

Submission of the Department of Foreign Affairs and Trade to the Joint Standing Committee on Foreign Affairs, Defence and Trade on international and regional mechanisms for preventing and redressing human rights violations

2 December 2008

1. Introduction

The Asia-Pacific region faces many significant human rights challenges, including discrimination against vulnerable groups, armed conflict, internal displacement of people, exploitation of children, people-trafficking and corruption. However, significant progress is being made to advance human rights in the Asia-Pacific. Many regional countries have been moving towards fully-fledged democracy and an important recent development has been the establishment of national human rights institutions (NHRI) in countries such as Indonesia, Malaysia, Philippines, Thailand and Timor-Leste.

However, while many countries in Asia have NHRIs, there is currently only one in the Pacific – in Fiji. At this time the Fiji Human Rights Commission is not recognised as complying with the Paris Principles¹, and on this basis, its accreditation has been suspended by the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights.

The Asia-Pacific is the only region in the world which does not have a regional human rights mechanism. The Association of South East Asian Nations (ASEAN) and, to a lesser extent, the Pacific Islands Forum (PIF) have begun exploring the possibility of creating sub-regional human rights frameworks and mechanisms. The Asia Pacific Forum of National Human Rights Institutions (APF) is a regional member-based organisation consisting of NHRIs, but at the moment it has no members from Pacific Island Countries.

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

The Commonwealth Joint Office was initially funded by Australia in 1983 and now receives funding from Australia, Canada and the United Kingdom, as well as other Commonwealth nations. Nauru, Samoa, Solomon Islands and Tuvalu are among the small countries participating in the UN through the Commonwealth office in New York. AOSIS is an ad hoc lobby group and does not have a regular budget or a secretariat. It operates through the New York-based diplomatic missions of its members.

¹ The Principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles) require that a national human rights institution has: a clearly defined and broad-based mandate; independence guaranteed by legislation; autonomy from government; pluralism; adequate powers of investigation; and sufficient resources.

There are no similar bodies to assist Pacific Island or other small nation participation at the United Nations in Geneva. The Commonwealth is currently exploring the feasibility of establishing a Commonwealth Small States Office in Geneva.

2. The United Nations Human Rights System

United Nations General Assembly – Third Committee

The Social, Humanitarian and Cultural Affairs Committee of the United Nations General Assembly (the “Third Committee”) oversees agenda items relating to a range of social and humanitarian affairs and human rights issues. The Committee discusses the advancement of women, the protection of children, indigenous issues, the treatment of refugees, the promotion of fundamental freedoms through the elimination of racism and racial discrimination, and the promotion of the right to self-determination.

The Committee also addresses country-specific issues, such as the human rights situations in Burma, Democratic Peoples Republic of Korea and Iran.

Office of the High Commissioner for Human Rights

The mission of the Geneva-based Office of the High Commissioner for Human Rights (OHCHR) is to work for the protection of all human rights for all people, to help empower people to realise their rights, and to assist those responsible for upholding such rights in ensuring that they are implemented. The OHCHR’s method of work focuses on three dimensions: human rights standard setting, monitoring and implementation on the ground.

Throughout 2008 and 2009, the OHCHR will focus its work in the Asia-Pacific region on impunity (the inability to bring perpetrators of violations to account), weak institutions and discrimination.

During this period, the OHCHR will open a new regional office for South and West Asia, in addition to existing regional offices for South-East Asia in Bangkok and the Pacific in Suva. Country offices will be maintained in Cambodia and Nepal, and the OHCHR will continue to support the human rights elements of peace missions in Afghanistan and Timor-Leste. The OHCHR will maintain human rights advisers in the Maldives, Indonesia and Sri Lanka, and deploy others to Papua New Guinea and the Philippines. Support will also be provided to UN Country Teams for the “One UN” pilot programs in Pakistan and Vietnam.

Australia, through the Australian Agency for International Development (AusAID), provides funding to the OHCHR through annual voluntary contributions. Traditionally, Australia earmarks a proportion of this funding to the OHCHR Pacific Regional Office and a proportion to the OHCHR’s National Institutions Unit for work in the Asia-Pacific.

OHCHR Pacific Regional Office (Suva, Fiji)

While the OHCHR will maintain its presence in the Pacific over the next two years, it will close the Solomon Islands liaison office and instead work through the Regional Office in Suva and the newly deployed Human Rights Adviser in Papua New Guinea.

According to the OHCHR, some of the most pressing human rights issues in the Pacific region include violence against women and children, lack of judicial independence, ill-treatment in detention, social instability, weak justice systems, and racial discrimination.

The OHCHR has made progress in addressing these issues by raising awareness about and encouraging the use of international human rights norms, standards and mechanisms; and supporting regional initiatives aimed at reinforcing national protection systems, including through the Pacific Islands Forum and the Asia Pacific Forum of National Human Rights Institutions (APF). In addition, the OHCHR provided advice and support on reconciliation processes in Fiji and the Solomon Islands.

Over 2008 and 2009, priorities of the Pacific Regional Office will include expanding its cooperation with regional organisations and institutions, such as the Pacific Islands Forum Secretariat (PIFS) and the Pacific Islands Chiefs of Police, to establish regional judicial structures; build national or regional human rights institutions; improve detention conditions; and work with other human rights mechanisms to improve coordination across the region.

OHCHR South-East Asia Office (Bangkok, Thailand)

Some of the most serious human rights concerns in the South-East Asia region include impunity; structural weaknesses in government and non-government organisations that hinder their ability to address human rights violations by the state; sexual exploitation of children and human trafficking; lack of protection mechanisms for minorities and indigenous peoples; the issue of statelessness and the lack of protection for internally displaced persons; and internal armed conflict.

Since 2006, the South-East Asia Regional Office has focused on assisting ASEAN to establish an ASEAN human rights mechanism. Additional priorities for the South-East Asia Regional Office include implementing recommendations of international treaty body mechanisms and special procedures; launching capacity-building programs in the administration of justice, legislative reform and human rights education in Indonesia, Lao People's Democratic Republic, Malaysia, the Philippines, Thailand and Vietnam; preparing the region for the UN Human Rights Council's Universal Periodic Review (UPR) process; and building the capacity of the UN system to promote and protect human rights in Burma.

Human Rights Council

The Human Rights Council (HRC) is a charter body of the United Nations (which replaced the Commission on Human Rights in 2006) empowered to prevent abuses, inequity and discrimination, protect the most vulnerable, and expose perpetrators. The HRC meets at least three times a year in Geneva.

Special Procedures is the general name given to the mechanisms used by the Human Rights Council to address either specific country situations or thematic issues in all parts of the world. Special Procedures may be either an individual –a special rapporteur or representative, or independent expert—or a working group. They are prominent, independent experts working on a voluntary basis, appointed by the HRC.

Special Procedures' mandates usually call on mandate-holders to examine, monitor, advise and publicly report on human rights situations in specific countries or territories, known as country mandates, or on major phenomena of human rights violations worldwide, known as thematic mandates. There are currently 30 thematic mandates and 8 country mandates. All report to the Human Rights Council on their findings and recommendations. They are sometimes the only mechanism that will alert the international community to certain human rights issues. In the Asia-Pacific region there are three country-mandate holders: Special Rapporteurs on the human rights situation in Burma and the Democratic Peoples Republic of Korea, and the Special Representative of the Secretary-General for human rights in Cambodia.

The General Assembly has mandated the HRC to undertake a Universal Periodic Review (UPR) which consists of the review of the human rights practices all UN member States, once every four years.

The UPR examines the fulfilment by each State of its human rights obligations and commitments. The review is a cooperative mechanism, based on an interactive dialogue, with the full involvement of the country concerned and with consideration given to its capacity-building needs. The preparation for the UPR is normally a national report, prepared by the State, and normally requires attendance in Geneva when the HRC considers the report. This can impose burdens on small states (particularly in the Pacific region) which do not have permanent representation in Geneva.

United Nations treaty-based bodies

The United Nations system has eight human rights treaty bodies, which are committees of independent experts that monitor implementation of the core international human rights treaties. They are created in accordance with the provisions of the treaty that they monitor. The OHCHR assists treaty bodies in harmonizing their working methods and reporting requirements through their secretariats. The current treaty-based bodies are:

- Human Rights Committee
- Committee on Economic, Social and Cultural Rights
- Committee on the Elimination of Racial Discrimination
- Committee on the Elimination of Discrimination against Women
- Committee against Torture
- Committee on the Rights of the Child
- Committee on Migrant Workers
- Committee on the Rights of Persons with Disabilities

All States parties are obliged to submit regular reports to the committees on how the rights are being implemented. After the initial report, States must report every two to five years, depending on the committee. The relevant committee examines each report and addresses its concerns and recommendations to the State party in the form of "concluding observations". In addition to the reporting procedure, the committees can consider inter-state and individual complaints.

Reporting and appearance requirements can be a financial and logistical burden on small states (especially in the Pacific region), requiring assistance from the OHCHR and, in the case of Pacific Island Countries, from other countries, including Australia.

3. The Commonwealth

The promotion of human rights and democratic norms is an important part of the Commonwealth's mandate. The Commonwealth has played a positive role in promoting good governance among member countries, consistent with the principles in the Harare Declaration of 1991. The Secretary-General has deployed his Good Offices in support of conflict prevention and resolution in countries as diverse as Bangladesh, Lesotho, Sierra Leone, Fiji and Solomon Islands.

In addition to the Commonwealth's activities in strengthening democratic processes and good governance, Australia has strongly supported an increased role for the Commonwealth in protecting human rights in member states, building on the Commonwealth's commitment to the rule of law. The shared common law traditions of most Commonwealth countries provide a sound basis for cooperation in legal and judicial assistance and capacity building. The Commonwealth supports activities such as strengthening the domestic human rights machinery of member states, the establishment of Ombudsmen's offices, workshops in such areas as criminal justice, administrative law and combating corruption, and implementation of international human rights conventions.

The Commonwealth Human Rights Initiative

The Commonwealth Human Rights Initiative (CHRI) is an independent, non-partisan, international non-governmental organisation, mandated to ensure the practical realisation of human rights in Commonwealth countries. The CHRI's mandate is to promote awareness of and adherence to the Harare Principles, the Universal Declaration of Human Rights and other internationally recognised human rights instruments and declarations made by the Commonwealth Heads of Government as well as domestic instruments supporting human rights in the Commonwealth.

CHRI advocacy targets include inter-governmental agencies as well as international and regional bodies. In addition, CHRI conducts advocacy efforts targeting national structures of the members of the Commonwealth.

4. Regional human rights mechanisms in the Asia-Pacific

Pacific Islands Forum

The Pacific Islands Forum's *Pacific Plan for Strengthening Regional Cooperation and Integration* (Pacific Plan) provides a framework for the strengthening of regional cooperation and integration. The plan was endorsed by Leaders at the Pacific Islands Forum meeting in October 2005, and called for a strengthening of human rights mechanisms within the region. The Australian Government, through the aid program, is a major financial supporter of the Pacific Plan. The overall goal of the Pacific Plan is to enhance and stimulate economic growth, sustainable development, good governance and security for Pacific countries through regionalism.

To achieve this goal, the Pacific Plan encompasses a series of Strategic Objectives with initiatives attached to each of these. Strategic Objective 12 of the Pacific Plan relates to good governance, calling for "improved transparency, accountability, equity and efficiency in the management and use of resources in the Pacific". Of relevance is Initiative 12.1 which states, "support or establish the regional consolidation of commitments to key institutions such as audit and ombudsman offices, customs, leadership codes, anti-corruption institutions and departments of attorneys general; including through judicial training and education". The Pacific Plan also identifies "the establishment of a regional ombudsman and other human rights mechanisms" as an area for further action and analysis.

The Pacific Ombudsman Alliance, launched in November 2008, is one outcome of Initiative 12.1. A key aim of the Alliance is to support the development of legislation and programs that recognise the right of citizens to transparent and accountable government services. Alliance membership is open to any statutory or constitutionally-based organisation that protects people from maladministration, violation of rights, unfairness, abuse of power, corruption and any injustice or lack of procedural fairness by a public authority. This seems to suggest an opening for other organisations, including human rights organisations, to expand the scope of the Alliance to address human rights issues.

More direct efforts are being made to develop human rights mechanisms under the framework of the Pacific Plan. For example, in April 2008 a symposium was held in Apia on "Strategies for the Future: Protecting Human Rights in the Pacific". One key outcome of this was the garnering of support for the establishment of a Working Group to carry out further work on the development of a Pacific human rights charter and mechanism, within the scope of the Pacific Plan.

Association of South East Asian Nations

The Association of South East Nations (ASEAN) Charter, due to enter into force in mid December 2008, includes provision for the creation of an ASEAN human rights body (AHRB). A High Level Panel of representatives from ASEAN member countries has been formed to draft the terms of reference for the human rights body. The Chair of the Panel has stated that the Panel aims 'to achieve a result that is realistic, balanced and credible, and which would be in the best collective interest of ASEAN', and noted the importance of engaging ASEAN civil society in its work.

The Working Group for an ASEAN Human Rights Mechanism (Working Group) is a coalition of national working groups from ASEAN member states which are

composed of government and parliamentary representatives, the academe, and NGOs. Its primary goal is to establish an intergovernmental human rights body for ASEAN.

On 11 September 2008, Working Group submitted to the High Level Panel its recommendations for the mandate and powers of the AHRB.

Asia Pacific Forum of National Human Rights Institutions

The Asia Pacific Forum of National Human Rights Institutions (APF) was established in 1996 in Darwin, with the active participation and support of the Australian Government and the Australian Human Rights Commission. It is a regional, member-based organisation consisting of national human rights institutions from the Asia-Pacific.

The APF Constitution has three membership categories: full members, candidate members and associate members. The APF currently has 14 full members (the national human rights commissions of Afghanistan, Australia, India, Indonesia, Jordan, Malaysia, Mongolia, Nepal, New Zealand, Philippines, Republic of Korea, Sri Lanka, Thailand, and Timor-Leste); and three associate members (Palestinian Territories, Qatar, and Maldives).

While the APF's primary mandate is to promote the establishment and strengthening of national human rights institutions and to provide capacity building and networking services to its members, it is also involved in various supplementary regional cooperation initiatives. These include: providing support to the Association of Pacific Island Legislatures; working with the Pacific Islands Forum Secretariat (PIFS) on human rights components of the Pacific Plan; working with governments, civil society and regional organisations in the Asia-Pacific to foster dialogue on human rights; coordinating a series of training workshops on the rights of people with disability in the Pacific; and advancing human rights in ASEAN through contributing to the development of an ASEAN human rights mechanism.

Pacific Regional Rights Resource Team (RRRT)

The RRRT is a non-governmental organisation established in 1995 in Suva, Fiji. The RRRT receives core support from AusAID and the New Zealand Agency for International Development (NZAID). Advocating for human rights, social justice and good governance throughout the Pacific, the RRRT states that it is guided by Pacific Leaders' vision in the Pacific Plan, to "seek a Pacific region that is 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". The RRRT provides human rights training, technical support, and policy and advocacy services tailored specifically for the Pacific region to non-governmental organisations, multilateral organisations, social welfare organisations, police, legal practitioners, the judiciary, politicians and law students.

The RRRT has advocated the establishment of a Pacific regional human rights mechanism, and its preferred model is a regional human rights commission established under a Pacific Charter of Human Rights. The RRRT works in eight focus

countries in the region - Cook Islands, Fiji, Kiribati, Samoa, Solomon Islands, Tonga, Tuvalu and Vanuatu.

5. Key regional human rights mechanisms in the rest of the world

African Commission on Human and Peoples' Rights

Established by the African Charter on Human and Peoples' Rights, the African Commission on Human and Peoples' Rights is charged with ensuring the promotion and protection of human rights throughout the African Continent. The Commission is officially charged with three major functions: protection of human and peoples' rights; promotion of human and peoples' rights; and interpretation of the African Charter on Human and Peoples' Rights

States Parties to the Charter are required to submit a report every two years on the legislative or other measures taken, with a view to giving effect to the rights and freedoms recognised and guaranteed by the Charter.

The Inter-American Commission on Human Rights

The Inter-American Commission on Human Rights (IACHR), headquartered in Washington D.C., is an autonomous organ of the Organization of American States (OAS). Its principal function is the promotion of the observance and the defence of human rights. The IACHR represents all of the member States of the OAS. It has seven members who act independently, without representing any particular country. The members of the IACHR are elected by the General Assembly of the OAS. The IACHR is a permanent body which meets in ordinary and special sessions several times a year.

The IACHR performs the following functions, *inter alia*:

- investigates individual petitions which allege human rights violations;
- observes the general human rights situation in the member States and publishes special reports regarding the situation in a specific State, when it considers it appropriate;
- recommends to the member States of the OAS the adoption of measures which would contribute to human rights protection.
- submits cases to the Inter-American Court of Human Rights and appears before the Court in the litigation of cases.

The Council of Europe

The Council of Europe, founded in 1949, is the oldest international organisation working towards European integration. It has a particular emphasis on legal standards, human rights, democratic development, the rule of law and cultural co-operation. The Council of Europe works mainly through conventions. By drafting conventions or international treaties, common legal and human rights standards are set for its member states.

One of the Council of Europe's notable achievements is the European Convention on Human Rights, adopted in 1950. The Convention created the European Court of Human Rights in Strasbourg. The Court supervises compliance with the Convention and thus functions as the highest European court for human rights and fundamental freedoms.

Organisation for Security and Co-operation in Europe

The Organisation for Security and Co-operation in Europe (OSCE) is the largest regional security organisation in the world. OSCE's human rights activities focus on such priorities as freedom of movement and religion, preventing torture and trafficking in persons.

The OSCE monitors and reports on the human rights situation in each of its 56 participating States, particularly in the areas of freedom of assembly and association, the right to liberty and to a fair trial, and the use of the death penalty. It provides training and education across the field of human rights, including for government officials, law-enforcement officers, rights defenders and students.

The OSCE's Office for Democratic Institutions and Human Rights is active throughout the OSCE area in the fields of election observation, democratic development, human rights, tolerance and non-discrimination, and the rule of law.

Useful Links:

United Nations Human Rights System

Office of the High Commissioner for Human Rights:

www.ohchr.org

Human Rights Council:

<http://www2.ohchr.org/english/bodies/hrcouncil/>

Information about UN Human Rights mechanisms:

<http://www.ohchr.org/EN/HRbodies/Pages/HumanRightsBodies.aspx>

The Commonwealth

The Commonwealth Human Rights Initiative

<http://www.humanrightsinitiative.org/default.htm>

Regional Human Rights Mechanisms in Asia-Pacific

Pacific Islands Forum:

<http://www.forumsec.org.fj/>

ASEAN:

<http://www.aseansec.org/>

Asia Pacific Forum of National Human Rights Institutions:

<http://www.asiapacificforum.net/>

RRRT:

www.rrrt.org

Regional Human Rights Mechanisms in the rest of the world

African Commission on Human and People's Rights:

<http://www.achpr.org/>

Inter-American Commission on Human Rights:

<http://www.cidh.org/>

The Council of Europe:

<http://www.coe.int>

Organization for Security and Co-operation in Europe:

<http://www.osce.org/>