaders in the region, because the problem is going to be in the Pacific Island countries not in New Zealand and Australia (Jud1, 2008).

You do need some strong local political leadership, at the political level, to be strongly advocating that this is an idea that is good for us (Supra3, 2008).

The importance of credibility and widespread support from people in key national and sub-regional organisations is illustrated in the following remark:

I think who the individuals are, is extremely critical. ... [T]hey have to be people who have credibility in the human rights community. ... [T]he leadership in the governments are critical. I think the Forum and the SPC [Secretariat of the Pacific Community] putting their weight behind it is very important. The Attorney-General offices, key human rights non-government organisations both [sub-] regional and national, all of these I think are key players (Law2, 2008).

Similarly, a comment from a civil society participant mirrored the views of other respondents when she asserted the importance of “the support of all the governments in the [sub-] region, ... civil society organisations, ... political parties, ... because they tend to have a big influence at the grass roots level, ... and also the traditional institutions” (CSO1, 2008). The courts and the media were also highlighted by an academic as potential champions that could assist in creating awareness and acceptance of human rights amongst the general public throughout the Pacific (Aca5, 2008).

From a different perspective a judge forthrightly stated:

The Asia-Pacific Forum [APF] really needs to be the champion of this [SHRAs] ... because they’ve got credibility in the area with developers and donors. They’ve got credibility with government and they’ve got the experience of establishing national human rights institutions (Jud2, 2009).

The APF was influential in the development of the ASEAN Charter and it was suggested their experience from that process could be beneficial in the Pacific context

(Supra2, 2008). One judge also preferred that the APF undertake any scoping exercises rather than the Regional Rights Resource Team (RRRT) because “RRRT would be seen to have put its stick in the sand already on the issue” (Jud2, 2009). An academic from a small island country maintained that RRRT are “biased, there’s no sense of balance there. They’re clearly pushing a particular agenda” (Aca2, 2007). Conversely, other participants suggested RRRT would be the best placed organisation to do any scoping exercises given they have established relationships with many of the small island country governments and, according to these people, have a positive reputation in the human rights area (Exec1, 2008; Law1, 2008; Supra1, 2008).⁶⁶

While there was an acknowledgement that non-state champions may have a pivotal role, particularly in raising awareness of issues of human rights and the idea of SHRAs, the support of governments was emphasised (Aca2, 2007; Aca3, 2007; Aca5, 2008; Exec1, 2008; Law2, 2008; Supra1, 2008). The following comment reflects these views:

Critically, I think you would require support from governments [in the Pacific] in the sense that they are key players and that having ... made a decision then you would need to work with other entities outside government in order to give it the support and reach within the community and throughout the [sub-] region. ... [W]hat would be critical is organisation and coordination both within countries and [sub-] regionally [and] the personnel to drive the process (Law1, 2008).

Three participants voiced their support for sub-regional developments being sustained both by leaders and people at other levels of Pacific society (Exec5, 2008; Law1, 2008; Supra3, 2008). These responses are typified by the following extract:

Recognition by governments is a start but I think even more so it would need some sort of acceptance from the churches and the traditional/ I don’t just mean the traditional leaders, I mean the traditional community, because they still form quite significant groups in all our countries (Law1, 2008).

The Secretary-General of the PIF was spoken of as being in “a pivotal position as he is the one that decides the draft agenda and, therefore, is largely responsible for what

⁶⁶ As mentioned in Chapter Three, SPC/RRRT has been given a mandate from the PIF to undertake initial scoping work with the support of the PIF Secretariat. This task was allocated after the research interviews were undertaken.

people discuss” (Jud1, 2008). Furthermore, having someone from within the PIF Secretariat to provide advice and “who knows how to do it in a step by step fashion that is not going to be seen as some radical non-government organisations trying to push something down the throats of the leaders” was recommended (Supra2, 2008). As another participant highlighted: “if we can get leaders to accept that there should be an initiative under the Pacific Plan I think that gives us the coverage and I don’t think you would get that if it was driven by the NGOs or academics” (Supra1, 2008). While gathering support is a necessary initial step, a supranational participant reminds us that commitment to an idea is critical:

[U]ltimately you are going to get traction when you start getting states talking to each other about a mechanism ... and pursuing it actively, not just sort of agreeing to it at Pacific Islands Forum meetings, but that there is some kind of follow-up action to it (Supra3, 2008).

Policy actors from small island countries

There was minimal support for overarching Asia-Pacific SHRAs, and the participants, excluding one (Exec3, 2008), were clear that if SHRAs were to be developed then they should be for the Pacific sub-region. Moreover, all processes of agenda setting and decision-making should be led by the Pacific small island countries. As succinctly noted below, the prevailing view was that:

There is room to work together but I think Pacific Islanders have their own identity and their own way of seeing things and I think it should be left to Pacific Islanders and not Asian lawyers or Asian judges. I am not saying they shouldn’t participate in some form of consultation and support and providing technical expertise but I think it should be driven by Pacific Islanders and Pacific Island organisations (Law2, 2008).

Likewise, two other participants pointedly remarked that any charter driven by Australian or New Zealand judges or LAWASIA would be too remote and not politically strategic, especially given the perception that LAWASIA is primarily an Asian organisation (CSO2, 2008; Jud2, 2009).

The involvement of Australia and New Zealand was seen to be a complex issue and a majority of the participants cautioned against these countries having too active a role in any sub-regional human rights developments (for example, CSO2, 2008; Exec1, 2008;

Exec4, 2008; Law1, 2008; Supra1, 2008; Supra3, 2008). The general thinking on this concern is outlined by these respondents:

I think one has to be extremely, extremely sensitive that it is not being pushed or being seen as being pushed by Australia and New Zealand. And no discredit to them because they are great countries in the area of human rights, it is just that one has to be sensitive that it is not felt to be something arising there. If it's something being imposed on them then I don't think that it is going to really ever take off, maybe even get established, let alone how much legitimacy it would have (Supra2, 2008).

The problem with this part of the [sub-] region is that given the kind of issues we are going through and the way they themselves stand to play, they are very suspicious of each other. Anything that suggests Australia and New Zealand might come in to dictate will be met with a lot of resistance (Jud1, 2008).

Two participants raised strong concerns about the colonial and neo-colonial history of the Pacific and New Zealand and Australia's role in this situation (Aca4, 2007; Exec3, 2008). One of these people opposed any institutional arrangement having the involvement of the two metropolitan countries:

There is a fear amongst people in Fiji, for example, or the Melanesian group of countries, that the New Zealanders and Australians will find a way of setting up a mechanism and fill them with their own people and that they will impose the European and Pakeha reality of what human rights means. And that's not going to be readily acceptable (Exec3, 2008).

Additionally, a New Zealand participant conceded:

It is not appropriate for us to be going out into the [sub-] region and promoting it either way, the issue of [sub-] regional human rights mechanisms at the more formal end of the spectrum. It is really for the Pacific to work that out (Exec5, 2008).

Apart from the significant concerns as to the role of New Zealand and Australia, more generally examining the successes and failures of other SHRAs in other regions was seen to have some utility. However, direct copying of arrangements was cautioned against by a New Zealand participant, an academic, and a representative from a supranational organisation. A judge summarised their views:

So while the experience of other countries is useful it does have its limitations because we do need a particularly Pacific looking and sounding and acting court for it to be acceptable to all of these Pacific Island countries (Jud2, 2009).

A majority of participants spoke of the necessity of policy actors from the small island states members of the PIF leading discussions and building momentum for SHRAs in the region. In addition, it was clearly highlighted that the idea of Pacific SHRAs should not be pushed by the two metropolitan countries.

Civil society

Perceptions concerning the strength and influence of civil society, particularly in the small island states of the Pacific, differed between interviewees. Several participants believed civil society has a critical role in the development of new institutional arrangements as its reach extends across the grassroots and into the political realm (Exec1, 2008; Exec4, 2008; Law2, 2008; Supra3, 2008). These organisations can, at times, put pressure on governments and demand political accountability (CSO2, 2008). As one lawyer noted:

Unless civil society comes on board in the Pacific Island countries nothing really happens. Most progressive legislation, most progressive human rights policy in the Pacific happens when non-government organisations drive it and when there is a degree of ownership too from the people (Law2, 2008).

In contrast, three participants spoke of the limited and passive role of civil society in the Pacific (Aca5, 2008; Exec3, 2008; Supra1, 2008). This quote is illustrative of their views:

These NGOs make a lot of noise and a lot of individual statements but they don't have much impact on the way the state thinks it is responsible for doing certain things. We believe many Pacific non-government organisations are facing a crisis of confidence and trust because too many of them are known not to produce any good results among the grassroots. They tend to concentrate in the middleclass area, or be middleclass (Exec3, 2008).

It was also questioned whether civil society was actively involved in discussing the idea of SHRAs in the Pacific. These two comments demonstrate different perspectives on this issue:

There are increasing voices around the issue [SHRAs]. ... [T]he fact is that more and more people are coming on board from different parts and walks of life, and I am again thinking about non-government organisations. ... [T]hey have got vested interests in having their rights better promoted and protected and, therefore, I think that is where the energy has to come from. I think we are all heartened to see that there is so much more discussion and dialogue and a lot more is coming from civil society (Supra3, 2008).

I think personally the sort of work that is being done by civil society advocacy, it's useful. I mean it is posing the question [of human rights], it is getting potential engagement on this debate, and it will emerge as to whether civil society groups within those smaller countries also identify this as being something they really want to push for with their governments. And I honestly don't know whether that is what is emerging at the moment or not (Exec4, 2008).

A civil society worker, whilst acknowledging the merit of SHRAs, also raised the issue of duplication with existing civil society organisations:

There is definitely a need for some kind of human rights mechanism which can have a stronger voice but some of them might be a duplication of work that is already addressing more specific areas. For example, women have their own [sub-] regional mechanism, the issue of sea level rise is probably being addressed by the [sub-] regional environmental groups, and I guess then what is left is the civil and political rights and also the economic and social and cultural rights which are probably not addressed as much (CSO1, 2008).

Overall the participants' observations on civil society in the Pacific indicated contrasting views on its role and influence. As has been noted, from one perspective civil society was considered an important forum in which to raise issues such as the development of SHRAs. Conversely, it was also claimed that civil society is not particularly active across the domain of human rights and its work may be met with resistance in some jurisdictions.

Motivations of policy actors

A few participants questioned who is asking for SHRAs and what their motivations might be (Aca5, 2008; CSO2, 2008; Exec2, 2008; Exec3, 2008). The political situation in Fiji during the time of the research was discussed comprehensively in several interviews. The Fiji coup of 2006 was considered a motivational factor for some of the

advocates of SHRAs and could also be perceived as a window of opportunity (see Chapter Six).

Three participants suggested that the 2006 Fiji coup had led two individuals, in particular, to promote the concept of SHRAs (CSO2, 2008; Exec2, 2008; Exec3, 2008). The reputations and motivations of these policy actors were discussed somewhat skeptically and dismissively:

They did not have that position when they were either Commissioners, or prior to, when they were supportive of the previous government but now it has changed. So you have to look at the bona fides of these sorts of suggestions and the people themselves (Exec2, 2008).

I know two people locally who are advocates of a [sub-] regional mechanism and we know why they are doing it, for completely political and unsound reasons. ... [T]he credibility of these individuals is not quite what ought to be for human rights advocates (Exec3, 2008).

A participant from outside of Fiji also acknowledged that some people in Fiji might be proposing the development of SHRAs due to “their perception of the lack of effective mechanisms at the national level in that country”, but also emphasised that there are people from outside of Fiji who are supportive of SHRAs (Exec4, 2008).

One of the officials also questioned the motivation and involvement of people external to the sub-region:

So I think we need to determine what is the motivation behind saying we need a [sub-] regional mechanism and then once you find out that motivation, then you need to look and say well, hang on, we need to address this locally (Exec2, 2008).

In sum, participants were able to identify a small number of individuals who were known to be advocating for SHRAs in the Pacific. However, no specific policy networks or communities were commented on. An emphasis was placed on the involvement of policy actors from the small island states of the Pacific, in contrast to the definitive statements against any push from New Zealand or Australia for SHRAs. If this occurred, several contributors believed that little support for SHRAs from the smaller countries would be forthcoming. The role and influence of civil society in the Pacific was debated and opinions differed as to its current strength and ability to create

change. No specific civil society groups could be identified as actively supporting the idea of SHRAs during the time of the research interviews.

Summary

The participants identified five main issues that linked with the idea of SHRAs in the Pacific. These issues were: awareness and prioritisation of human rights; addressing human rights violations; the limitations associated with NHRIs; international human rights requirements; and the geographical and economic challenges of the Pacific. The three possible institutional configurations, noted as solutions to the highlighted issues, were a Pacific human rights charter, a Pacific human rights commission, and a Pacific court.

A small number of individuals who are championing SHRAs in the Pacific were identified in this research. Ensuring any discussions and decision-making is led by the small island countries was emphasised and highlighted concerns about the imposition of institutional arrangements by New Zealand and Australia. The role of civil society in this policy domain was generally perceived to be weak, although there was a view that without the inclusion of civil society organisations then progress towards SHRAs would be more difficult. The reasons why individuals or groups may advocate for a particular idea, such as SHRAs, may vary, and there was a suggestion that the 2006 coup in Fiji has been a motivating factor for some of the identified policy actors.

Consistent with the theoretical framework set out in Chapter Two, the following chapter focuses on venues, windows of opportunity, the receptivity of Pacific leaders, and possible institutional factors that may affect the prospects for agenda success of SHRAs in the Pacific.

Chapter Six

Venues, Windows of Opportunity, Receptivity and Processes

Introduction

In the preceding chapter three components of the theoretical framework which constitutes the lens through which the empirical materials are viewed, were outlined. This second findings chapter is structured around the remaining elements of the theoretical framework. Accordingly, it begins by identifying the possible venues of agenda setting in which the idea of SHRAs in the Pacific may be able to be raised and decided upon. Special attention will be given to the PIF as the primary agenda setting venue. Next, the temporal aspect of whether there are currently any windows of opportunity for the concept of SHRAs to be advanced or placed on the Pacific leaders' decision agenda and thus potentially implemented will be canvassed. Subsequently, the third section explores the interviewees' perspectives on the factors that may affect the receptivity of the Pacific leaders to the idea of SHRAs. Finally, suggested processes for increasing the likelihood of agenda success are outlined.

The location of agenda setting

Possible venues for agenda setting were identified by the research participants. The venues included the UN and associated forums of the Asia-Pacific region, and the PIF. Emphasis, however, was placed on the PIF as being the foremost venue in which to address human rights issues and consider human rights institutional alternatives for the Pacific. In Chapter Five it was noted that political leaders or other champions might also raise the idea of SHRAs with Pacific governments. However, in terms of venues for agenda setting in respect of this policy idea, the nation state was not highlighted by participants.

UN meetings in the Asia-Pacific region were not deemed to be the most suitable venue for agenda setting in respect of SHRAs in the Pacific. Some participants perceived the region to be dominated by Asia, with Pacific countries and their specific issues not necessarily being well represented (CSO3, 2008; Law2, 2008; Supra2, 2008; Supra3,

2008). As reflected in the following comments, there seems to be little affinity from Pacific Island countries for the Asia-Pacific regional category:

Pacific Islanders don't see themselves as part of Asia. In fact they resent it, even governments resent the groupings in the UN, and they resent the fact that when Pacific Islanders go to Asia-Pacific meetings we just get marginalised because of our size and size of our voices and the small scale of our governments and economies (Law2, 2008).

I could see that in the bigger theatre of international politics some countries having problems with an Asia-Pacific approach. We don't see ourselves as part of Asia, or we want Pacific expression of regional networks. We don't want to be clipped on (Exec5, 2008).

As mentioned at the beginning of this thesis, an executive representative also claimed that the UN more broadly does not demonstrate an understanding of the Pacific context. She wryly observed:

The UN sends Niue a survey on tanks, how many tanks are there and have they been demilitarised? And Niue is thinking: now are they [referring to] water tanks? There is no relevance, no sense of scale, size appropriateness, that sort of thing (Exec5, 2008).

Support for the development of human rights arrangements inside the Asia-Pacific grouping - rather than within the Pacific itself - was voiced by only one interviewee. For this person, an executive member of a small Pacific Island state:

The question is: what region are we talking about? Are we talking about Asia-Pacific which is the appropriate regional grouping under the UN? For a regional mechanism, the best thing would be to have a broader Asian regional mechanism, rather than a Pacific sub-regional mechanism. That will be more inclusive, especially as Pacific nations are looking towards the Asian economies and markets to assist them (Exec3, 2008).

Conversely, five other participants overtly disagreed with this sentiment (Exec5, 2008; Law2, 2008; Supra1, 2008; Supra2, 2008; Supra3, 2008). In respect of an Asia-Pacific institutional arrangement, one supranational representative recounted:

For many years the UN has also promoted dialogue and held annual meetings on a regional arrangement for human rights. ... [F]ifteen years later it is no closer to [one] that would incorporate all of Asia and the entire Pacific and it is very unlikely. ... [I]

think an overarching Asia-Pacific regional mechanism is highly unlikely at this stage (Supra3, 2008).

While there was uncertainty as to the appropriateness of raising the idea of human rights arrangements in the Pacific inside the Asia-Pacific configuration, some contributors mentioned that given the UN is supportive of such regional and sub-regional arrangements it might provide funding or technical assistance, thus acting as a possible resource for advocates of SHRAs (Exec1, 2008; Jud2, 2008; Law2, 2008; Supra2, 2008).

The venue of the Pacific Islands Forum

Within the Pacific sub-region the majority of sub-regional institutional developments have occurred in recent times through the structure of the PIF. All of the participants expected that the Forum would be instrumental if there was any advancement of SHRAs in the Pacific. It was observed that the Forum's role has been evolving so that it "has become a political mover as well, and is in fact rather more political than social or economic" (Exec3, 2008). An academic from a small island country emphasised the key position of the PIF:

I think there is probably more now than before a move towards regional or sub-regional consolidation of certain areas ... and the Forum is exactly the place where the discussion should flow from (Aca3, 2007).

There was also a suggestion that Pacific states are more likely to be open to and supportive of an initiative that stems from the Forum where they are able to significantly contribute to the discussions and decision-making of any institutional developments (Aca3, 2007; CSO2, 2008; Exec5, 2008). In spite of the PIF being endorsed as an appropriate venue to advance the notion of SHRAs, it was also seen to be very bureaucratic and not adequately reaching the grassroots level of society (CSO1, 2008; CSO4, 2008; Law1, 2008). Further, another interviewee cautioned that while:

The PIF may be perceived to be supportive of the development of SHRAs due to their commitment to [sub-] regional integration and development ... Pacific leaders, in general, tend to be cautious of giving resources to human rights initiatives and may be less supportive of SHRAs because of its emphasis on the promotion and protection of human rights in the [sub-] region. Also, some Pacific leaders are concerned about the

tension between human rights and state sovereignty, culture and tradition, and are cautious of widespread [sub-] regionalism processes (Supra1, 2008).

The Forum's informal status, which means it has no constitutional standing and, therefore, limited jurisdiction over Pacific states, was highlighted as a potential difficulty in the development and implementation of SHRAs:

One of the issues with Pacific [sub-] regionalism has been this resistance to binding legal commitments and they are essential if you are going to have a meaningful human rights mechanism (Exec1, 2008).

Similarly, a judge emphasised the need for the PIF to consider reviewing its position both at the sub-regional and international levels:

I think that the Forum is at a stage in its development where it has either got to say that it's going to continue to be a club that makes broad sweeping statements of intent and aspiration, or wants to step up to the plate, wants to be a true international player and for that reason gets its own charter and becomes a legal entity (Jud2, 2009).

The concept of SHRAs was seen by a cross-section of participants as fitting within the existing Pacific Plan objectives which have been developed and endorsed by the PIF (Aca2, 2007; CSO2, 2008; Exec3, 2008; Jud1, 2008; Law1, 2008; Law2, 2008; Supra1, 2008; Supra2, 2008). A judge enforced this view:

The opportunities probably build off the Pacific Plan and the four pillars that chart the way forward to [sub-] regional development ... [it] requires the establishment of [sub-] regional mechanisms of law and justice because the Pacific Plan is an effort to define what will make the Pacific predictable, and to define what will make the Pacific transparent, and define what will give donors and developers the confidence they need to get in and have a lifetime engagement with the Pacific so the Pacific can move on and be successful (Jud2, 2009).

Significantly, the Pacific Plan contains several references to human rights including an emphasis on the ratification and implementation of international and (sub-) regional human rights conventions. A few participants interpreted this as a direct mandate for the development of SHRAs in the Pacific (Aca2, 2007; Jud1, 2008; Law2, 2008):

There is already a point in the Pacific Plan about ratification of human rights treaties; it can be narrowly tailored to fall within that, that you need a [sub-] regional commission to help on this ratification issue (Supra2, 2008).

In addition, strategic objective 12.9 refers to the strengthening of the judiciary in the sub-region, and a sub-regional commission or court was raised by some contributors as one way of meeting this goal (Exec3, 2008; Jud2, 2009; Supra1, 2008; Supra2, 2008). New priorities are able to be added to the Pacific Plan and one participant suggested this would be an appropriate process to advance the concept of SHRAs in the Pacific (Supra1, 2008).

In contrast, an academic disagreed with advancing the idea of SHRAs under the Pacific Plan, considering it to be a neo-colonialist tool that has been forced upon Pacific states by New Zealand and Australia. That person stated:

I'm not against human rights mechanisms. I'm saying if that's the Pacific Islands' ideas then great, go ahead, but I think it is just part of the Pacific Plan which was a device conceived in Wellington and picked up by Canberra to lock Pacific people in together under Western influence. ... [O]ne of the things that really annoys me about the Pacific Plan is that Australia and New Zealand say, 'You natives do this and that'. They won't let them work it out [and] they won't let themselves be an equal part of the region (Aca4, 2007).

From this perspective if Pacific Island countries want SHRAs then they should lead the development themselves outside of the Pacific Plan objectives. Another academic claimed Australia and New Zealand are pushing sub-regional agreements and the Pacific Plan initiatives, and this may not be in the best interest of the other Pacific Island countries (Aca2, 2007). These perspectives were in contrast to the majority of participant opinions which emphasised advancing any development of SHRAs under the current Pacific Plan objectives, and within the PIF institutional structure.

Melanesian integration as an alternative to the PIF sub-regional configuration was endorsed by one participant, although there was not a suggestion that the idea of SHRAs be raised in this forum:

The only sensible region for deep integration is Melanesia. Large countries, as in Europe or Africa or the Americas, are mainly contiguous. Melanesia is the closest to the

model, geographically they are a unit, they have much more cultural similarity, and they have much more historical similarity, much more economic [similarity] (Aca4, 2008).

Finally, within the Pacific there is a strong history of decision-making at the sub-regional level, although one contributor supported a critical examination of existing sub-regional processes alongside any deliberations on SHRAs:

As a [sub-] region the Pacific has operated for hundreds of years in all sorts of different ways. ... [I] think it is really critical when you are looking at [sub-] regional mechanisms to really burrow into what [sub-] regionalism means in the Pacific and the different models for it over the centuries. We are at a particular snapshot in time at the moment with how [sub-] regionalism is developing and it is not finished. And so I think any discussion about [sub-] regional mechanisms has to take into account what [sub-] regionalism is in the Pacific and why (Exec5, 2008).

Overall, the interviewees agreed the most appropriate venue for agenda setting, in regards to the concept of SHRAs in the Pacific, was the PIF. As the Pacific Plan contains strategic objectives pertaining to human rights some contributors considered it would be most appropriate to advance SHRAs through this policy document. While support for SHRAs in the Pacific might be given by the UN or meetings of the wider Asia-Pacific region, several participants were clear that discussions and decision-making in respect of SHRAs in the Pacific should not primarily occur in these settings.

Opportunities for agenda setting

A range of perspectives on the timeliness of placing SHRAs on the agenda of the PIF were provided. Several participants believed it is the right time to begin discussions, raise awareness, and strongly advocate for SHRAs in the Pacific, and for a variety of reasons. These reasons could be regarded as ‘windows of opportunity’ for the proponents of SHRAs in the Pacific.

There was a sense that at both the state and sub- regional levels, Pacific leaders want, to some extent, to be seen to be adhering to human rights standards and addressing associated issues. Increased pressure by constituents and interest groups on governments to tackle specific issues such as environmental and women’s rights may facilitate greater visibility and prominence of the idea of SHRAs, and increase the likelihood of serious consideration by Pacific leaders in their sub-regional meetings

(Aca1, 2007; Aca2, 2007; Jud1, 2008; Law2, 2008; Supra3, 2008). As illustrated in the following remarks, it may be an appropriate time for such a development:

I think it's an idea whose time has come, to use an overused cliché. I think that Pacific governments want to be seen as part of an order that is observing human rights even if they don't to a certain extent (Law2, 2008).

It is only in the last four or five years that human rights has had any visibility in the Forum itself. Up until that point every time you mentioned the words 'human rights' you were always told that it was too sensitive and you have to stay away from it. So I think the timing is right now for us to do a big push for human rights (Supra1, 2008).

Pressures of funding and fulfilling donor and international expectations were also highlighted as a possible window of opportunity. As mentioned earlier, a number of interviewees see a pivotal role for SHRAs in assisting governments to meet external obligations (Supra3, 2008). Taking a long-range view, one of the judges maintained:

In terms of the next sixty years it is likely to happen, well the environment is certainly right for it to happen. And if only for the really practical reason that the gatekeepers of development and donor funding see human rights development as a key issue (Jud2, 2009).

More generally, governments throughout the Pacific may be more willing to further cooperate and integrate as a sub-region and thus the creation of new sub-regional institutional arrangements may support this intention, as illustrated in the following quote:

I think at the moment we are in an interesting period where I think there is a greater willingness by the [sub-] region collectively to look at [sub-] regional mechanisms. I just think it is the right time (Exec1, 2008).

The 2006 coup in Fiji was also noted as a window of opportunity for some advocates of SHRAs. A few participants indicated that SHRAs could assist in addressing human rights violations that occurred during the military takeover, as well as during other incidents throughout the Pacific, and potentially prevent further abuses in the future (Jud2, 2008; Law1, 2008; Law2, 2008). If Pacific leaders agreed with this potential utility of SHRAs then they may become more receptive to the idea being placed on their agenda for further deliberation.

A possible spillover event that was also highlighted by a small number of contributors was the concept of a Pacific ombudsman. In 2008 the Pacific leaders commissioned a scoping exercise to explore how ombudsmen could be further supported in their work. The scoping document recommended a strengthening of the existing ombudsmen offices in the sub-region rather than the establishment of a new institutional body that could house an ombudsman to represent the entire sub-region:

The Forum Secretariat is saying a number of Forum members need ombudsman-like services within [their] country [however] ... it is like a hub, it is not a [sub-] regional ombudsman (Exec5, 2008).

One participant was frustrated by this result (Supra1, 2008). This person believed that if a Pacific ombudsman's office had been recommended and approved by Pacific leaders it may have paved the way for further consideration of SHRAs. Other contributors thought the idea of a sub-regional ombudsman had been focused on by leaders as it was less controversial or challenging than human rights:

It is probably less dangerous. [The leaders] know that they're not going to have any effect (Aca4, 2007).

It was an easier political sell [as] ... it's only an ombudsman, don't worry about it, they can't do anything. So it was easier to swallow politically and easier to swallow from the point of view of surrendering a bit of state sovereignty (Jud2, 2009).

A small number of contributors were doubtful about the timeliness of seeking to place SHRAs on the sub-regional agenda with two participants holding a more cynical view that a proposal about SHRAs will go on the PIF agenda when New Zealand and Australia decide for this to happen (Aca3, 2007; Aca4, 2007). The following section explores other concerns associated with the receptivity of Pacific leaders to SHRAs.

Convincing the decision-makers

As highlighted in Chapter Two, decision-makers will generally consider placing an issue or proposed solutions onto their pre-decision or decision agendas if there is sufficient interest, if issues of feasibility are resolved, if costs of implementation are tolerable, and if the idea is consistent with dominant values and thus acceptable to both the public and decision-makers. The participants touched on each of these areas although at times using different terminology. The key factors raised by the contributors

that may affect the receptivity of Pacific leaders to the idea of SHRAs included whether these arrangements are seen to be a priority area, issues of access, financial and human resources, and political and public acceptance.

Priorities

According to several participants, human rights is generally a low priority for Pacific leaders and, at the time of the interviews, there had been little interest in establishing SHRAs in the Pacific (Aca3, 2007; Aca5, 2008; CSO1, 2008; CSO4, 2008; Exec3, 2008; Exec4, 2008; Law1, 2008). Within the setting of the nation state, priorities relating to human rights may vary, with some Pacific countries placing greater importance on, for example, environmental rights vis-à-vis women's rights (CSO4, 2008). As noted in Chapter Five, a number of contributors emphasised that any development of SHRAs in the Pacific should be led by the small island countries. A Pacific-based academic supported this view that Pacific states wish to decide upon their own priorities and not have institutions or decisions imposed upon them. She commented: "I think it is more this Pacific sentiment, it is almost a sovereignty issue, leave us to sort out our own things, leave us to set our own agendas, leave us to set our own priorities" (Aca2, 2007). A New Zealand government representative agreed with this, arguing: "it [SHRAs] has to be Pacific-led, it has to be [and] ... the only way it is really going to be Pacific-led is if the people own it" (Exec5, 2008).

A correlation between the recent history of colonisation and independence in the Pacific countries and the emphasis on Pacific states deciding their own priorities was also suggested (Exec1, 2008; Exec3, 2008; Exec5, 2008). This issue is illustrated in the following interview extracts:

There are quite a number of countries in the Pacific where there has been a tension around having a [sub-] regional grouping, particularly where that is seen to take away national autonomy. Particularly for those countries which had to fight hard to get their autonomy in a post-colonial environment or where their independence was thrust upon them by rapidly exiting colonial powers (Exec5, 2008).

The notion of the sovereign state is very important in the Pacific. ... [W]e need to deal with Australian and New Zealand colonialism first and all the harm it has caused the Pacific Island countries, the natural resources that have been depleted and other basic human rights violations ... then look at how we can come together with an

understanding of a broader human rights framework, whatever it might be (Exec3, 2008).

This second official brusquely continued:

Australia and New Zealand should keep their noses out of any talks in the Pacific about a [sub-] regional mechanism. Seriously. The Pacific Islands need to go through their own rights priorities (Exec 3, 2008).

One academic remarked on the notion that:

A lot of Pacific Island states think that the problems they are having [are] something only the Pacific is having. ... [I] think that's a little bit of a shame because I think it prevents people having a really close look at these [other regional or sub-regional] mechanisms and really learning from them (Aca1, 2007).

Accordingly, Pacific leaders may be reluctant to consider the idea of SHRAs and their possible relevance for the sub-region. Furthermore, there might be little impetus to support such institutional arrangements if they are not expected to add anything of value to existing systems and processes. This sentiment is reflected in the following comment:

It would be a question of priority: do people actually think this is important? Because state legal systems are really managing this interface between human rights and state law and local customs and practices quite well, so is this something that we really need? ... [W]hat benefit would it be for individual countries to have a [sub-] regional mechanism? ... [W]hilst it might be an interesting idea, is it really a priority? Probably not in many people's minds (Aca2, 2007).

Two other participants questioned whether Pacific leaders would be prepared to agree to an institutional arrangement that might challenge their existing practices:

The utility is linked to its ... potential effectiveness in the Pacific, and its effectiveness is going to be linked to its powers, and its powers are going to be linked to the degree of receptivity by Pacific states. ... [T]he Pacific states given the current leadership in the Pacific would be very reluctant to hand to a [sub-] regional body powers to make judgements over actions taken by state bodies at this time (Jud2, 2009).

It is a good idea, but the question of timing as to when it can become effective; it might be a long way off (Aca5, 2008).

Alternatively, if Pacific leaders saw relevance in having SHRAs then they might be more willing to support its development and implementation (Jud2, 2009). One participant's comment indicates some of the complexities:

There are some Pacific leaders who are supportive [but] they are also nervous, they don't want to be told off, they don't want to be made to look bad like any other government elsewhere in the world so, therefore, why would they subject themselves to a new charter that means they lose not only national but possibly even [sub-] regional autonomy. Why would they do that? Unless there is some reason where they can see it helping drive them and the other things they are after. ... [I]f, for example, Pacific leaders see a [sub-] regional human rights charter as something which promotes and defends their cultural rights and their rights to religion, balanced in accordance with human rights principles ... if they see it as something which defends the things that they hold dear then they may have a reason to submit to [its] jurisdiction or to create something which they could submit to (Exec5, 2008).

Another concern about SHRAs was their potential effectiveness in protecting human rights at the grassroots level and whether it might be more beneficial to strengthen national mechanisms so that governments have to take responsibility for human rights issues internally (Exec2, 2008; Exec3, 2008; Supra2, 2008). In general, there was a strong sense that the lack of political will associated with SHRAs is indicative of the low priority placed on human rights and the limited understanding of the potential utility of such arrangements (Aca1, 2007; Aca3, 2007; Aca5, 2008; CSO1, 2008; Supra3, 2008). For Pacific leaders to become more receptive to the idea of SHRAs then, it might be surmised that greater understanding and awareness of human rights and related institutional arrangements, is necessary. The Pacific leaders may not, however, have placed SHRAs onto their decision agenda for other reasons that were unknown to the interviewees.

Access

Issues of access were raised as a factor that might affect whether SHRAs could be effective solutions to human rights issues in the Pacific, and so be seen to be an idea that Pacific leaders would want to pursue. The geographical context of the Pacific, in particular, might significantly affect the accessibility and thus the utility of SHRAs. The following extracts reflect the general view:

I think the other thing with the case of the Pacific which is not to underestimate that there are a lot of little states which are very, very far apart. ... [S]o it is costly, it is very time-consuming and that also hinders the communication (Aca1, 2007).

It's the fact that on an island you can't just get on a bus, [you] have to get on a boat or a plane, so there's less mobility and these people don't have the money to add an extra trip just to lodge a complaint. ... [G]o to a website? Or go to town? So how does that person access the system? How would that person get heard? So the utility is very hard to see. How would it serve the average Pacific Islander in the foreseeable future? (Aca5, 2008)

Consequently, having NHRIs or alternatively, sub-regional human rights offices, in more Pacific countries might assist with these issues. A civil society representative touched on this point:

We have found that people who go through violations find it easier to access a national human rights body than a regional [or sub-regional] one, simply because it is easier to communicate with, maybe because of language and the environment. [Sub-] Regional organisations tend to be quite bureaucratic, they tend to have quite a high level personnel which would make grassroots people feel it is kind of out of reach for them and not very comfortable to access (CSO1, 2008).

Questions as to the involvement of New Zealand and Australia were also raised in regards to access. Is there any incentive for these two metropolitan countries to be party to a sub-regional mechanism, especially when they have NHRIs (Exec4, 2008; Exec5, 2008; Law2, 2008)? How could New Zealand and Australia not be part of SHRAs when they are members of the PIF (Supra3, 2008)?

Additionally, it was queried whether waiting for all Pacific states to agree to the implementation of SHRAs would hinder any potential development and, therefore, a suggestion of "gated access" was offered (Jud2, 2009; Law2, 2008). This could enable two or three countries to commit to the establishment of an institutional arrangement but allow other countries to join at a later stage. The functions of the mechanism might also be introduced incrementally, thus allaying concerns about the relinquishing of sovereignty (Jud2, 2009).

As noted in the previous chapter, geographical challenges in the Pacific may be an issue that could potentially be addressed by the establishment of SHRAs. Accessing these

institutional arrangements, however, may be difficult and Pacific leaders may be more or less receptive to the idea of SHRAs depending on their views on this issue. The type of institutional mechanism, and whether it had outposts or offices or some other means of being readily available to a majority of people throughout the Pacific would affect its accessibility and, therefore, its potential effectiveness.

Financial and human resources

Limited financial and human resources, especially in the small states of the Pacific, were identified as key factors that might affect future decision-making about SHRAs. A staff member from a civil society organisation explained:

The main [preventing] factor would be cost because we are small island countries in the Pacific and we are separated by long distances. ... [W]e have small amounts of resources. To reach each other we have to travel long distances by air which is expensive so if we are thinking about establishing a [sub-] regional human rights mechanism that would really be one of the factors preventing it, cost and distance (CSO1, 2008).

An academic endorsed this view:

Money is one of the big issues. I mean, you are looking at very small populations where people with one specialisation are getting very quickly overworked and the thought of having to spend money and people power on another reporting mechanism might be the most preventative of all of them (Aca1, 2007).

A participant opposed to SHRAs insisted: “it takes a lot of resources to try and get something like this established, and that’s as well as money, it is human resources and we haven’t had the human resources to put into something like this” (Aca2, 2007). Other participants doubted whether the smaller states of the Pacific would be willing to contribute funding to SHRAs due to their limited national budgets and their keener interest in other policy areas (Aca1, 2007; Jud1, 2008; Law2, 2008; Supra1, 2008). However, an advantage of SHRAs, once set up, might be the ability for Pacific countries to pool their resources (Law2, 2008).

Several other participants commented on the challenges of adequate and sustainable funding. One person was particularly concerned about:

Who is going to provide the resources and the establishment of it, will it be adequately resourced, will there be the normal reliance on donor states, and will it be viable? So I think there is going to be an interesting issue around whether member states will contribute and on what basis they will contribute to the running of it (Supra3, 2008).

Perspectives on where funding should originate emphasised the importance of both Pacific and external donors:

In terms of funding, you would imagine the lion's share of that would come from Australia and New Zealand and possibly UN bodies. I know that the UN was very supportive for instance of the creation of the African Human Rights Commission (Exec1, 2008).

The most practical challenge that will have to be addressed is funding, [however], it is in the economic interest of Pacific Island countries to support such a body. This will encourage countries to contribute to the operational costs. A funding model to be considered might be the arrangement adopted by existing [sub-] regional institutions such as the University of the South Pacific (Law2, 2008).

Funding from what may be regarded as independent sources, for example, the EU and the UN, were also seen to be advantageous so that "it looks less like the mandate of the fiddler calling the tune" (Jud1, 2008; Supra2, 2008). Having a range of funding sources might also be beneficial so that one donor does not have unequal power to drive the work of the SHRAs (Supra1, 2008).

Available financial and human resources in the Pacific are likely to be two key factors that will affect the receptivity of Pacific leaders, both to the idea of SHRAs and any decision-making or implementation that may follow. As identified by the participants, resources are necessary for the successful development and implementation of any institutional mechanism which may place considerable pressure on the Pacific leaders. However, SHRAs may also be able to deliver cost-effective and wide-ranging services that might not be possible to provide in individual countries.

Political and public acceptance

Support for the idea of SHRAs as solutions to human rights issues in the Pacific has not been widely debated. One civil society representative recommended that rather than pre-determining a starting point by focusing on or modelling existing SHRAs in other regions, Pacific leaders should begin by considering their own context and utilise

Pacific decision-making processes to decide on what may be valuable in regards to the promotion and protection of human rights in the sub-region (CSO4, 2008). She went on to say:

If there is an interest in this kind of mechanism ... it needs to be reflective of the realities of those communities. ...[S]tart talking about the realities on the ground first and what that means in terms of the end product and how you might look at interweaving those differences into some kind of all accommodating framework (CSO4, 2008).

Gaining political and public support for SHRAs, however, might be challenging as:

Different countries have different cultures and different attitudes towards the place of human rights and the relationship between human rights and customary law and state law. So, for some people at least, there would be the concern that a [sub-] regional body would be almost a homogenisation [and] there wouldn't be space for specific cultures to be able to breathe (Aca2, 2007).

The place of New Zealand and Australia in agenda setting, decision-making and implementation processes in regards to SHRAs in the Pacific was frequently discussed. The relationship between the Pacific Island states and Australia and New Zealand is complex, as vehemently stated by one lawyer: "there is a very strong antipathy towards Australia and New Zealand" (Law2, 2008). One participant described this issue as "the elephant in the room" (Exec5, 2008). In Chapter Five, it was noted that many participants believed the two metropolitan countries should not be active participants in the agenda setting and decision-making processes associated with the idea of SHRAs (CSO2, 2008; Exec1, 2008; Exec4, 2008; Law1, 2008; Supra1, 2008; Supra3, 2008).

Concerning the implementation of SHRAs, however, there was a level of uncertainty as to whether New Zealand and Australia, even as PIF members, should be party to a formal institutional human rights arrangement. The extract below illustrates the commonly identified dilemma:

Do they really need to be in it? In all reality probably not. But if you don't have Australia and New Zealand in it will it look like Australia and New Zealand are opting out because they don't want examination by a human rights commission. If you have them in will it appear that this is Australia and New Zealand [ideas] being forced down

the Pacific Island necks? In the end I think it will be better to have them in it, but how it is possible to do that? [Their views] need to be kept low key (Supra2, 2008).

It was also questioned as to whether the two larger countries would even consider being bound by SHRAs, as noted in the following comments:

They have both got very highly effective human rights commissions of their own. They may not want initially to submit a degree of their sovereignty to a [sub-] regional body (Law2, 2008).

Would [New Zealand and Australia] be willing to submit to a [sub-] regional jurisdiction? I can't see either government being willing to do so if such an institution had a wide-ranging, binding or even declaratory jurisdiction really (Exec5, 2008).

One judge suggested that Pacific leaders might also be wary of the idea of SHRAs because they do not understand their functions or potential effectiveness (Jud1, 2008). Pacific peoples may also be concerned if it was perceived SHRAs might force them to relinquish their sovereignty (Aca2, 2007; Exec5, 2008; Law2, 2008; Supra1, 2008). To address this concern, a judge suggested:

It might be too hard to get Pacific states to agree to relinquish so much sovereignty that they automatically end up in the Supreme Court, [however], it might be an easier task to get them to relinquish a little bit of sovereignty so they might go there in certain circumstances (Jud2, 2009).

Potential risks that might affect the receptivity of Pacific leaders to the idea of SHRAs identified by participants were a lack of support both politically and financially, a lack of clear direction, and unskilled or poorly managed staff (Aca2, 2007; CSO1, 2008; CSO4, 2008; Law2, 2008). This comment summarises these concerns:

Another risk very much depends on the mandate and the people who work there and how it gets developed. ... [I]f it doesn't have legitimacy, if it doesn't have very good people working there [and they] don't know human rights, don't know the [sub-] region, don't know the issues ... a risk is that people will always have the idea that this is a paper tiger that really can't do anything (Supra2, 2008).

Another potential risk was that SHRAs might not be necessary or able to meet the needs of local communities and cater for the diversity of the sub-region:

The risk of the development of a human rights mechanism could be that it's fixing something that is not broken. Maybe. We have many cases of that in the Pacific of situations where things are developed because there is a perception that it is good and when it does come about, it actually doesn't meet the need (Aca3, 2007).

Every country is very distinct, so this whole idea, sometimes the Pacific Island countries get lumped together particularly by outside academics. ... [M]elanesia, Micronesia, Polynesia, all very distinct. Can we realistically lump them together? ... [M]aybe there's a more general sentiment that Pacific Islands aren't all the same and, therefore, they can't all be treated the same (Aca2, 2007).

Although public acceptance of SHRAs in the Pacific is important, especially as politicians generally rely on the support of their constituents so as to stay in power, it is the political leaders who will ultimately decide whether the idea of SHRAs will reach their decision agenda (Supra1, 2008). The final two quotes succinctly reveal the power of the Pacific leaders, particularly given the semi-formal and non-elected nature of the PIF, which gives the leaders more discretion than might otherwise be the case in a nation state:

The [sub-] regional agenda may be proposed by a range of parties who try to get things on the leaders' agenda to go forward, but ultimately Pacific leaders at their retreats will prioritise what they want to see occur (Aca5, 2008).

Ultimately it's the [leaders'] political will that will make it come into fruition or not (Supra3, 2008).

Processes for increasing agenda success

The Pacific leaders have multiple issues that compete for space on their pre-decision and decision agendas in the PIF, and if the idea of SHRAs is to gain any traction then it must be one of the leaders' top agenda items (Aca5, 2008). Therefore, SHRAs need to become politically acceptable to the leaders. In short, in the context of the PIF the Pacific leaders exercise a determining veto over policy developments. One participant suggested that following a systematic and procedural process is essential if SHRAs are to be seriously considered by the members of the PIF (Supra2, 2008). An additional concern was the involvement of New Zealand and Australia in any processes of agenda setting, decision-making, and implementation in regards to SHRAs in the Pacific (see Chapter 5).

Some contributors suggested a slow-paced approach beginning with discussions and dialogue on what institutional arrangements might be appropriate for the Pacific sub-region (Aca3, 2007; Exec4, 2008; Law2, 2008). While scoping and feasibility activities were also endorsed, the pace of which these could be undertaken was considered necessarily slow given the Pacific context (Exec3, 2008). As one interviewee, an advocate of SHRAs, wearily remarked: “you know it is slow moving, a slow moving thing, but I think it is moving” (Aca1, 2007). Three participants pointed out the likely deliberate and measured pace of any sub-regional human rights development:

The frustration will come in a tension between a desire to establish that forum overnight as it were, and establishing it in a much more Pacific way which will take some time. It’s a slow train, but it’s coming (Jud2, 2009).

One has to start small with the Pacific Island countries and then gradually work up after dialogue, discussion and consensus. This can be done at the Pacific Islands Forum level but right now if you suggest a [sub-] regional mechanism to the Fiji Government, involving leading roles played by Australia and New Zealand, they will say, get out of here (Exec3, 2008).

You have to build it slowly, you will have to build it in an area that will come naturally, don’t try and jump ahead. This is something about the [sub-] region: some good ideas have been floundered on the reef of jumping too early (Jud1, 2008).

One judge commented on beginning with specific human rights areas:

For it to be politically acceptable to the leaders my sense would be that you start off by scoping it to deal with [sub-] regional rights issues, human rights issues, development rights issues, and environmental rights issues (Jud1, 2008).

A starting point for discussions could also be demonstrating the worth of an existing instrument such as an international convention and using it as a pre-requisite or precedent for further sub-regional developments in the human rights domain (Aca3, 2008). An executive participant who was less enamoured by the concept of SHRAs also conceded:

If the [sub-] regional mechanism idea originates in a much broader dialogue and consensus, and in the right order, like having a desk and then moving to a national institution and then moving to a convention and to a court, as with the Europeans, there is no reason why governments wouldn’t support it (Exec3, 2008).

Aside from the likely slow pace of developments, several contributors mentioned the importance of having discussions on the concept of SHRAs (Aca3, 2008; Law1, 2008; Law2, 2008; Exec5, 2008; Supra1, 2008; Supra2, 2008). These views are summarised by an executive participant:

Having the debate on the table is a healthy one because what it is doing is fostering an ongoing discussion at the [sub-] regional level and at the national level about, do we have a human rights problem at all, if so what is that about, if so what are the institutional arrangements and other planks we need in place in order to improve our ability to protect human rights (Exec4, 2008).

The participants were not all aware of the potential development of a working group by the PIF Secretariat and SPC/RRRT and originating from a mandate given to RRRT in 2008 by Pacific Members of Parliament and judicial officers (Law2, 2008, Supra1, 2008).⁶⁷ It had been suggested that any preliminary work on SHRAs should be driven by an indigenous regional human rights organisation so that Pacific leaders would be assured that their concerns and aspirations were well represented during any scoping process (Law2, 2008). This sentiment was echoed in the following extract:

When we say that basically RRRT and the Forum are leading it, it is not that we are going to do it in isolation. It is very much about trying to give the members a level of comfort about where this is coming from (Supra1, 2008).

One of the people involved in the establishment of the working group described the course of action:

This is a bureaucratic process. ... [P]repare a policy paper that goes to [the] leaders to convince them that we need to start investigating the benefits and the possibility of a [sub-] regional human rights charter and /or mechanism. ... [W]hen they say okay this is a Pacific Plan initiative the next step is to do a scoping study, which actually looks at different options and the feasibility of each option. Then we need to get sign off from that and then we're away (Supra1, 2008).

Following a scoping exercise, sub-regional governments, through the PIF, could decide how to proceed (CSO1, 2008). As one contributor noted this might involve a lengthy set of actions including:

⁶⁷ See Chapter Three for further comments on this working group.

More advocacy activities happening, which could be position papers for government, more meetings at micro NGO community level, institutional level, as well as leadership level, giving the endorsement and then committing to a policy and then once the policy is committed then setting it up. But I am talking about a ten year plan though (Law2, 2008).

Retaining openness within a scoping exercise was highlighted:

It is so critical with the [sub-] regional human rights mechanism dialogue ... not to be focused only on there is going to be this charter and there is going to be this court and we are going to be accountable to it. ... [T]hat might be an end goal but there is a lot of steps along the way to get that kind of consensus which would make something like that to actually work for everybody (Exec5, 2008).

In contrast to the working group process outlined above, an alternative approach could be to leave seeking political acceptance of SHRAs until other practicalities are secured (Jud2, 2009). As one of the judges explained, this might involve approaching the UN High Commissioner for Human Rights in the first instance to secure initial funding. Additional funding could then be sought from other stakeholders such as the World Bank and the Asian Development Bank before meeting with Pacific leaders about SHRAs initiatives (Jud2, 2009). At that stage Pacific leaders could be presented with a tagged funding offer:

I'd be coming back to the Pacific and saying, well here's the package and if you want aid and development money to do things you're going to have to be a good citizen, and part of the good citizen approval is going to have to come from working collectively towards establishing this charter (Jud2, 2009).

Having a definite entry point for discussions, therefore, was seen to be critical in order to gain traction for the concept of SHRAs, and if funding is already secured then it is less important if some individual members of the PIF leadership change during the decision-making part of the process (Jud2, 2009). It was maintained that funding is frequently attached to a time-frame as well as expected outcomes, and so more pressure may be placed on the leaders to develop SHRAs so that they can benefit from the funding package (Jud2, 2009).

Other participants made less detailed suggestions about activities that could advance the idea of SHRAs. For example, one suggested developing a blueprint for the development

of SHRAs or “some kind of feasibility project to see if in actual fact there is a need for something” (Aca3, 2008). Another person advocated having a “group of representatives from across the Pacific Islands Forum, working through the issues” (Exec1, 2008). One participant suggested that discussions with Asian governments should also occur during a scoping exercise and consideration given to a Pacific human rights arrangement being:

[N]ested and grown out of an Asia-Pacific regional mechanism [as] there is no reason in principle why that shouldn't be part of scoping work. I think if it's to be a genuine scoping exercise then all the options need to be put on the table. I can immediately see both benefits and possible disadvantages to that kind of approach (Exec5, 2008).

In sum, many participants noted the importance of debate and scoping exercises on SHRAs. The necessity of taking a slow and incremental approach was also widely acknowledged. As one person observed: “This is the story of progress on human rights in the Pacific, that if you want to get progress it is small sustainable steps” (Exec5, 2008).

Summary

Throughout Chapters Five and Six, participants' perspectives on the prospects for agenda success of SHRAs in the Pacific have been examined. The categories within which the empirical materials have been reported have been guided by the theoretical framework on agenda setting established in Chapter Two.

The participants did not express consensus on the idea of SHRAs in the Pacific and even individuals who supported the concept frequently had concerns (for instance about which policy actors should lead any developments and whether it is the right time for decision-making and implementation). While a small number of individuals were identified by interviewees as advocating for SHRAs, there was no evidence of established networks or policy communities, which suggests that there is currently little momentum for establishing SHRAs. The factors that were noted as affecting the receptivity of Pacific leaders also suggest that for there to be agenda success, several constraints and potential risks would need to be overcome. However, the discussion by participants on the three identified alternative institutional arrangements - a Pacific charter of human rights, a Pacific human rights commission and a Pacific court - indicated that a reasonable level of background work and consideration of possible roles and functions of each mechanism has occurred. Having the opportunity to present these

ideas to the Pacific leaders was seen to be more challenging, although again some participants had clear ideas as to possible processes that could increase the likelihood of agenda success.

The interviews preceded the decision of the PIF leaders to commission a scoping exercise to be undertaken by SPC/RRRT and the PIF Secretariat. In short, while the idea of SHRAs has recently reached the Pacific leaders' pre-decision agenda with this initiative (see Chapter Three), it has not yet been placed on the Pacific leaders' decision agenda. Therefore, through a theoretically informed analysis of the empirical materials, the next chapter will directly address the prospects for agenda success of SHRAs in the Pacific.

Chapter Seven

The prospects for agenda success of SHRAs in the Pacific

Introduction

At the heart of this research lies the question: what are the prospects for agenda success of sub-regional human rights arrangements (SHRAs) in the Pacific? Earlier chapters have detailed the theoretical framework on agenda setting that has been applied to this question, synthesised the literature on institutional human rights arrangements at international and regional levels, discussed the methodological approach taken in this doctoral research, and presented the empirical materials that were generated through semi-structured interviews. In this, the penultimate chapter, I will directly address the overarching research question. Accordingly, the chapter is structured around the key elements of the agenda setting framework as detailed in Chapter Two.

Seeking agenda success

The theoretical framework applied in this research provides a heuristic device for understanding the complex dynamics that contribute to agenda setting. The basic premise of the framework is that if certain conditions are met during the agenda setting process then the prospects for agenda success - that is, an agreement by decision-makers to advance the idea in question - are increased (Cobb & Elder, 1972; Kingdon, 2003; Peters, 1994; Princen, 2009, 2011). The theoretical framework incorporates the core elements of issues, alternatives, venues, policy actors, policy windows, the receptivity of decision-makers, and the institutional context. The likelihood of an idea achieving agenda success is increased if constraints in each of these areas are minimised. For the concept of SHRAs to achieve agenda success, then, it must be: able to be connected to a problem that Pacific leaders consider worthy of addressing; a readily available solution; seen as immediately important; and able to stand up to constraints such as technical feasibility, value congruence, cost efficiency, public support, and political acceptability (Kingdon, 2003). As Kingdon (2003) comments:

The probability of an item rising on a decision agenda is dramatically increased if all three elements - problems, proposal, and political receptivity - are coupled in a single package (p. 195).

A summary of the findings from the research, organised according to the theoretical framework, is illustrated in Table 7.1. These key factors are elaborated upon in the discussion to follow.

Table 7.1 A summary of factors affecting the prospects for agenda success of sub-regional human rights arrangements in the Pacific

Venue	Issue & alternative formation
<ul style="list-style-type: none"> ▶ PIF is the primary venue <ul style="list-style-type: none"> • Foremost sub-regional intergovernmental body with established institutional infrastructure • The Pacific Plan provides a mandate for further sub-regional developments and in the domain of human rights 	<ul style="list-style-type: none"> ▶ 5 core issues <ul style="list-style-type: none"> • Awareness/prioritisation of human rights • International requirements • Civil and political crises • Limited NHRIs • Geographical and economic challenges ▶ 3 primary institutional arrangements <ul style="list-style-type: none"> • Pacific Charter • Pacific Commission • Pacific Court
Policy actors	Windows of opportunity
<ul style="list-style-type: none"> ▶ Limited number of policy advocates ▶ Minimal public demand ▶ Limited bureaucratic involvement ▶ Informal networks ▶ UN encouragement but not enforcement 	<ul style="list-style-type: none"> ▶ Fiji coup 2006 ▶ Climate change ▶ Pacific Plan human rights objectives ▶ PIF Secretariat staff ▶ Scoping exercise ▶ Emphasis on regional cooperation and integration ▶ Obligations to the United Nations
Receptivity of decision-makers	The Pacific context
<ul style="list-style-type: none"> ▶ Issues of feasibility ▶ Conflict between human rights, customs and practices ▶ Restricted financial and human resources ▶ Minimal public interest ▶ Low priority 	<ul style="list-style-type: none"> ▶ Political will of Pacific leaders ▶ New Zealand and Australia's position in the PIF ▶ Size, isolation and diversity of PIF states ▶ Balancing state sovereignty with sub-regionalism ▶ Connections and obligations to the international community

Venues for decision-making

At the outset of the thesis the venue of the PIF was proposed as the most likely formal decision-making arena for the idea of SHRAs in the Pacific. Policy actors, however, often seek to have their ideas about specific issues and alternatives placed on agendas in multiple venues at the national, regional or supranational levels.

The majority of the participants confirmed that as the principal intergovernmental political body in the Pacific, the PIF is the most appropriate venue in which to examine any advancement of SHRAs. There are two main reasons why this is so. Firstly, the PIF has an established record of developing institutions that serve its member countries and thus it is not unreasonable to expect it to consider establishing a new institutional arrangement. Secondly, the Pacific Plan provides a framework for sub-regional discussions on the promotion and protection of human rights (APF, 2008; Australian Human Right Commission, 2008; Fong Toy, 2006; Jalal, 2009; Liddicoat, 2007). Specifically, SHRAs can be linked with the strategic objectives directly concerned with (sub-) regional human rights mechanisms, the ratification of human rights treaties, and the strengthening of the judiciary (Hay, 2009; Jalal, 2009; Liddicoat, 2007, 2009). Additionally, objectives relating to social, economic and environmental issues may also justify the relevance and need for SHRAs (Glazebrook, 2009; Liddicoat, 2007, 2009).

However, even as the most appropriate venue in which to consider the development of SHRAs, the PIF has limitations in terms of its jurisdiction and its status both within the sub-region and internationally. The PIF currently operates as a non-constitutional, advisory body that cannot impose formal sanctions or requirements on its member states (Huffer, 2006; Peebles, 2005). This may restrict the functions of SHRAs to being advisory, educational and promotional, unless member states subsequently agree to submit to an adversarial institution.

The choice of venues for pursuing certain issues or alternatives is also affected by the policy instruments that are available within that context (Maddison & Denniss, 2009; Princen, 2009). Despite its legal and constitutional limitations, there are appropriate policy instruments within the PIF that could be utilised in respect of SHRAs. For instance, the PIF has treaties or charters in other policy areas, including trade, air

services and hazardous waste,⁶⁸ as well as several sub-regional institutional arrangements that are part of the Council of Regional Organisations (CROP).⁶⁹ The development of a new mechanism in the form of a charter, commission or court is, therefore, viable based on the existence of other mechanisms in the PIF. The institutional architecture of the PIF enables not only the execution of an assessment of the idea, such as the scoping exercise, but also the means of establishing SHRAs if agreed upon by the Pacific leaders. In addition, the PIF Secretariat has the human resources and experience required to facilitate the development of a new mechanism.

One participant, however, supported the concept of an overarching Asia-Pacific human rights mechanism although an Asia-Pacific venue for agenda setting was not identified. The empirical materials also confirmed that national venues for political decision-making have not received significant focus by advocates of SHRAs. With the exception of the Australian government, Pacific political leaders have not, as far as it is known, given the concept any formal consideration at the national level in recent times. The Australian Inquiry on Human Rights in 2008-2009 sought expert knowledge on the issues and alternatives pertaining to SHRAs. The majority of submissions emphasised that any development of SHRAs in the sub-region should be led out by the small island states and not Australia and New Zealand. It is currently unknown as to whether the Australian government will defer to this strong advice and not place the idea on their federal agenda.

In sum, the PIF is the most suitable venue for agenda setting in respect of SHRAs in the Pacific due to its sub-regional focus, existing infrastructure, and history of establishing sub-regional institutions. The Pacific Plan provides a framework within which the concept of SHRAs can be deliberated upon and, furthermore, the inclusion of strategic objectives that refer to human rights, both specifically and obliquely, gives the Pacific leaders a mandate to seriously consider advancing the concept of SHRAs in the Pacific.

Connecting with issues

The prospects for agenda success of an idea are increased if it is seen to be connected to a problem that decision-makers consider worthy of addressing. The research undertaken

⁶⁸ See <http://www.forumsec.org.fj/pages.cfm/about-us/forum-treaties-agreements/>

⁶⁹ See <http://www.forumsec.org.fj/pages.cfm/about-us/crop/>

for this study suggests that while SHRAs could be considered an appropriate means of addressing several key issues in the Pacific, not all of these issues are currently a priority for Pacific leaders. This suggests a constraint on the prospects for agenda success.

Analysis of the empirical materials revealed there is limited understanding and awareness of human rights throughout the Pacific, particularly in the small island states (Hay, 2009; Liddicoat, 2007, 2009; RRRT/SPC, 2008; Toki & Baird, 2009). Promotion and education work is not widespread throughout the sub-region, and human rights are often perceived to be both contentious and of little relevance (Liddicoat, 2009). This stance is associated with the debates around universalism and cultural relativism and the tension between human rights, culture and law in the Pacific (Madraiwiwi, 2006; New Zealand Law Commission, 2006; Peebles, 2005; Tuilaepa, 2006). The perception that human rights are a Western construct contributes to ambivalence within the Pacific to the concept of human rights (Australian Human Rights Centre, 2008; de Blaauw, 2008; Houg-Lee, 2006; Huffer, 2006; Human Rights Law Resource Centre, 2008; Madraiwiwi, 2006; McDougall, 2009; Thaman, 2000). The cultural diversity throughout the Pacific is perceived to be a significant constraint on the Pacific leaders' commitment to human rights constructs, including SHRAs. Given the limited funding and support for civil society and national organisations working in the area of human rights, especially in the small island countries, it appears that addressing the issues of limited awareness and understanding of human rights is currently of low priority for many Pacific leaders.

Even so, human rights policy and legislation are evident in all of the PIF member countries. The small island states and New Zealand have a bill of rights and all PIF countries have ratified at least some of the international human rights instruments (Human Rights Law Resource Centre, 2008; RRRT/SPC, 2008). The Pacific sub-region does, however, have the lowest worldwide level of ratification of the seven core international human rights instruments, and while the ratification of treaties does not guarantee that human rights will be protected, it does give a general indication of a government's commitment to prioritising human rights standards (Angelo, 1992; Australian Human Rights Commission, 2008; Baird, 2008; Farran, 2009; Jalal, 2006; Liddicoat, 2007; Maclachlan, 2009; Peebles, 2005). Pacific leaders may, however, consider SHRAs as mechanisms that could further support their current efforts to meet their national, sub-regional, and international obligations and requirements. Certainly

with the introduction of the compulsory four-yearly UPR process, leaders may be more willing to support the establishment of sub-regional arrangements if they provide technical support and monitoring and reporting expertise.

There is some evidence to suggest that SHRAs may be supported for their potential to address ongoing civil and political crises in the sub-region, such as in Fiji, the Solomon Islands and Papua New Guinea. In particular, the Fiji coup in 2006 was perceived to be a situation in which SHRAs could have either assisted in preventing or helped with addressing alleged human rights violations. In addition, SHRAs could have potentially assisted with associated challenges including the lack of an independent NHRI in Fiji and the distance and cost of accessing international human rights fora. Although the Pacific leaders saw the coup as a significant event, they did not prioritise the idea of SHRAs as a solution to the Fiji crisis, but instead responded through direct sanctions at both national and sub-regional levels. SHRAs, therefore, were not at that time seen as immediately important for implementation. Future political or civil crises may also be able to be connected with SHRAs, although if the Fiji situation is indicative, Pacific leaders may be reluctant to employ a direct sub-regional response by means of an institutional arrangement.

The number of NHRIs in the Pacific is extremely low compared with other regions and sub-regions throughout the world (Liddicoat, 2007, 2009; Maclachlan, 2009; RRRT/SPC, 2008). This issue can also be connected with the idea of SHRAs as sub-regional mechanisms can act as alternative institutions in which to promote human rights standards or to seek redress for human rights violations (Durbach, 2009; Liddicoat, 2007, 2009; Sydney Centre for International Law, 2008). The small island countries in the Pacific have not established NHRIs for many reasons, including a suspicion about the relevance of human rights (especially to their cultural context), resource constraints, and difficulties with meeting the required standards, chiefly that of independence (APF, 2008; Enright & Zirnsak, 2009; Liddicoat, 2007, 2009; Maclachlan, 2009). Furthermore, few of these countries have indicated an interest in establishing NHRIs in the near future.⁷⁰ This suggests that Pacific leaders do not see them as vital, and this, too, may inhibit the linking of this issue to the establishment of

⁷⁰ Exceptions are Samoa, Papua New Guinea, and Nauru whose leaders have held discussions with the Asia Pacific Forum on establishing NHRIs in their respective countries. Palau, Tonga, and Vanuatu have more recently expressed interest in establishing an NHRI (Lee, 2011).

SHRAs in the Pacific. However, Pacific leaders may be persuaded to support the establishment of a sub-regional arrangement as opposed to a national institution if they believe SHRAs will provide similar advantages but be more cost-effective and less resource intensive for individual Pacific states.

The Pacific faces significant geographical, economic and environmental challenges. Issues of isolation, distance to the main islands, and smallness of economy and population, are apparent (Australian Human Rights Commission, 2008; Fong Toy, 2006; Human Rights Law Resource Centre, 2008; Powles, 2006). Climate change and global warming are critical issues throughout the sub-region, impacting on the rights of people to food, housing, sustainable livelihoods, and education (Glazebrook, 2009). NHRIs or other national institutions may not be sufficient to address these widespread challenges that are common across the Pacific. Pacific leaders are currently actively engaged in sub-regional and international fora, especially in respect of climate change. However, to date SHRAs have not, as far as it is known, been formally raised as a potential solution for assisting with addressing these challenges.

Although at this point in time the Pacific leaders have not placed SHRAs on their decision agenda, there has been gradual movement towards increasing the promotion and protection of human rights in the sub-region. This is evident in the inclusion of human rights objectives in the Pacific Plan, the appointment of a senior human rights advisor in the PIF Secretariat, and the scoping exercise due for completion in 2011. Furthermore, several issues have been identified in this research that could be connected with SHRAs. Advocates of a sub-regional mechanism, and in particular a commission, have strategically emphasised that SHRAs could assist with meeting the obligations of the UPR and treaty processes, be part of the solution to civil and political unrest such as in Fiji, and assist with environmental rights issues such as the problem of climate change. Therefore, whilst Pacific leaders may be reluctant to address human rights issues per se, they may be more likely to establish SHRAs if they are convinced these arrangements can usefully address other critical problems in the PIF countries or the wider sub-region. If SHRAs then can be presented as available, feasible and cost-effective solutions to these issues then the prospects for agenda success will be increased.

Institutional alternatives

As acknowledged in previous chapters, only a small number of individuals can be identified as actively seeking to facilitate the placement of SHRAs on the decision agenda of the Pacific leaders. In their efforts to advance their ideas, these actors are endeavouring to define which institutional arrangements should be deemed most important for consideration (Camilleri, 2003; Theodolou & Kofinis, 2004). The concept of a Pacific human rights commission has received the most public attention in the past five years with advocates framing their arguments around the issues of the importance of raising awareness and understanding of human rights, addressing civil and political crises, and assisting states with meeting international obligations (Jalal, 2008, 2009). In addition, they have sought to clarify that SHRAs can complement rather than supplement NHRIs and the international system of the UN. A Pacific charter of human rights has received little attention recently but emphasis has previously been placed on increasing awareness of human rights that are relevant and applicable to the Pacific, whilst not detracting from the international standards (Butler, 2005). A Pacific court has also received minimal public attention but work in this area generally links it to the issues of addressing human rights violations and cementing human rights standards in national and sub-regional case law throughout the Pacific.

The empirical materials established that regional human rights arrangements extending across the Asia-Pacific countries would be unlikely to succeed. Although the Pacific is part of this UN region, it is contended that it is both a minor and marginalised player, and this affects its interest and subsequent involvement in Asia-Pacific regional processes (Amnesty International, 2009; Australian Human Rights Centre, 2008). Further, the Pacific does not demonstrate an affinity with the Asia-Pacific grouping. Given the significant diversity across the Asia-Pacific region, achieving consensus on an overarching human rights mechanism would be extremely difficult, thus making a sub-regional arrangement more tenable (McDougall, 2009; New Zealand Law Commission, 2006; Peebles, 2005).

Three types of SHRAs, potentially relevant to the Pacific context, have been emphasised in the empirical materials: a Pacific charter of human rights, a Pacific human rights commission, and a Pacific court (Hay, 2009; Jalal, 2009). Whilst not mutually exclusive, these arrangements were considered discretely by research

participants. Common to each of the arrangements were, however, several core principles including: a commitment to upholding the international standards of human rights, legally binding instruments, and independent, impartial, professional and sustainably resourced mechanisms. Also, accessibility for Pacific peoples and cooperative approaches between governments, the PIF and civil society were supported (Amnesty International, 2009; Durbach, 2009; Jalal, 2009). The prospects for agenda success of these institutional arrangements are likely to increase if Pacific leaders view these arrangements as being readily available, technically feasible, cost-effective, resonating with PIF goals, having public support, and being politically acceptable.

Of the three identified types of SHRAs, analysis of the empirical materials indicates that a Pacific human rights commission is considered the most viable institutional arrangement (Jalal, 2009; Peebles, 2005; RRRT/SPC, 2008; Sydney Centre for International Law, 2008). Significant foundational work on the potential principles and functions of a commission has been undertaken over the past six years, particularly by Imrana Jalal under the auspices of SPC/RRRT. Initial analysis of other regional commissions and consideration of what aspects of these arrangements might be effectively brought into the Pacific context has also been conducted (Jalal, 2009). This preparatory work, whilst not exhaustive, is immediately available if this form of arrangement is to be pursued by the Pacific leaders. This background work, and the existing infrastructure of the PIF, is also indicative that a Pacific human rights commission is technically feasible for development in the sub-region (Jalal, 2008, 2009).

Furthermore, a commission is proposed to be cost-effective for the PIF member countries as their financial and human resources could be pooled (Jalal, 2008, 2009). In this way it could be a medium for the cooperative examination, targeting and addressing of human rights issues (Jalal, 2009). Adopting conciliatory processes for resolving human rights violations has been suggested as one way of ensuring Pacific approaches are central to any future commission (Jalal, 2009; Liddicoat, 2007, 2009).

Although public support for a commission appears minimal, several Members of Parliament, members of the judiciary, and Pacific civil society organisations have endorsed the concept. The political acceptability of a commission depends, in large part, on its mandate. It may be seen to be of value in that it could further extend the PIF goals

of Pacific cooperation and integration as well as assist with the realisation of some of the key objectives in the Pacific Plan. Pacific leaders may also value an institutional arrangement that could support the development of NHRIs if requested, strengthen the independence and institutional capacity of NHRIs, or provide assistance to countries that cannot resource such an institution. A mechanism that could assist individual states in the implementation of international human rights standards and meeting reporting requirements may also be favourably viewed by leaders (Jalal, 2009). Conversely, a commission charged with investigating specific instances of human rights abuse may be viewed as less acceptable to the Pacific leaders who may, at some point, be accused of alleged human rights violations (ACTU, 2008; Sydney Centre for International Law, 2008).

A Pacific charter was not widely favoured by research participants for immediate consideration or implementation. Whilst endorsing the concept of a sub-regional charter it was, in general, perceived as too difficult a task to agree to a set of 'Pacific' human rights standards, at this time. Furthermore, while a charter might provide a basis for other human rights work, such as that undertaken by a commission, it was not seen, in itself, to be the most effective means of addressing the issues identified above.

However, several advantages of a charter were noted. Specifically, a charter based on shared values that reflect the unique environment of the sub-region could contribute to greater social cohesion, strongly interconnected networks and effective governance, as well as be seen to be relevant to local communities (Angelo, 1992; Farran, 2009; Ladley & Gill, 2008). A charter could complement other work on the ratification of international treaties by containing clauses that encouraged states to continue developing respect for human rights in their own context, especially through the strengthening of national human rights law (Peebles, 2005). By embodying both individual and collective rights and duties, the diversity of Pacific cultural and ethnic groupings could also be acknowledged and celebrated. Although a Pacific charter is not immediately available for implementation, should the Pacific leaders desire, the LAWASIA draft Charter could provide a useful starting point for further work (Glazebrook, 2009; Jalal, 2008, 2009).

On a more cautionary note a strong sentiment throughout the empirical materials was the importance of several minimum considerations if a sub-regional charter was to be

developed (Australian Baha'i Community, 2008; RRRT/SPC, 2008). Firstly, a charter should not derogate from the international human rights standards but rather reinforce and expand these to incorporate the particularities of the Pacific (Australian Human Rights Centre, 2008; Jalal, 2008; Peebles, 2005). Additionally, a charter should not condone cultural relativism but be culturally sensitive and thus incorporate human rights standards and norms that are applicable to Pacific peoples (Peebles, 2005; RRRT/SPC, 2008). These might, for example, include the right to fish to ensure food security, the duty of individuals to their family and community, and the right to the protection of the environment (Chasek, 2010; Glazebrook, 2009; Hamel-Green, 1997; RRRT/SPC, 2008). Integrating UN human rights standards into a charter rather than drafting an entirely new instrument might assist in ensuring a balance between the universal standards and specific cultural considerations (Peebles, 2005).⁷¹

Overall, a Pacific charter is not likely to be politically acceptable to Pacific leaders at this time due to the extensive human and financial resources that would be necessary for consultation, development and implementation of a charter that could extend across the PIF member countries. In addition, agreement on the content of a Pacific charter may be difficult to achieve due to the range of perspectives on human rights throughout the sub-region.

A Pacific human rights court received minimal attention and endorsement from participants in this research, the majority of whom were unaware of activity occurring around this type of mechanism. And, as a further example of the current lack of interest in this institutional form, in a text which explores possible future human rights arrangements for the Pacific, no mention is given to this idea as a possible alternative (Farran, 2009). The notion of a Pacific Court, however, is not new with a precedent being the Western Pacific Court of Appeal that was situated in Fiji during the 1960s (RRRT, 2007).

The concept of a Pacific Supreme Court, that would include a human rights focus, is currently being advocated by Justice Gerard Winter and a small number of Pacific academics, lawyers and judges who have primarily discussed the concept with other

⁷¹ Peebles (2005) suggests the inclusion of the ICCPR, the ICESCR and five second-generation conventions. These are the Convention against Torture; the Convention on the Elimination of All Forms of Racial Discrimination; the Convention on the Rights of the Child; the Convention on the Elimination of Discrimination Against Women; the Declaration on the Right to Development.

members of the judiciary and legal fraternity. It is understood foundational work has been undertaken including an examination of other regional courts, with special attention being paid to the Caribbean sub-region which has similar geographical and economic issues to the Pacific. Publications promoting the idea of a sub-regional court are expected to be published in the short-term future and this work could certainly be valuable for Pacific leaders if they agreed to advance this type of arrangement (Jud2, 2008).

Functions of a Pacific Supreme Court could include strengthening Pacific law, security and development, complementing case law in individual Pacific countries, enabling a sub-regional dispute settlement process, and the development of Pacific jurisprudence on human rights (Matangi Tonga, 2007). It could also be a final sub-regional option for individuals and groups who have experienced human rights violations in the Pacific. The development of a Pacific court could proceed in a number of ways although an incremental approach may be most appropriate. Strengthening and extending the sub-regional pool of jurists shared around the national Pacific courts is suggested as a first step, followed by a Pacific law commission tasked with drafting and revising national legislation and analysing sub-regional legal issues. Eventually a Pacific court of appeal and courts with special jurisdictions, such as human rights, could be developed (Matangi Tonga, 2007). Taking a slow, gradual approach may sit more comfortably with the Pacific leaders and afford them time to build both public and political support for such an arrangement.

This type of institutional arrangement does, however, face several hurdles. It is doubtful whether Pacific leaders would approve of a binding, adversarial sub-regional court in the near future given the challenges associated with developing shared understandings of human rights concepts, a strong sense of sovereignty and commitment to principles of non-interference, the political instability of some countries in the sub-region, and the costs of such a mechanism (Sydney Centre for International Law, 2008). On the other hand, in 2007, a (sub-) regional legal infrastructure initiative was included in the Pacific Plan which emphasised increased cooperation and support across judiciaries, courts, and tribunals throughout the Pacific and this may indicate changing priorities of the leaders (Pacific Islands Forum Secretariat, 2007, p.19).

The prospects for agenda success of SHRAs lie, in part, in whether a particular type of arrangement is considered by Pacific leaders to be appropriate, cost-effective, and feasible. Although a charter, commission and court could be developed in tandem, Pacific leaders may support the advancement of one mechanism prior to others. Analysis of the empirical materials suggests that, at this time, a Pacific human rights commission is most likely to be preferred by the Pacific leaders.

Policy actors

Advocates of specific issues or alternative solutions seek to gain the attention of decision-makers so as to have their ideas considered on the pre-decision agenda. The likelihood for agenda success of these ideas will be enhanced if policy actors are prepared and ready to present their ideas when, or if, an opportunity arises. Furthermore, decision-makers may be more receptive if there is evidence of public support or wider mobilisation for an idea.

Since the 1980s the primary advocate for a Pacific charter of human rights has been LAWASIA and, specifically, one of its members, Justice Kishor Govind. Surprisingly, only one research participant was aware that Justice Govind has recently been reviewing the charter. It is not known how far advanced he might be in this process or how he may proceed once he has concluded this work. LAWASIA staff have, however, indicated that as an organisation it is not currently working to advance a Pacific charter of human rights.

The most prominent advocates for a Pacific human rights commission are Imrana Jalal, a human rights advisor at SPC/RRRT, and Ratu Joni Madraiwiwi, previously Vice-President of Fiji and presently a lawyer in Fiji.⁷² Together they have advocated for a commission at sub-regional consultations, spoken at conferences and to the media, and Jalal has also published material clearly stating her positive views on this type of institutional arrangement (Jalal, 2008, 2009). SPC/RRRT, where Jalal is employed, has been tasked, with the PIF Secretariat, with undertaking the PIF scoping exercise on SHRAs in the Pacific. Also, SPC/RRRT has included in its strategic plan to advance a Pacific human rights commission during the next ten years.

⁷² Imrana Jalal and Ratu Joni Madraiwiwi are former Commissioners at the Fiji Human Rights Commission.

Acharya and Johnston (2007, p. 276) suggest that: “*Who* makes a proposal can sometimes be more controversial than the *content* of the proposal itself” and in the case of Jalal and Madraiwiwi this may be somewhat true. Their perceived motivations in pursuing a sub-regional human rights commission were noted by a small number of research participants. Both have been public opponents of the 2006 Fiji coup and the interim government, with Madraiwiwi losing his post of Vice-President during the military takeover. Jalal has frequently spoken in public of alleged human rights violations that have occurred in Fiji since that time as well as the lack of independence of the Fiji Human Rights Commission. Although both have been long-time advocates of SHRAs in the Pacific it has been said that their main motivations for a Pacific human rights commission correlate with the current political situation in Fiji. According to some participants, this undermines the idea of a sub-regional commission as they believe it to be a self-motivated and unnecessary concept. Although the 2006 coup has provided an additional stimulus for discussing SHRAs, the work of these two policy actors has been strategic, sustained, and was initiated prior to the Fiji event. This indicates the depth of their commitment to the development of this form of institutional arrangement and supports Kingdon’s (2003, p. 201) view that: “the work of floating and refining proposals is not wasted if it does not bear fruit in the short run. Indeed it is critically important if the proposal is to be heard at the right time.” Given the Pacific leaders’ commitment to a scoping exercise it appears that it is a propitious time for Jalal and Madraiwiwi, in particular, to push their proposal for a Pacific human rights commission.

Justice Gerard Winter, a New Zealand citizen who has lived and worked in the Pacific for many years, is the most vocal advocate of a sub-regional court. Together with Madraiwiwi and several prominent judges and lawyers throughout the sub-region, Justice Winter has, in the past five years, worked on developing possible configurations of a court or a sub-regional hub of legal services that would include a human rights focus. These ideas have been raised at conferences and in the Pacific media. These policy actors also appear to be prepared for taking advantage of any opportunities to present their ideas to the Pacific leaders.

There is no indication of a coordinated approach or a convergence of ideas between these core actors for advancing SHRAs in the Pacific. The reasons for this lack of cohesion across the actors and the different institutional configurations are unclear. One

possibility is that LAWASIA or Justice Govind does not have strong links with Pacific organisations such as SPC/RRRT, although it is understood that the individuals involved in the work are known to one another. Justice Winter is also known by the advocates of both the charter and the commission although it appears that no attempts have been made to work together on furthering these ideas in tandem. Also of interest is the work of Dr Dave Peebles on the concept of a Pacific order, published in 2005, which, whilst including a comprehensive blueprint for an Oceanic human rights charter and an Oceanic human rights commission, has not been noted either in the interviews or other literature. It seems his ideas have received little attention by the current advocates of Pacific SHRAs or by Pacific decision-makers beyond the Australian Labor Party during the mid-2000s. This perhaps reflects the view that any advocacy for the idea of SHRAs should be undertaken by people from the small island states rather than Australians or New Zealanders.

The PIF Secretariat, as the sub-regional administrative executive branch, has had a small number of staff involved in work relating to SHRAs in the Pacific. In particular, Andie Fong Toy, a policy advisor in the Secretariat until the end of 2008, was an advocate for a sub-regional mechanism.⁷³ Specifically, she supported the establishment of a Working Group to explore possible SHRAs at the conclusion of the 'Strategies for the Future' conference in Samoa in 2008. As a PIF official, she understood the process of agenda setting and recommended a Working Group that consisted primarily of respected peoples from the small island states and taking a step by step approach that could culminate in a scoping exercise for Pacific leaders. As Fong Toy was due to be leaving the PIF Secretariat at the end of 2008, she advised waiting until the appointment of the senior Human Rights Advisor in the PIF Secretariat so that an 'insider' who understood the PIF processes could be involved. Fong Toy was also instrumental in the discussions and decision-making that led to the establishment of the advisory position.

As it eventuated, this Working Group was not established; although later in 2009 the PIF leaders did place SHRAs on their pre-decision agenda and requested that SPC/RRRT with the support of the PIF Secretariat undertake a scoping exercise. This exercise was further delayed until the appointment of Mr. Filipino Masaurua to the senior

⁷³ In early 2011 Andie Fong Toy was appointed as the Assistant Secretary-General of the PIF. Given Fong Toy's previous supportive stance towards SHRAs her appointment might bode well for advocates seeking support from within the PIF.

Human Rights Advisor position in the PIF Secretariat. In this respect PIF Secretariat staff, and foremost the senior Human Rights Advisor, continue to have a key role in the agenda setting process. The strong relationship between Jalal and Fong Toy also guided Jalal in her efforts to raise Pacific leaders' awareness of the idea of a Pacific human rights commission and may also have influenced the decision to have SPC/RRRT undertake the scoping exercise.

There is also an informal network of people interested in SHRAs as evidenced in their involvement in the aforementioned 'Strategies for the Future' symposium in 2008 and the Australian Inquiry on Human Rights in 2008-2009. Although not an exhaustive list these people and institutions include Petra Butler (Victoria University of Wellington Law School), Kieren Fitzpatrick (APF), Joy Liddicoat (formerly New Zealand Human Rights Commission), Cassandra Goldie (formerly Australian Human Rights Commission), Amnesty International, the Sydney Centre for International Law, and the Australian Human Rights Centre. It is of note that these actors have varying levels of commitment to SHRAs in the Pacific. For instance, members of the executive branches of the Australian and New Zealand governments and the APF have stipulated that any discussion and development of Pacific human rights arrangements should be led out by people from the small island states, thus deliberately limiting their involvement in the agenda setting process. This perspective is also emphasised throughout the empirical materials. While it is reasonable to expect that some of these actors will contribute to further consideration of SHRAs, whether through the scoping exercise or other consultation processes, at present there is no evidence of them actively mustering support for SHRAs in the Pacific.

The Office of the High Commissioner for Human Rights (OHCHR) Pacific division, based in Suva, has also shown an interest in SHRAs in the Pacific. For instance, it has indicated that its priority areas from 2008 include, amongst other objectives, expanding its cooperation with sub-regional institutions such as the PIF and the APF, and to support these institutions in the development of sub-regional human rights mechanisms. Furthermore, it has committed to assisting with establishing sub-regional judicial structures and building national or sub-regional human rights institutions (Chiam, 2008; OHCHR, 2009a). These goals clearly indicate the OHCHR has an interest in the establishment of SHRAs in the Pacific, even though the details of these intentions have not been publicly specified. A sub-regional commission and a sub-regional court or

modified judicial structure correlates with the stated objectives from the OHCHR. It is unknown as to whether the OHCHR has communicated with Pacific leaders about advancing SHRAs or influenced the decision to undertake a scoping exercise.

Widespread support from ‘the public’ throughout the Pacific for SHRAs is not apparent due to a combination of three factors: the concept of SHRAs has not been widely promoted, there is little demand for such institutional arrangements from Pacific communities, and there is little opportunity for ‘the public’ to access or take political action at the sub-regional level of the PIF. This presents a challenge to advocates of SHRAs as Pacific leaders may be reticent to pursuing an idea, especially one in the challenging domain of human rights, if there is little public support or demand. However, as the Pacific leaders do not directly rely on constituent support for their ongoing position in the PIF, the limited demand from the public for SHRAs in the Pacific may be of lesser consequence.

The influence of policy actors on agenda success for SHRAs in the Pacific is currently limited for the following reasons. Only a handful of policy actors are actively attempting to raise awareness of SHRAs and have them placed on the Pacific leaders’ pre-decision agenda. By working in isolation from one another there is potential for decision-makers to receive a fragmented view on issues pertaining to human rights and institutional alternatives. With the exception of the senior Human Rights Advisor, the key policy advocates are all members of the legal fraternity without direct involvement in the political structure of the PIF. Maintaining a high level of commitment to the agenda setting process is challenging and may not be sustainable for individual actors due to their own personal and professional commitments. The involvement of other institutional actors such as government bureaucrats, political parties and non-government organisations, in pursuing this idea of SHRAs in the Pacific is minimal, thus limiting understanding and awareness of the idea as well as access to the decision-makers.

That said, the scoping exercise to be executed by SPC/RRRT and the PIF Secretariat in 2011 is a significant opportunity for advocates of SHRAs to garner more widespread support and have their views heard by the people undertaking the exercise. The idea of a Pacific human rights commission is expected to receive considerable attention given that the SPC/RRRT, with Jalal as one of its senior staff members, has already publicly

supported this type of institutional arrangement. Advocates of other mechanisms are likely to endeavour to have their ideas represented in the exercise so as to increase the likelihood of the Pacific leaders examining their ideas and potentially placing them on their decision agenda.

Opening windows

There are times when particular focusing events or opportunities produce an environment which allows for the promotion of new ideas and alternatives (Birkland, 1998; Haas, 1992; Howlett & Ramesh, 2003; Hudson & Lowe, 2009; Joachim, 2003; Keck & Sikkink, 1998; Kingdon, 2003; Peters, 1991; Pralle, 2006; Princen, 2009, 2011; Theodolou & Kofinis, 2004). Kingdon (2003) describes these moments as windows of opportunity that may open either because of political changes or because of the nature of an issue. Open windows, however, are only available for a short period of time due to political, institutional or resource constraints (Dearing & Rogers, 1996; Howlett, 1998). Even if an idea is able to be pushed through an open window, agenda success is not guaranteed but an idea is more likely to be considered by decision-makers (Kingdon, 2003). Four window types have been specified by Kingdon (2003) and each of these will be briefly considered in respect of SHRAs in the Pacific.

A random problem window refers to an unexpected event, crisis or change in the national, or in this case, sub-regional mood. The Fiji coup in 2006 was an example of this type of policy window. Although the concept of SHRAs in the Pacific preceded the latest coup, its occurrence stimulated further debate. Five years on, however, and a sub-regional mechanism has not been actioned by Pacific leaders thus indicating the idea of SHRAs was not successfully pushed through this policy window. SHRAs, therefore, were not seen by decision-makers as a priority response or solution to this crisis. Kingdon (2003) emphasises the importance of policy actors being ready with their solutions when a window of opportunity presents itself. It appears that apart from some background work being undertaken by Jalal and Madraiwiwi prior to 2006 the idea of SHRAs as a potential institutional solution was insufficiently developed and ready for pushing onto the PIF leaders' pre-decision agenda at that time.

Routine political windows - for instance, electoral or budgetary cycles - are more difficult to identify in the sub-regional context. This is in contrast to a national political system wherein routine windows are predictable and regular, thus enabling policy

advocates to be prepared for opportune moments to present their proposals (Kingdon, 2003). The annual review cycles operating within the PIF are the primary routine opportunity for policy actors seeking to access the PIF agenda. In particular, during the Pacific Plan annual review process, officials and political leaders assess what action has been taken over the previous year and what, if any, attention will be given in the following time period. Prior to 2008, minimal attention was paid to the Strategic Objective 12 in the Pacific Plan that referred to a (sub-) regional human rights mechanism, with other goals receiving greater priority. From that time forward this goal was moved into a new category which required it to receive further analysis. In 2011, the annual review of the Pacific Plan is likely to include the results of the scoping exercise on SHRAs in the Pacific. Therefore, at the time of the leaders' meeting there will be a brief opportunity for advocates of SHRAs to further stimulate public and political attention to the idea, particularly through media releases and the lobbying of individual politicians and officials. Increasing the knowledge of these policy actors on potential functions and advantages of SHRAs may affect the decisions made by the Pacific leaders at that time.

Discretionary political windows are opened by the behaviour of individual policy actors. In particular, this type of window can open if new personnel are receptive to an idea and have the ability within the organisational constraints to advance this (Kingdon, 2003). Therefore, if a political leader or member of the PIF Secretariat supports the idea of SHRAs then increased attention to the idea is more likely to eventuate. The staff of the PIF Secretariat are pivotal as they have opportunities to present concept papers and other documents directly to the Pacific leaders. Furthermore, the appointment of Filipino Masaurua, senior Human Rights Advisor in the PIF Secretariat, indicates an endorsement from the Pacific leaders' to further advance the promotion and protection of human rights at the sub-regional level. Masaurua, tasked with working with SPC/RRRT on the scoping exercise, is in a central position to influence the execution of the exercise, the information that is included or excluded, and the recommendations that will be made to the Pacific leaders.

Finally, spillover problem windows occur when a change in one issue area allows for developments in a related field (Birkland, 1998; Howlett, 1998; Kingdon, 2003; Lindquist, 2001; Pralle, 2006). A potential spillover window that has now closed was the scoping exercise on a sub-regional ombudsman, undertaken by an Australian

consultant in 2008. If this exercise had recommended the establishment of a sub-regional hub of ombudsman-type services, then advocates of SHRAs could have used this event as leverage to push their own, similar, proposals. Instead, the consultant recommended strengthening ombudsman services in individual Pacific countries and enhancing the links between these national arrangements. This recommendation, endorsed by the Pacific leaders, prevented a window of opportunity for advocates of SHRAs at that time. There are currently no apparent spillover problem windows open for campaigners of SHRAs in the Pacific to push their ideas through.

The notion that it is the 'right' time for advancement of the idea of SHRAs is also perceptible throughout the empirical materials, thus endorsing the view that, at times, policy ideas or solutions wait or search for a window of opportunity. (Kingdon, 2003; Ladley & Gill, 2008; Pralle, 2006; Theodoulou & Kofinis, 2004). In addition to the policy windows described above, two more opportunities were identified. Firstly, the institutional and political aspirations of the PIF offer an opportunity for SHRAs to be advanced. As already noted, the Pacific Plan endorses sub-regional cooperation and integration, and contains strategic objectives for the promotion and protection of human rights. The current scoping exercise, mandated by the PIF, provides a significant opportunity for advocates to push their ideas on SHRAs forward so that they may be heard by the Pacific leaders.

Secondly, there is an expectation from the UN and other donors that individual countries as well as the Pacific sub-region more generally, should be adhering to international human rights standards and good governance practices. Moreover, the PIF member states are obligated to the UN to fulfill accountability, monitoring and reporting requirements in respect of human rights. Advocates of a commission have argued that the PIF states may benefit from a pooled approach to meeting the requirements of the compulsory UPR process, as well as reporting on ratified international treaties. These international requirements and obligations may, therefore, present a window of opportunity through which supporters of a commission, in particular, can push their proposals.

The ongoing political unrest in some Pacific countries, international requirements and obligations, and the scoping exercise on SHRAs, provide opportunities for advocates to promote their ideas to Pacific leaders. Conversely, there is tension around the concepts

of human rights, culture and law in the Pacific that requires further debate, and Pacific leaders have not taken previous opportunities, such as the Fiji coup, to explore the utility of SHRAs for assisting with addressing human rights issues. There is, therefore, a tension for policy advocates as they seek to balance pushing their proposals through the policy windows and also framing these in a way that is congruent with the sub-regional goals and aspirations of the Pacific leaders. Moreover, there are political and institutional pressures for Pacific leaders as they receive the findings from the scoping exercise and consider whether SHRAs offer appropriate ways in which to address the future promotion and protection of human rights in the Pacific.

The Pacific context and agenda setting

The context within which agenda setting is occurring affects the prospects for agenda success (Colebatch, 2006; Joachim, 2003; Peters, 1994; Princen, 2009). PIF member states have their own social, political, cultural, and geographical issues that shape their views on ideas such as SHRAs. At the sub-regional level, while there are precedents for new institutional developments, the small state nature of the Pacific, contested views on human rights concepts, the relationship between New Zealand, Australia and the other PIF states, and issues of sovereignty, may either constrain or improve the likelihood of agenda success for SHRAs. International obligations may also provide impetus for the advancement of SHRAs in the Pacific. These contextual factors affect how ideas are framed by advocates, as well as the resolutions by Pacific leaders to move an idea from the pre-decision to the decision agenda.

The small state nature of the majority of the PIF members creates significant challenges. The size and isolation of many small island states limits reliable, accessible and affordable communication, transportation and service delivery. Accessibility to a mechanism such as a commission or a court, especially for people in outlying island or rural areas, is potentially a major issue given that travel is difficult, expensive and time-consuming (Fitzpatrick, 2009; Levantis, 2005; Renshaw, 2009). Active participation in policy activities in sub-regional fora is also difficult due to financial and human resource constraints and the necessity of focusing energies at the national level (Australian Human Rights Commission, 2008; Fong Toy, 2006; Human Rights Law Resource Centre, 2008; Ladley & Gill, 2008; Liddicoat, 2007; Tuilaepa, 2006). Furthermore, officials who are managing multiple demands in the small island states

have limited time and impetus for pursuing or implementing new ideas and this significantly restricts what becomes a priority for their governments. Attention from small island governments to a new idea, particularly in the area of human rights which is frequently associated with contention and disinterest, is notably restricted. The relevance of a sub-regional institution to all Pacific peoples is also questionable and national arrangements may be more apposite and easily reached, depending on the assigned functions of the mechanism (Farran, 2009; RRRT/SPC, 2008). Although there are challenges associated with the small island nature of the Pacific, exploiting economies of size and scale may be possible if Pacific leaders have similar preferences for advancing the promotion and protection of human rights throughout the Pacific (Ladley & Gill, 2008; Liddicoat, 2007).

Human rights are a contentious issue within the Pacific and while the establishment of new sub-regional institutions may generally meet with little opposition, the concept of a *human rights* institution may not be so popular. Emerging from the empirical materials is a suggestion of a correlation between the limited understanding of human rights standards and the lack of demand for human rights institutional arrangements throughout the Pacific at both the national and sub-regional levels. The constitutional and international obligations on Pacific countries could, however, lead to a re-prioritising of human rights, at both levels in coming years (Farran, 2009). Reframing policy issues such as economic development and environmental concerns as human rights issues, and the focus on achieving the strategic objectives of the Pacific Plan and the Millennium Development Goals, gives scope for a renewed emphasis on human rights and associated institutional arrangements (Chasek, 2010; Hamel-Green, 1997; Human Rights Law Resource Centre, 2008; Peebles, 2005; Sydney Centre for International Law, 2008). Recent crises such as the 2006 Fiji coup have also increased awareness of the idea of human rights mechanisms especially given the altered role of the national human rights commission in that country. Emphasising that the aim is to resolve tangible problems, not just to build another institution is important. As van der Donckt (1996) comments: “The most effective instrument for solving the problem should be supported, whether it is a formal organisation, an ad hoc grouping or some other arrangement” (p. 60). Improving understanding of human rights standards and the relevance of these to all sectors of society may contribute to increasing demand for a new institutional arrangement.

There is also considerable tension associated with the involvement of Australia and New Zealand in the advancement of Pacific institutional arrangements (MacLellan, 2009; Shibuya, 1996). If these two metropolitan countries are perceived as imposing or even actively promoting SHRAs then many of the small island states may become adverse to further consideration of this concept (Amnesty International, 2009; Hay, 2009; Human Rights Law Resource Centre, 2008; Jalal, 2009; Liddicoat, 2009; Shameem, 2007; World Vision Australia, 2008). Agenda success may, therefore, be more likely if these two metropolitan countries leave the other PIF countries to take any initiative on pursuing the idea of SHRAs. While it is both appropriate and feasible for tasks such as the scoping exercise to be led by the small island countries, there is a dilemma in that New Zealand and Australia are both members of the PIF and are, therefore, entitled to contribute to both the agenda setting and decision-making processes. The Australian and New Zealand governments have not publicly voiced their views on the idea of SHRAs and may well take a low-key role in initial deliberations within the PIF, as encouraged by several research participants. However, there are unanswered questions as to New Zealand and Australia's involvement in the establishment of SHRAs, the extent of their provision of financial and technical support and any conditions attached to these resources, and whether they would agree to be subject to the jurisdiction of SHRAs, especially given the effectiveness of their national institutions (RRRT/SPC, 2008).

The issue of state sovereignty is highlighted throughout the empirical materials as pertinent to the Pacific context. A range of perceptions on whether SHRAs may threaten the sovereignty of individual states by usurping their control of policy decision-making and implementation is evident (Asia-Pacific Human Rights Network, 2003; Australian Human Rights Centre, 2008; Sydney Centre for International Law, 2008). Tension currently exists in the Pacific between the stance of absolute state sovereignty and the more contemporary view that collective action in the sub-region enhances and strengthens the position and role of the state (Aqorau, 2006). In part, this tension stems from the relatively recent independence from colonial rule for many Pacific states and the subsequent focus on national issues and cementing notions of nationhood (Fraenkel, 2006; New Zealand Law Commission, 2006). There is, however, a sense that this post-colonial period is ending, and that Pacific countries are becoming more concerned with strengthening sub-regional and international relationships (Sydney Centre for

International Law, 2008; Tuilaepa, 2006). The adoption of UN and other multilateral treaties, especially in the human rights and economic policy domains, already curtails the sovereign powers of individual states through the associated obligations and responsibilities. While sub-regionally focused, the PIF does not seek to limit the national sovereignty of individual Pacific states (Frazer & Bryant-Tokalau, 2006; Pacific Islands Forum Secretariat, 2007). National sovereignty is protected through sub-regionalism as policy-making remains at the country level while efficiencies may be made through sub-regional service delivery (Clements, 2008; Fry, 2005; Graham, 2008; Urwin, 2007). Involvement of member countries in agenda setting and decision-making processes ensures collective policy-making, although as noted, the strength of New Zealand and Australia in these processes is contentious.

The PIF is also part of the international community and most member states have political, social and economic relationships with a range of international or supranational institutions, for example, the UN, the World Trade Organisation (WTO) and the EU. International agreements such as ratified human rights covenants influence executive and legislative decision-making at the national level. Agenda setting processes within the PIF are also affected by these relationships. Although the UN has been encouraging debate on the idea of (sub-) regional human rights arrangements for many years, it has not applied overt pressure on the PIF to develop a human rights mechanism in the sub-region. However, the signaling of the OHCHR to support the PIF in this area perhaps indicates their expectation for agenda success in the future.

The milieu within which the PIF is situated shapes the agenda setting process and likelihood for agenda success of SHRAs in the Pacific. While several contextual factors have been highlighted throughout the empirical materials, three of these have been identified as the most likely to act as constraints upon agenda success for SHRAs. These factors are the limited awareness and understanding of human rights across the Pacific, thus contributing to the limited demand for SHRAs, issues of state sovereignty, and a lack of consensus on human rights concepts. Contextual factors will affect the perceptions of Pacific leaders as to whether SHRAs may have congruence with the existing Pacific institutional and political environment and, therefore, be seen to be feasible and of sufficient priority.

Receptivity and political will

The receptivity of Pacific leaders is the final critical factor for agenda success. The idea of SHRAs in the Pacific has received some attention in recent times, from proponents of these arrangements as well as from the Pacific leaders. Furthermore, there exists an appropriate venue within which the ideas can be advanced as well as potential windows of opportunity through which the proposals may be pushed. Initial work on possible institutional arrangements has been undertaken and is available for the consideration of the decision-makers. However, for agenda success to be finally realised the Pacific leaders need to be receptive to an idea and willing to advance it. For an idea to survive the scrutiny of decision-makers it needs to overcome certain constraints including: technical feasibility, value acceptance, tolerable cost, anticipated public acquiescence, and political acceptability (Kingdon, 2003, p. 131). This typology largely correlates with the analysis of the empirical materials.

Having realistic ideas and solutions to present to decision-makers ensures that the constraint of feasibility is overcome (Boscarino, 2009; Kingdon, 2003). There are clearly differing views on which types of SHRAs might be most practicable for the Pacific. The empirical materials indicate that a sub-regional commission is the most appropriate and viable institutional arrangement at this time, especially if it is initially established as a promotional and educational body, with additional functions added at a later stage. Agreement on the standards of rights contained in a Pacific charter would be time-consuming and contentious thus making it more difficult to achieve. A sub-regional court is also less feasible, due to the perceived adequacy of existing national legal mechanisms and apprehension about taking an adversarial approach to human rights in the region.

A concern as to whether SHRAs fit with individual, societal and institutional values in the Pacific emerged from the empirical materials (Fong Toy, 2006; Powles, 2006). Ethnic differences within and between PIF member states are considerable and there are varying attitudes towards definitions of human rights and the relationship between human rights, culture and law (New Zealand Law Commission, 2006). There is not a harmonious view on what human rights are or how they can best be protected across Pacific cultural or ethnic groupings. Indeed, in many Pacific countries the majority of citizens have little knowledge of the term 'human rights' or the concept of 'having

human rights' (Australian Baha'i Community, 2008a; Jalal, 2009). Due to perceived conflict between human rights, customs and practices some governments may fear that their own political and cultural identity could be undermined or jeopardised by the development of SHRAs (Sydney Centre for International Law, 2008). Whilst a new institutional mechanism could resonate with some of the strategic objectives in the Pacific Plan, reaching agreement on the concepts of human rights and what these mean in the Pacific context is more challenging.

SHRAs need to be seen to be viable in terms of cost. On the one hand, SHRAs can be cost-effective if individual governments pool their resources, utilise local expertise and draw on the institution to fulfill some of their human rights obligations and requirements, rather than, for example, employing external consultants to undertake this work (Asian Development Bank, 2005; Jalal, 2009). Many smaller Pacific countries regard the implementation of human rights standards as too expensive. Therefore, SHRAs could support states with meeting these obligations (Human Rights Law Resource Centre, 2008; Jalal, 2006, 2008). Conversely, the limited resources, particularly of the small island countries, may be better utilised by developing or strengthening local human rights mechanisms (Australian Human Rights Centre, 2008). Resourcing is also related to the functions of SHRAs, as their mandates will affect the extent of individual and state access and utility. As van der Donckt (1996) suggests: "budgetary considerations often act as a major determinant of the type of activities regional bodies can plan for and undertake" (p. 52). Resourcing is most pertinent for the idea of a sub-regional commission or a court which would require sustainable funding to ensure both its establishment and ongoing work (RRRT/SPC, 2008). Suggestions for accessing adequate funding have been outlined in Chapter Six.

Agenda success is less likely if decision-makers do not believe the public will largely agree with their policy decision. Without considerable awareness-raising both on human rights generally and the idea of SHRAs specifically, it is doubtful that individual citizens across the Pacific will support the establishment of such mechanisms. The work of the PIF is somewhat removed from the lives of individuals compared with the decisions of local and central governments which have an immediate impact on daily needs and resources. Whether citizens from the PIF member states will find the idea of SHRAs acceptable will depend largely on their functions and whether these are seen to add value to the lives of individuals and communities. Also of consideration is whether

such arrangements would be accessible or may negatively impact on Pacific peoples, financially or in other ways (Liddicoat, 2007). It seems unlikely that widespread mobilisation at this level of society will occur in the short-term future, especially given the constraints about acceptability of the concept of human rights. Further, it is unknown whether public interest in SHRAs would significantly affect the receptivity of decision-makers.

Apart from garnering the support of individual citizens, Pacific leaders will also want to ascertain the support or otherwise of other stakeholders. If an institution is established without a mandate from key policy actors across the Pacific states including relevant civil society organisations, then it is unlikely to be successfully implemented. This could reinforce the view that widespread sub-regional cooperation in the Pacific is unrealistic, unnecessary and unattainable (Crocombe, 2006). As SHRAs are only one of several possible approaches to ensuring the promotion and protection of human rights in the Pacific, it is crucial for the decision-makers to have support across both the state (formal) and non-state (informal) sectors to pursue such an initiative. At the present time, there is no indication of significant demand for SHRAs in the Pacific and no sign of a policy 'champion' amongst the Pacific leaders themselves for such an initiative. Therefore, Pacific leaders, although committed to the scoping exercise, may have little compulsion to further the idea beyond this activity, especially given the multiple policy issues demanding their attention.

An idea must also be politically acceptable to the Pacific leaders for agenda success to occur. The minimal attention given to SHRAs, even since the inception of the Pacific Plan, suggests that SHRAs have been a low priority for individual states and the PIF leaders (Angelo, 1992; Farran, 2009; Huffer 2006; Jalal, 2008; Sydney Centre for International Law, 2008; Tuilaepa, 2006). The lack of demand from the public and other policy actors has also meant leaders have had no sense of immediacy or urgency. Due to the contested and political nature of human rights, Pacific leaders have also been reluctant to place a significant focus on human rights developments in their agenda. Historically, other ideas such as trade, marine protection and security have taken precedence due to the strategic focus of the PIF on developing the sub-region economically and ensuring individual countries are protected from external threats. While a continuation of this emphasis on the economy and security in the Pacific is

expected, due to the changing political and environmental context, leaders may be more open to considering the utility of SHRAs for the sub-region.

Until 2009, when SHRAs were placed on the PIF leaders pre-decision agenda, there was no evidence to show that the idea was being actively considered by the Pacific leaders (APF, 2008; Farran, 2009; Sydney Centre for International Law, 2008). The appointment of the senior Human Rights Advisor in the PIF Secretariat and the directive to undertake a scoping exercise with SPC/RRRT on the concept of SHRAs may signal a shift in interest by Pacific leaders. The scoping exercise is, therefore, an important policy window and an indication that Pacific leaders may be becoming more receptive to the concept of SHRAs in the Pacific. However, it is not yet known whether the recommendations of the scoping exercise will support the advancement of SHRAs in the Pacific. Moreover, even if the recommendations are favourable towards establishing a new mechanism the idea of SHRAs may still not receive broad political support amongst the PIF leaders. From a more skeptical perspective, the scoping exercise may also be an attempt by PIF leaders to appease the advocates of SHRAs but essentially placing the idea aside until a later time.

The prospects for agenda success

The theoretical framework developed for this thesis provides the parameters in which an examination of the elements that affect agenda setting processes can occur and an optic through which the prospects for agenda success can be ascertained. This chapter has discussed in detail how each aspect of the agenda setting process pertains to the idea of SHRAs in the Pacific. In so doing, it is possible to see both opportunities and constraints which are increasing or decreasing the likelihood of agenda success.

Following extensive research and analysis - and notwithstanding the caveats identified in this and previous chapters - my conclusion is that the prospects for agenda success of SHRAs in the Pacific are moderate. There are six central reasons for this view:

1. An appropriate venue for agenda setting, decision-making and implementation is available in the PIF. Although sustainable funding is likely to be a significant implementation issue, the PIF has adequate human, financial and institutional resources and infrastructure for agenda success.

2. It is a suitable time to advance SHRAs in the Pacific due to the on-going political instability in some parts of the sub-region, the serious environmental and related rights challenges facing the Pacific, and the requirements for Pacific states to fulfill UN and other donors' human rights obligations. Momentum to increase awareness and understanding of human rights is building, albeit slowly, (and due in no small part to the endeavours of some of the core policy actors identified in previous chapters), and this may provide further impetus for Pacific leaders to consider their response to human rights issues at the sub-regional level. These issues are all significant for the PIF member countries, and advocates have framed each of these as able to be addressed, at least in part, by SHRAs. It remains the case, however, that the PIF leaders have not yet prioritised these issues, which in turn limits the likelihood of agenda success for SHRAs.
3. A Pacific human rights commission can be viewed as a readily available institutional arrangement for the consideration of Pacific leaders as extensive foundational work on this type of mechanism has already been undertaken. SPC/RRRT has also explicitly stated in its strategy documents that it is committed to advancing the idea of a Pacific human rights commission. Furthermore, initial groundwork on the concept of a Pacific court has commenced. The resources, both human and financial, required to establish and sustain either of these mechanisms may, however, be considered to be prohibitive or at least delay any movement towards advancing SHRAs.
4. The influence of policy advocates of SHRAs is limited due to the small number of proponents and their fragmented approach. However, although advocates of SHRAs are primarily working individually, there is some evidence that an overarching mobilising architecture - comprising policy actors who are engaged with the issues - does exist, and that it is well placed to support the work that is being done on SHRAs when the time is propitious. In particular, it is significant that a key advocate for a Pacific human rights commission is part of the organisation that is undertaking the scoping exercise (SPC/RRRT). The commitment of the OHCHR to furthering sub-regional human rights developments in the Pacific is also significant as it indicates that the UN is

supportive of the idea. This places some pressure on the Pacific leaders to, at a minimum, consider the idea of SHRAs, but also provides them with an opportunity to seek funding and technical assistance from the UN if agenda success for the idea of SHRAs is achieved.

5. The Pacific Plan includes strategic objectives on furthering sub-regional cooperation and integration and also on the promotion and protection of human rights. These objectives provide a mandate for Pacific leaders to move the idea from their pre-decision agenda onto the decision agenda. The Pacific Plan is also a vehicle through which advocates can frame their ideas and mobilise support.
6. Pacific leaders have already shown a level of receptivity to the idea of SHRAs by committing to the scoping exercise. This provides an initial indication that SHRAs are becoming more politically acceptable to these decision-makers. Placement of SHRAs on the pre-decision agenda, by means of the scoping exercise, provides a critical avenue for discussion and consideration of matters relating to the possible advancement of SHRAs. This, in turn, increases the likelihood of movement onto the decision agenda and, potentially, agenda success.

The prospects for agenda success of SHRAs in the Pacific are considered to be moderate with - in the final instance - the receptivity and political will of the Pacific leaders necessary to ensure agenda success. While the other elements of the agenda setting process have been identified as being required for advancing an idea onto a pre-decision or decision agenda, ultimately it is the political decision-makers who determine whether an idea is agreed to and on what terms it is advanced. These decision-makers, therefore, will need to be convinced of the importance, immediacy and feasibility of SHRAs before they will agree to progress the idea. This presents a challenge for advocates of SHRAs who, in their lobbying and tactical activities, must not only demonstrate the need for a sub-regional mechanism but also show how implementing SHRAs may be beneficial politically, socially, culturally and economically. Furthermore, there are historical and contextual constraints on the idea of SHRAs that will need to be resolved. Specifically, these challenges include accommodating the

cultural diversity of the Pacific, addressing issues of state sovereignty, and endorsing the relevance and applicability of human rights concepts in the Pacific.

With some policies it is more straightforward to achieve consensus, especially if it can be demonstrated that benefits will be distributed across several jurisdictions, therefore politically benefitting a wide range of actors (Peters, 1994, p. 23). For that reason, convincing Pacific leaders that their home country, as well as the broader sub-region, will be advantaged by the establishment of SHRAs may assist with making this concept a priority.

The emphasis on the receptivity and political will of decision-makers in the agenda setting process offers a fresh insight into this aspect of policy-making. While this focus on decision-makers does not detract from the importance of the other components of the agenda setting process, it does illuminate a significant caveat on the prospects for agenda success. And in the case of the Pacific, it would appear that the relevant decision-makers remain unequivocal, at best, regarding the development of sub-regional human rights arrangements.

Summary

The deployment of the theoretical framework underpinning this research suggests that, to a greater and occasionally lesser extent, the preconditions exist for the successful shift of the notion of SHRAs onto the decision agenda. Specifically, there is a suitable venue in the PIF, several issues that could potentially be addressed by SHRAs can be identified, and there is evidence of policy windows that could be used as an opening through which to push the idea of a sub-regional mechanism. However, Pacific leaders have not thus far demonstrated that SHRAs are of high priority, especially as human rights remains a contested policy issue throughout the PIF member countries. Historical and temporal challenges in the Pacific sub-region also curtail the prospects for agenda success of SHRAs.

The central finding of this research, then, is that the prospects for agenda success of SHRAs in the Pacific are moderate. Moreover, the receptivity and political will of PIF leaders will - in the final instance - determine agenda success. These decision-makers must be convinced of the validity and necessity of a human rights sub-regional arrangement before they will agree to advance the idea. This emphasises the importance

of the scoping exercise on possible human rights mechanisms for the Pacific, the results of which are expected to be presented to Pacific leaders in August 2011. The conclusions reached by those responsible for the review may well have a significant influence on Pacific leaders' assessment as to whether the idea of SHRAs should be moved onto the decision agenda.

In the final chapter of this thesis the theoretical framework applied in this research will be assessed, prior to the presentation of a revised framework on agenda setting in a sub-regional context. The thesis will conclude with a consideration of future research areas and final remarks.

Chapter Eight

Conclusion

Introduction

Regional human rights arrangements are established in all United Nations-defined regions apart from the Asia-Pacific. Given the tremendous size and diversity of this region it seems unlikely that an overarching regional human rights arrangement will be supported and advanced. Sub-regional human rights arrangements (SHRAs) may, however, be more feasible, as is exemplified in the recent developments in the ASEAN. In the PIF the leaders have not, to date, pursued the idea of SHRAs for the Pacific. This is in spite of increased commitment to sub-regional cooperation and integration, and promises to support the promotion and protection of human rights in the PIF countries. At the time this research was initiated in 2006 there was no evidence that the concept of SHRAs was being purposefully considered by the Pacific leaders. In 2009, however, after the interviews on which this research is based were concluded, the leaders agreed to a scoping exercise, thus moving SHRAs onto their pre-decision agenda. Whilst this indicates a shift in the leaders' interest in the idea, agreement to implement SHRAs in the Pacific, thereby achieving agenda success, is - as demonstrated in the previous chapter - by no means guaranteed.

In this final chapter, I begin by briefly summarising the earlier chapters and their contribution to addressing the research question. Next, I reflect on the agenda setting framework utilised in this thesis and then present a new framework for examining agenda success. The chapter concludes with a consideration of areas for future research and final remarks.

Tracing the prospects for agenda success

The purpose of this thesis was to examine the prospects for agenda success of SHRAs in the Pacific. The thesis began by introducing the idea of SHRAs and establishing the contextual parameters of the research. It was noted that no formal regional human rights mechanisms currently exist in the Asia-Pacific and that it is unlikely that such a development will occur due to the diversity and size of the region. In recent times the ASEAN, a sub-region of the Asia-Pacific, has committed to a Charter of Human Rights

for this cluster of countries and work on an ASEAN Human Rights Commission has begun. The Pacific, defined in this research as the member states of the PIF, is another sub-regional group of the Asia-Pacific. Given the goals of the PIF include sub-regional cooperation and integration and the promotion and protection of human rights, the development of SHRAs in the Pacific could be anticipated. However, until 2009 the Pacific leaders had shown little interest in this idea and the prospects for agenda success seemed very low.

In Chapter Two the theoretical framework for examining the research question was presented. An examination of agenda setting literature illustrated several key components to the process and also highlighted variations in national and regional frameworks. Building on the work of Kingdon (2003) and Princen (2009), an adapted framework was created. This framework took account not only of the major elements but also the overarching institutional context in which the agenda setting process takes place. As an optic through which to view the prospects for agenda success of SHRAs in the Pacific, the theoretical framework was used to examine and analyse the empirical materials and subsequently address the research question.

Chapter Three included a discussion on the concept of human rights, and international and regional approaches to their promotion and protection. The evolution and development of human rights institutional arrangements in other regions of the world were outlined. Variations on three institutional configurations, namely a human rights charter, a human rights commission, and a human rights court, were evident across the regions. The core functions, advantages and limitations of these arrangements could assist in future considerations of what might be viable in the Pacific context. An outline of previous activity in the Pacific on the idea of SHRAs verified that minimal work has been undertaken and until the agreement to a scoping exercise, events relating to SHRAs were being led by the UN, civil society organisations and a small number of other policy advocates rather than by the Pacific leaders or their officials.

Chapter Four established that an inductive, qualitative approach was appropriate for addressing the research question. Furthermore, the research was based on the premise of social constructivist epistemology, whereby socially located actors construct their own meanings of events or situations. An interpretivist methodology further supported these principles with a range of Pacific and human rights experts being interviewed, and a

variety of secondary sources including archival material from LAWASIA being accessed. The generation, sorting and analysis of the empirical materials, guided by the Framework method, were also underpinned by these foundational principles.

Chapters Five and Six outlined the findings generated through the semi-structured interviews. These chapters were shaped around the key components of the agenda setting framework: issue and alternative formation, policy actors, venues, policy windows, and receptivity of decision-makers. Activity in each of these areas was evident in respect of the research question. Several issues that could potentially be addressed by SHRAs were noted and three main types of institutional arrangements, that is, a sub-regional charter, commission or court, were highlighted. Only a small number of policy actors advocating for SHRAs were mentioned and the research participants were unaware of any active networks in this policy domain. The PIF was considered the most viable venue for advancing the idea of SHRAs in the Pacific. Moreover, several policy windows were noted as providing opportunities for policy actors to push their proposals in front of the Pacific leaders. The participants also emphasised the necessity of Pacific leaders being receptive to the concept of SHRAs before it could be placed on their decision agenda and, potentially, advanced.

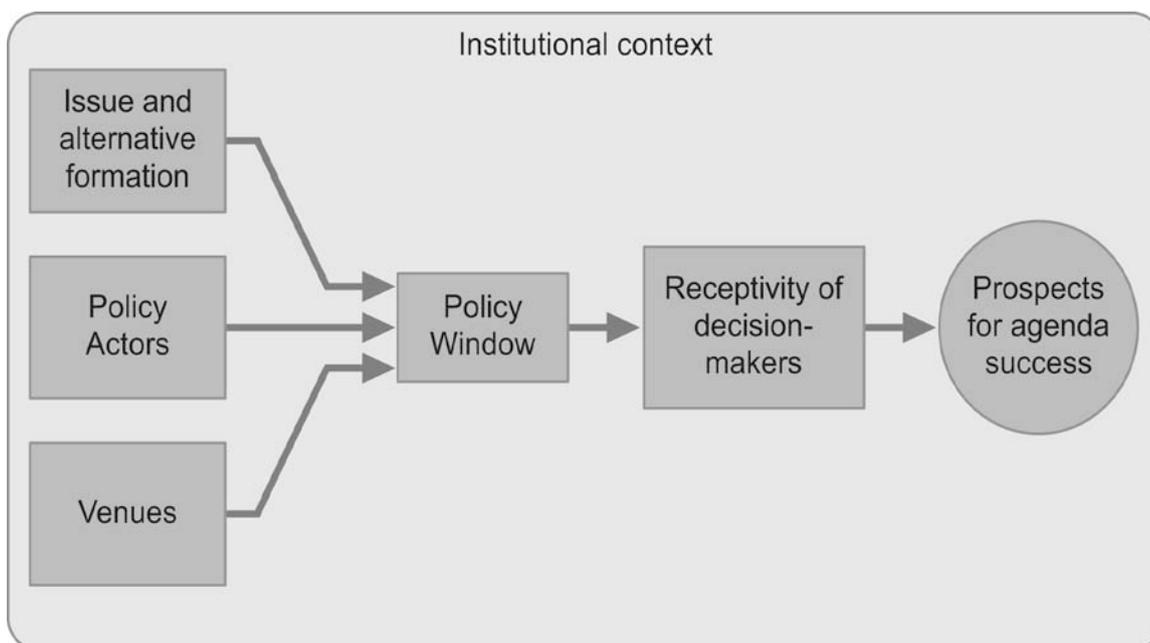
In Chapter Seven, the findings from the previous two chapters were analysed, together with the secondary empirical materials. This chapter demonstrated that, in spite of considerable challenges, all of the elements of the agenda setting process are evident in this case study. However, the strength of these elements in respect of agenda success for SHRAs in the Pacific vary, thus leading to the conclusion that the prospects for agenda success are moderate. Furthermore, there was one final and significant caveat: the receptivity and political will of the Pacific leaders will ultimately determine agenda success.

Applying an agenda setting framework

This research has examined the prospects for agenda success of SHRAs in the Pacific. To address the research question, and following a review of the agenda setting literature, I primarily drew on the work of Kingdon (2003) and Princen (2009) to develop an agenda setting framework for application in this thesis (see Figure 8.1). The purpose of this was to create a framework that contained the key elements from previous national and regional models and which also recognised that institutional

factors shape the agenda setting process. The factors from Kingdon and Princen’s models that were retained, although in part renamed, included issue framing, venues for decision-making, involvement of policy actors, and windows of opportunity. I also specified that alternatives are framed alongside issues, as I perceived this be a concealed component in the other models. As with Princen’s framework, the receptivity of decision-makers was incorporated as a significant factor. Princen also highlights the availability of instruments as a core element of the agenda setting process in the EU. I was aware the PIF had limited policy instruments compared with the EU, therefore, I decided to examine this feature within the venue component. While both Kingdon (2003) and Princen (2009) acknowledge the institutional context within which agenda setting occurs, I believed the affect of institutional factors was understated in their research. Consequently, institutional factors were explicitly identified as a separate element within the agenda setting process. Furthermore, in this theoretical framework the final outcome was the prospects for agenda success, akin to Princen’s model, rather than a policy outcome as in Kingdon’s framework. Due to my focus on the sub-regional agendas of the PIF, Princen’s work on agenda setting in the EU was also strongly reflected in my initial framework.

Figure 8.1 A theoretical framework for examining the prospects for agenda success of sub-regional human rights arrangements in the Pacific



(Source: Author, adapted from Kingdon, 2003 and Princen, 2009)

This agenda setting framework structured the management and interpretation of the empirical materials, and shaped the findings and conclusions of the research. It set parameters around the research topic which enabled a constant focus to be placed on examining the central question. In this way it provided a logical and practicable approach to the analysis of the empirical materials. Each of the components of the framework was able to be examined during the analysis process and it was apparent that activity was occurring within every element. Several human rights issues had been linked to the idea of SHRAs and a small number of alternative solutions to these concerns could be identified. A limited number of policy actors had been actively pursuing the placement of particular types of human rights mechanisms onto the PIF leaders' pre-decision agenda. There was, however, no evidence of formal networks mobilising in this policy domain. A suitable venue, in the form of the PIF, was apparent. The importance of policy windows was emphasised with several potential policy opportunities being identified. Institutional factors, particularly historical and temporal elements, were highlighted as affecting the entire agenda setting process which accentuated the utility of including this factor into the agenda setting framework. The receptivity, along with political will, of the PIF leaders was identified as the final determinant for agenda success.

However, while the agenda setting framework was effective in enabling the research question to be addressed, several limitations also became apparent. In the theoretical framework issue and alternative formation were placed together. Analysis of the empirical materials indicated that while there are strong interrelationships between these two elements, they are distinct aspects of the agenda setting process. Policy alternatives may be generated and then attached to an issue, or conversely a new problem may demand a suitable solution. However, by collapsing both under the same heading, this relationship is hidden.

The framework also situated issues and alternative formation, policy actors and venues alongside one another. The separation of these elements into silos, however, provided a false view of the agenda setting process. Instead, these elements have a level of connectivity that is not adequately shown or allowed for in the framework I initially articulated. Each of these elements may have an effect on the other components. For example, during the agenda setting process policy advocates may frame certain issues and/or alternatives in particular venues because of awareness that policy developments

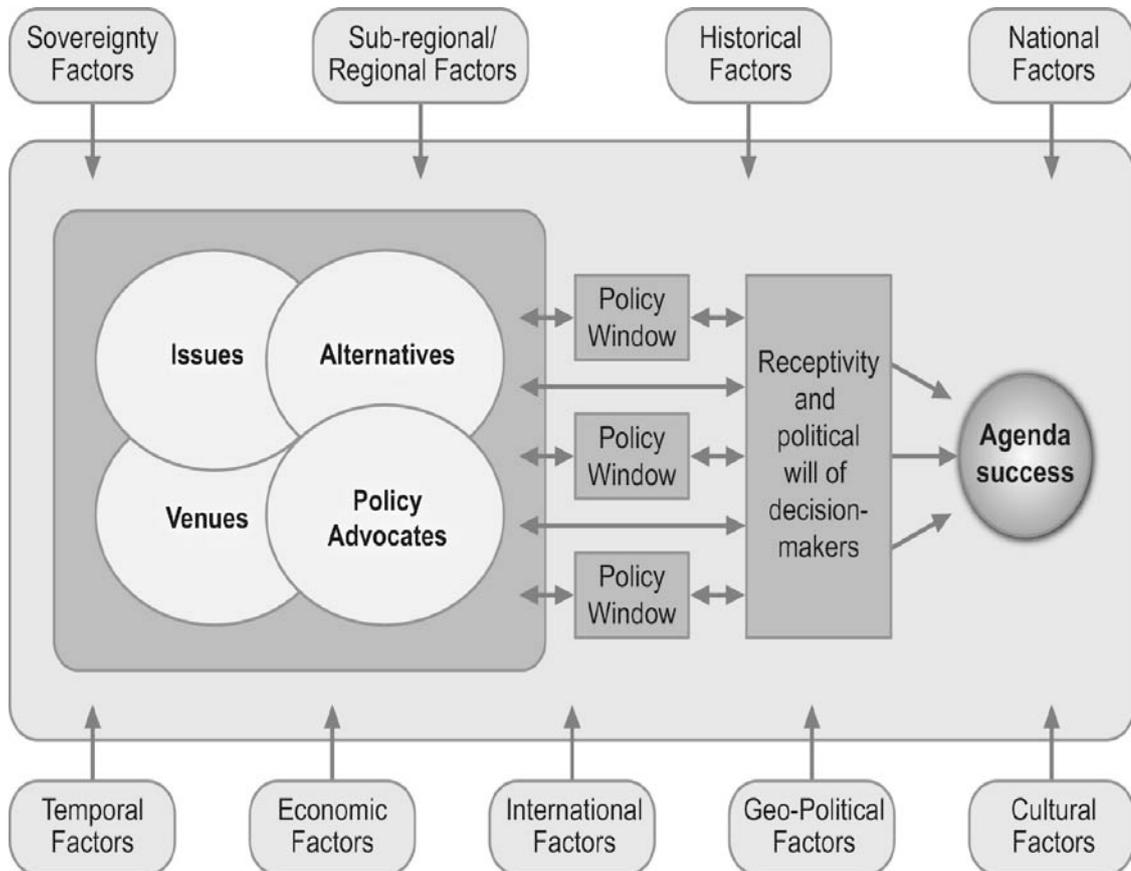
are more likely in that context. Also, the policy priorities that are emerging from a specific venue, for example the PIF, may encourage policy advocates to shape their policy solutions to be more conducive to that environment.

Institutional factors were included in the agenda setting framework as being external to the other elements of the process. The analysis of the empirical materials illuminated that the context of the Pacific has a significant impact on the likelihood of agenda success. The complexity of the political, geographical, economic, social and cultural environment of the Pacific was highlighted as shaping the agenda setting process. The phrase ‘institutional factors’ is a broad term, and whilst this may allow for a range of factors to be considered it does not sufficiently depict the specific factors that may be shaping the prospects for agenda success.

In short, the theoretical framework employed in this research was, overall, an effective tool for examining the prospects for agenda success of SHRAs in the Pacific. However, during the process of analysing the empirical materials it became apparent that it could be further improved.

A new framework for examining agenda success

Analysis of the strengths and shortcomings of the theoretical framework applied in this research has, therefore, led to the development of a new framework for examining agenda success (see Figure 8.2). This new framework elucidates the connections and relationships between the individual elements and specifies the key contextual pressures on agenda setting in the sub-regional environment of the PIF. In this way it is better tailored to examining the prospects of agenda success than other available models. Not only does such an elaboration enhance the capacity of the theoretical framework to explain the particulars of the case study used in this research, it also generates a robust analytical frame with potential application to other jurisdictions.

Figure 8.2 A framework for examining agenda success

(Source: Author)

Illuminating the connections

The analysis of the empirical materials highlighted strong connections and interrelationships between issues, alternatives, venues and policy actors. In previous agenda setting models issues and alternatives have been collapsed under one heading and this has hidden the distinctiveness of these two elements of the agenda setting process. By separating these two components but showing they interact with each other as well as with venues and policy advocates, a more fluid analysis of the relationship between these four elements is facilitated. For instance, policy actors generate knowledge about issues and possible solutions to these which they then endeavour to articulate and advocate in particular venues. Similarly, the policy work being focused on in a specific venue may stimulate certain policy actors to raise their own issues and proposed solutions in that environment. Rather than perpetuate the rationalist fiction that solutions necessarily follow issues, this elaboration more clearly accommodates

agency and purposive intervention on the part of policy actors. In short, a clearer picture of the interconnectedness of these aspects of the agenda setting process emerges.

A further addition to the new framework for examining agenda success is the renaming of policy actors to policy advocates. Princen (2009) adds a qualifier to the term 'policy actors' in his agenda setting framework: actors who want to challenge the status quo. This distinction between policy actors and policy advocates is important. While many policy actors may be involved peripherally in an agenda setting process due, in large part, to their occupation, only a limited number of policy actors may be *actively* promoting a specific issue or policy alternative (and are thereby the *policy advocates*). Consequently, the phrase 'policy advocate' is employed in Figure 8.2 as it more aptly describes the actors seeking to challenge existing arrangements. Policy advocates may work alone or with other advocates and, therefore, the phrase does not negate the development of policy networks that may evolve when a number of policy advocates align in order to push their proposals onto the pre-decision agenda.

The centrality of policy windows

The analysis of the empirical materials endorsed the utility of the concept of policy windows. The new framework retains policy windows as a central element in the agenda setting process. Whilst issues and policy alternatives need to be promoted by policy advocates and a suitable decision-making venue is required, there still need to be specific opportunities for an idea to be pushed in front of the decision-makers. Windows may open for a range of reasons, for instance due to a new problem, regular policy processes, an official or politician being interested in a particular idea, or in times of crises. This part of the agenda setting process adds a level of unpredictability for the policy advocates who need to be ready with their proposals so that when an opportunity arises they can ensure, as far as possible, they are heard by the decision-makers. Maintaining this component of agenda setting in the new model is, thereby, necessary.

The receptivity and political will of decision-makers

Including the political will of decision-makers alongside receptivity is a further elaboration in the new theoretical framework. A close reading of the empirical materials showed the importance of decision-makers being open to an idea before it will be placed on their decision agenda. Moreover, decision-makers must also have the political will, defined here as a commitment to the advancement of a salient idea, for agenda success

to occur. There is, therefore, both a dynamic relationship and also a distinction between receptivity and political will. For instance, the Pacific leaders may be receptive to the idea of SHRAs but not have the political will to advance such arrangements at this particular time. Non-decisions or relegation of an idea back to the pre-decision agenda for consideration at a later stage may then occur. Political will, alongside receptivity, is essential for agenda success and is, therefore, explicitly acknowledged in the new framework.

The importance of context

The effect of institutional and contextual factors on the agenda setting process is acknowledged in the agenda setting scholarship (for example, Kingdon, 2003; Princen, 2009). In the initial agenda setting framework (Figure 8.1) the general term 'institutional factors' was included; however, this phrase did not adequately represent the intricacies of the sub-region or the dynamic effect of these elements on the agenda setting process.

Specifically, several contextual factors were identified as shaping the agenda setting process in respect of SHRAs in the Pacific. These factors have been categorised as geo-political, national, sub-regional/regional, international, issues of sovereignty, cultural, economic, historical and temporal. The inclusion of these factors in the new theoretical framework highlights their influence on the agenda setting process and the likelihood of agenda success. The placement of these factors around the other elements of the agenda setting process indicates that they may have an impact on any element in the process. While these factors have emerged from an analysis of the empirical materials and thus relate to the sub-regional context of the Pacific, it is surmised that the categories may have relevance for other national, sub-regional or regional contexts.

Historical and temporal factors, in particular, have been underemphasised in the agenda setting scholarship, although they are core to new institutionalist theory. Through the analytical process, these factors have been shown to be especially pertinent in this research. The history of the Pacific affects the prospects for agenda success of SHRAs. For instance, while the success of other sub-regional institutions might increase the likelihood of agenda success, the rejection of the draft Pacific Charter of Human Rights in the 1980s as well as the colonial history of the Pacific, emphasis on state sovereignty, and historical tension over the relevance of the concept of human rights, may inhibit

agenda success. In short, policy ideas do not exist in a vacuum; their reception and eventual resolution is to some degree contingent upon what has come before. Understanding the history of the sub-region is, therefore, imperative to understanding what ideas might be agreed to by the Pacific leaders, in which venues those ideas might receive the most positive reception, and which windows of opportunity may arise, and when.

Temporal factors were also highlighted with the idea of SHRAs being viewed by several participants as timely. However, it is not yet known whether the Pacific leaders also agree with the sentiment that it would be judicious to establish a sub-regional human rights mechanism. The specification of the contextual factors provides greater insight into forces affecting the agenda setting process. These factors are all shaping aspects of this process, and illustrating them as dynamic better reflects the wider policy-making context.

Agenda setting as a dynamic process

The inference behind much of the agenda setting literature (reflecting, perhaps, its genesis in rational-comprehensive accounts of the wider policy process) is that agenda setting is a uni-directional process. However, this research exposed the connectivity between elements in the agenda setting process and the dynamic nature of this aspect of policy-making in the sub-regional context of the Pacific. For example, a window of opportunity can precipitate activity by policy advocates, as in the instance of the 2006 Fiji coup. Furthermore, SHRAs have become a potential solution for the ‘problem’ of the coup. Similarly, the commitment of the Pacific leaders to a scoping exercise has created an open window for policy advocates to push their ideas through and has reinforced the PIF as an available and appropriate venue for agenda setting. These correlations between the elements of the agenda setting process mirror Kingdon’s concept of a policy primeval soup in which various aspects of agenda setting are floating around and are coupled at particular moments. This activity, however, is neither as random nor unstructured as Kingdon may suggest it is. Rather, as demonstrated by this research, there are interconnected elements affecting the agenda setting process, although there may be variations on the extent of the influence of each of the components in different policy areas. What is certain is that all of the elements shape the agenda setting process and that immediately prior to agenda success the receptivity and political will of the decision-makers is required.

Adding value

This thesis has two important contributions to make. First, the new framework (Figure 8.2) constitutes an important contribution to the existing agenda setting scholarship. Based on extensive empirical work, it is a sophisticated conceptual tool for understanding processes of agenda setting leading to agenda success. Although the framework has been developed as a heuristic tool for analysing the prospects for agenda success in the venue of the PIF, it may also have utility in other national, sub-regional, or regional contexts. The framework enables analysis of the core components of agenda setting: issues, alternatives, policy advocates and venues, and their connections and interrelationships. It highlights the dynamic relationship between these components and two of the other elements: policy windows and the receptivity and political will of decision-makers. Importantly, the receptivity and political will of decision-makers immediately precedes agenda success. Key institutional and contextual factors, identified as shaping all aspects of the agenda setting process in the PIF, are also likely to be prominent in other policy-making settings.

Second, the thesis offers an important contribution to current knowledge on agenda setting in the context of the PIF. Only one other piece of empirical research on agenda setting in the Pacific was able to be located (Shibuya, 1996). Specifically, the research has generated new knowledge on the prospects for agenda success of SHRAs in the Pacific. More generally, as policy-making in the PIF is an under-examined area the findings from this research provide the foundation for future research on the policy process in this sub-regional venue.

Recommendations for future research

There are a number of ways in which the findings from this research on the prospects for agenda success of SHRAs in the Pacific could be extended through future research. As agenda success had not occurred at the time this thesis was concluded, continuing research on the progress of SHRAs, and a retrospective analysis - using the new framework outlined in this chapter - of the factors that affected the agenda outcome, would provide further insights into this specific agenda setting process.

Future research, if timed appropriately and depending on whether agenda success occurs, may be possible on assessing the operationalising and implementation of SHRAs in the Pacific. Examining the issues associated with these aspects of the policy

making process would have a dual benefit of tracking the development of a new sub-regional institutional arrangement as well as advancing understanding of policy processes in the context of the PIF.

Furthermore, an important opportunity exists to extend the parameters of this study and examine the agenda setting processes of the PIF across a range of policy domains. Application of the new agenda setting framework would test its credibility in the sub-regional context of the Pacific and deepen understanding of the key elements affecting agenda success. Extending this focus to comparative work on agenda setting processes within other sub-regional or regional bodies would enable the assessment of the transferability of the new framework and a nuanced understanding of agenda setting in these jurisdictions.

Given that I chose at the outset to focus on interviewing experts that were not the decision-makers of the PIF member countries, the voices of Pacific Island leaders were not solicited in this study. Consequently I was only able to infer what their views might be based on the perspectives of the research participants and secondary sources, such as PIF communiqué. In future work, it would be valuable to talk to leaders directly so as to hear their views on the idea of SHRAs or agenda setting processes in the PIF.

Specific elements of the agenda setting process could also be further assessed within the Pacific context. For instance, analysis of which types of policy windows are more prevalent in a sub-regional vis-à-vis state jurisdiction, and for what reasons, would add to current debates on this matter. The categorisation of types of windows could be extended to include a policy window that took greater account of the broader political and institutional context in which agenda setting occurs at the sub-regional or regional level. In addition, further work could assess when policy windows are likely to occur, how big they need to be to effect change and which policy advocates are active around each type of policy window.

The research conclusion emphasises the receptivity and political will of the political decision-makers in the agenda setting process, and this finding could be further assessed across the national, sub-regional and regional spheres. Examining the influence of decision-makers on agenda success across a cohort of policy domains would also usefully add to the scholarship on agenda setting.

Concluding remarks

Examining agenda setting in the sub-regional context of the Pacific provides a unique view of the factors shaping this aspect of the policy process. A framework of agenda setting (Figure 8.1), developed to examine the prospects for agenda success of SHRAs in the Pacific, enabled analysis of the empirical materials. There was a level of agreement that it is a suitable time to advance the idea of SHRAs in the Pacific and that the PIF is a viable venue in which to proceed with such an institutional arrangement. Furthermore, possible policy alternatives, and in particular, a sub-regional human rights commission, have been identified as being feasible for advancement. However, constraints for agenda success are concerned with contextual factors, and especially the limited understanding and awareness of human rights across the Pacific, a lack of consensus on human rights standards, and issues of state sovereignty. If Pacific leaders are to agree to advance SHRAs, thus paving the way for agenda success, these significant issues will need to be addressed.

A new framework for examining agenda success (Figure 8.2) - developed from reflections on the empirical analysis - further assists with an examination of the core components and the contextual forces that are shaping the agenda setting process. The new theoretical framework illuminates the connections and interrelationships between the different elements of the process. Most importantly, it highlights that, ultimately, the success or otherwise of policy notions concerning SHRAs will to a significant extent depend on the receptivity and political will of decision-makers.

While agenda setting processes occur across national, sub-regional and regional jurisdictions, this thesis demonstrates that taking account of the particularities of each environment is important. A sentiment expressed by an interviewee is pertinent:

I think there are still ways in which the Pacific expression of democracy is not yet fully developed, in some cases it is a case of take Westminster, add coconut and stir (Exec5, 2008).

In the final instance, the prospects for SHRAs in the Pacific lies in the hands of the Pacific leaders whose agenda setting processes are shaped, not only by the dynamics of policy-making, but also by the unique sub-regional context of the Pacific.

Appendix A

Information Sheet and Consent Form

Governance in the Pacific:

The shaping of a sub-regional human rights mechanism

INFORMATION SHEET

The Researcher

My name is Kathryn Hay and I am a doctoral student in the School of People, Environment and Planning (Politics programme) at Massey University, Palmerston North. I can be contacted at the University on (06) 356 9099 ext. 4901 or by email (K.S.Hay@massey.ac.nz). The doctoral research that I am undertaking is supervised by:

Dr Richard Shaw	Assoc-Professor Regina Scheyvens
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The Research

The project seeks to examine why the Pacific does not have a sub-regional human rights mechanism. Broadly speaking a 'sub-regional human rights mechanism' may include a sub-regional human rights court, commission, treaty or charter as well as associated legislation and policy. The Pacific is one of only two sub-regions in the world without a sub-regional human rights mechanism and previous attempts to find agreement for such a development have failed. Using a governance perspective, I will examine factors which (a) have thus far impeded the development of a Pacific human rights mechanism, and (b) may potentially influence any future development of such a mechanism.

Your Participation

I would like to invite you to participate in the research. Should you agree to do so, I would appreciate meeting with you in the context of a focused, one hour interview. The time and place

of the interview(s) will be a matter for you to decide. With your permission the interview will be audio-recorded, and will be transcribed by an administrative assistant who will have signed a confidentiality agreement. As soon after the interview as practicable, I will provide you with a transcript of our discussion. Ownership of the data is yours, and as such I will give you the opportunity to check, correct and amend the transcript in any way you think is necessary. Both audio data and transcripts of our interview(s) will be securely stored at my place of residence or the University, and access to these will be limited to yourself and the researcher.

Once the research has been completed and passed examination, you may choose to have all audio-recorded communication either:

- securely archived at the University; or
- returned to you; or
- destroyed.

I ask your permission to retain the transcript(s) for the purposes of on-going research and publication. Alternatively, upon completion of the thesis and the examination process, you may request to have the transcripts either:

- returned to you; or
- destroyed.

Participant's Rights

Your involvement in this research is sought on a voluntary basis, and would be appreciated.

Should you decide to participate, you have the right to:

- seek further clarification about any aspect of the research;
- decline to answer any particular question(s);
- request that the audio recorder be turned off at any stage of the interview;
- read and edit the interview transcripts;
- request that specific information you have provided not be used in the context of the research, and/or
- withdraw your involvement;

You have the right to request that any, or all, of the information you choose to divulge be treated in strictest confidence, and that it not be attributed to you. However, given the relative size of the Pacific and the individuals and organisations working in the human rights field, as

well as the focused nature of the research topic, it will not be possible for anonymity to be guaranteed.

A summary of the research findings will be made available to you once the project has been completed.

My thanks for considering participating in this research.

Kathryn Hay

This project has been evaluated by peer review and judged to be low risk. Consequently, it has not been reviewed by one of the University's Human Ethics Committees. The researcher named above is responsible for the ethical conduct of this research. If you have any concerns about the conduct of this research that you wish to raise with someone other than the researcher please contact Professor Sylvia Rumball, Assistant to the Vice-Chancellor (Ethics & Equity), telephone 06 350 5249, email humanethics@massey.ac.nz

Governance in the Pacific:

The shaping of a sub-regional human rights mechanism

Consent Form

I have read the Information Sheet for this study and have had the details of the research project explained to me. Any questions that I have about the study have been answered to my satisfaction, and I understand that I may ask further questions at any time.

I understand that I have the right to withdraw from the study at any time, and to decline to answer any particular question that may be asked of me.

I agree to provide information to the researcher on the understanding that my name will not be used without my permission, and that the information provided will be used only for this research and publications arising from it.

I agree/ do not agree to the interview being audio-taped, and I understand that I have the right to ask for the audio recorder to be turned off at any stage of the interview.

The information that I provide is on the understanding that:

Either

1. The researcher is permitted to attribute my responses to me in the thesis and any publications that arise out of the research. The researcher will provide me with a transcript of the interview to edit before it is used in the thesis or other publications.

Or

2. My responses remain confidential and shall not be directly attributed to me in any way, shape or form. The researcher will provide me with a transcript of the interview to edit before it is used in the thesis or other publications.

I agree to participate in this research under the conditions set out in the Information Sheet.

Signed:

Dated:

Appendix B

Interview Questions

- What human rights initiatives/work are you aware of currently in the Pacific?
- The Pacific sub-region does not currently have a sub-regional human rights mechanism such as those found in the European Union, the Americas and Africa. What would you consider to be the key factors that have, so far, prevented the development of such a mechanism?
- Are you aware of any individuals, organisations or networks that are currently, or have been previously, working *towards* the establishment of a sub-regional human rights mechanism in the Pacific?
- In what ways might these individuals, organisations, states or networks have exerted influence over policy-making in this area?
- Why do you think they want a sub-regional human rights mechanism?
- Which individuals, organisations, states or networks do you think have been influential in *not* supporting or blocking the development of a Pacific human rights mechanism?
- In what ways might these individuals, organisations, states or networks have exerted influence over policy-making in this area?
- Why do you think they do not want a sub-regional human rights mechanism?
- What factors might enable or prevent any future development of a Pacific human rights mechanism?
- Who do you consider are the key actors or power-brokers- institutions or individuals- that would need to provide support for such a mechanism?
- How could a Pacific human rights mechanism gain legitimacy and to whom or what could it be accountable?
- What do you consider to be the risks and opportunities for the development of a sub-regional human rights mechanism?

- If you were to establish a human rights mechanism in the Pacific, how would you do this?
- What are your views as to the utility of a Pacific human rights mechanism? What frames these views?

Appendix C

List of Participants

Number	Participant	Country of abode	Profession
1	Aca1	NZ	Academic
2	Aca2	Vanuatu (NZ origin)	Academic
3	Aca3	Vanuatu	Academic
4	Aca4	Cook Islands (NZ origin)	Academic
5	Exec1	Australia	Government Official
6	Aca5	Fiji (Australia origin)	Academic
7	Law1	Fiji	Lawyer
8	Supra1	Fiji	Official in PIF
9	Exec2	Fiji	Government Official
10	Law2	Fiji	Lawyer
11	CSO1	Fiji	CSO Worker
12	Exec3	Fiji	Government Official
13	Supra2	Fiji (US origin)	UN Official

14	CSO2	Fiji	CSO Worker
15	Jud1	Fiji	Judge
16	Supra3	Australia	APF Adviser
17	CSO3	Australia	CSO Worker
18	Exec4	Australia	Government Official
19	CSO4	NZ	CSO Worker
20	Exec5	NZ	Government Official
21	Jud2	NZ	Judge
22	Jud 3 ⁷⁴	Fiji(NZ origin)	Judge

⁷⁴ Permission was not granted to include the material from the interview with this participant.

Appendix D

Index

Index for an examination of the factors shaping the prospects for sub-regional human rights arrangements in the Pacific

1. The utility of SHRAs

- 1.1 agree with concept
- 1.2 disagree with concept
- 1.3 neutral with concept
- 1.4 current sub-regional human rights initiatives in Pacific
- 1.5 other issues

2. International factors

- 2.1 Pacific in the international context (including relationships with international bodies)
- 2.2 donor and other funding/resources
- 2.3 other SHRAs
- 2.4 UN requirements
- 2.5 globalisation
- 2.6 other issues

3. Geographical factors

- 3.1 Small states
- 3.2 Distance
- 3.3 Travel/communications
- 3.4 NHRI
- 3.5 other issues

4. Political factors

- 4.1 state sovereignty
- 4.2 Fiji situation
- 4.3 demand/priorities
- 4.4 resources /economic position of states
- 4.5 conservatism/opposition to impositions
- 4.6 state relationships
- 4.7 readiness/timing
- 4.8 Pacific approach to decision-making (e.g. slow)
- 4.9 regional institutions, e.g. PIF, MSG and responses to sub-regional integration (the sub-regional environment)

4.10 other issues

5. Social/cultural factors

5.1 perspectives/concepts on human rights (e.g. cultural relativism)

5.2 civil society and issues of duplication

5.3 cultural diversity and human rights

5.4 supply of hr initiatives

5.5 awareness of human rights

5.6 other issues

6. Types of institutional arrangements

6.1 Charter

6.2 Commission

6.3 Court

6.4 Desk/Unit

6.5 Access to an institutional arrangement

6.6 Position of Pacific Plan/PIF/Auckland Declaration

6.7 Function/role and location

6.8 other issues

7. Process for development

7.1 policy process

7.2 legitimacy

7.3 actors involved in process (either for or against or needed to make progress)

7.4 resourcing an institutional arrangement and its development

7.5 other sub-regional developments e.g. sub-regional ombudsmen

7.6 risks/disadvantages in developing an institutional arrangement

7.7 opportunities/advantages in developing an institutional arrangement

7.8 other issues

8. Other key issues (not covered above)

8.1 Other

49 categories

Appendix E

Example of Thematic Chart (partial)

Thematic Chart 7: Process for Development⁷⁵

process for dvlpmt	7.3	7.4	7.5
ID	actors involved	resourcing SHRAs & dvlpmt	other reg. dvlpmts
Law1	PIFSec has been thinking abt SHRAs- not sure how advanced that is; Judge Winter preparing position papers for PIFSec on issue (3); not strong articulation from Pacific either for/against- only sustained opposition from Fj HRC who says its neo-colonialist, domination form NZ/OZ (see 4.3, 4); require support from govts as key players, then other entities		SHRAs mre relevant than regnl ombuds bz its broader but ombuds reflects mindset of policy planners at PIFSEc & regn as they see ombuds as mre substantive; I think it overlaps & they're quite compatible (see 1.1, 13)

⁷⁵ Note: The spacing of this chart has been altered. Also, only the information from four participants are shown in this example. Each chart, however, included the comments from all of the participants and spaces were left if a participant did not mention anything related to the category.

Supral	<p>RRRT & PIFSec wkg tog to promote idea of SHRAs but not in isolation-just giving Ldrs level of comfort where its coming from(1,4); need on board: regnl orgs,not just lawyers, RRRT (3); got support from APF, NZHRC for HR Advisor positn (4); need ldrs to sign off on SHRAs initiative for it to happen (4); wk with key stakeholders (4); NZ/OZ involved in consultant but maybe not be v visible (5); prob pick couple of PICs who advocate for HR & get them to lead process, eg vanu, (5) ; need to get support from advocates who aren't in govts but hv credibility/connectn to govt eg MPs, Dame Carol Kidu-does depend on which side they are on (ie support/not support HR/SHRAS) (see 7.1, 6); critical to hv AFT in PIFSec /someone else in PIFSec bz they can advocate for things to be put on agenda (6); the 2 actor-specific HR positions also supportive of SHRAS (6); key partners</p>	<p>Imrana gone to EU for fundg for consultatn process (4); need sustainable fundg for RHRComm-donor funding so will PICs say its foreign driven? With own priorities PICs wont fund regnl comm.;spread fundg across donors so 1 donor cant drive the agenda; prob a 20 yr process getting it embedded so</p>	<p>mre wk done over the yrs with an ombuds so mre familiarity, 3-4 PICs hv ombuds cf NHRIs with only FJ hving one- sort of staggered approach so if u hv PICs that hv these instits PICs network & allay concerns,eg if Samoa has one & its not causing probs then OK we'll hv a go (11); cld think abt hving sub-regnl ombuds and share eg like court of appeal judges-sub-regional ombuds office who does a circuit; hard in small PICs to hv an ombuds as theyre related to everyone-hv seen draft report of regnl ombuds-saying hv a network of ombuds, mtgs & strengthen that- not hv a separate regional one- network wouldn't cover all PICs, only ones that already hv an ombuds (12); wld hv been good if scoping study on regnl ombuds initiative had been</p>
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Thematic Chart 7: Process for Development

process for dvlpmt	7.3	7.4	7.5
ID	actors involved	resourcing a SHRAS & dvlpmt	other reg. dvlpmts
Jud2	SPCourt: Gerard Winter, Mere Pulea, Paul Rishworth, Brian Opeskin, Ratu Joni (legal academics, lawyer, judges) leading it out (3); if commissioned to make a RHRCOM happen I'd go to see High Commissioner for HR, treaty bodies, special procedures, UPR, EU, World Bank, ADB and get \$ together before going to Pacific politicians (see 7.1, 10); RRRT wld certainly hv a role, prob lead role but not sure what exactly that wld be- need to	common trnd to hv parachute drops of legal consultants to patch up law, spend 3 weeks then leave so no continuity-has to be better way of spending \$ & mre effective way regionly of getting agreemnt/harmonisatn on common areas of law eg customs, trade, health (4); sea-change in rationale behind	regnl supreme court (see 6.3) which is an old idea embedded in legal history & jurisprudence (1); in absence of formal mech now seeing activist judges harmonising law across region, eg HR, resource law, tuna law, land law (2); way to deal wth tension btn old colonial systems, custom, traditns etc wld be a Pacific was of referring to Supreme Pacific Court for opinion on a ruling or
Exec5	sense from the Pathways paper that there's higher degree of comfort with PIF given the nature of it helping govts by providing HR technical assistance rather than a separate institutn like NZHRC coming in & doing things (see 6.4, 6.6, 6); UN sends Pacific govts irrelevant surveys on tanks- no sense of scale, size appropriateness etc (see 6.4, 6); NZHRC decided not approp to go to region & promote SHRAS at mre formal end of spectrum-	HR desk- originally NZAID & PIFSec funding it but budget blow out in PIF has meant APF now doing interim funding- ultimately want PIF to fund it (11); NZAID funded the 3 year project- NZHRC didn't want NZAID to fully fund it as wanted a partnership, collaborative with	Law Commission work on custom & HR- they were initially asked to consider issue of regnl court but Law Commission said no, it's too big so they offered to look at custom & HR in Pacific as a way into sme of the regnl aspects of indigenous ppls relationships or judicial systems (8); history of conversatns abt regnl courts (8); ombuds: is diff sort of mech to a SHRAS-its at the other end

Appendix F

Principles Relating to the Status of National Institutions

Commonly known as The Paris Principles:

- a) a clearly defined and broad-based mandate, based on universal human rights standards;
- b) independence guaranteed by legislation or the constitution;
- c) autonomy from government;
- d) pluralism, including membership that broadly reflects the society;
- e) adequate powers of investigation;
- f) sufficient resources.

(Adopted by the UN General Assembly resolution 48/134 of 20 December 1993)

Appendix G

Excerpts from the Pacific Plan

Excerpts from: The Pacific Plan for Strengthening Regional Cooperation and Integration (Pacific Islands Forum Secretariat, November 2007, pp. 18-19).

12.5 Where appropriate, ratify and implement international and regional human rights conventions, covenants and agreements; and support for reporting and other requirements.

12.9 Deepen regional cooperation between key actors in the legal sector in the region, including senior government law officers, legislative drafters and judges. Explore the possibilities for regional support, including through pooling of resources and regional integration, in legal institutions and mechanisms providing legislative services, and in the area of judiciaries, courts and tribunals.

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