

Submission to the Parliament of Australia Joint Standing Committee on Foreign Affairs, Defence and Trade, 'Inquiry into Human Rights Mechanisms and the Asia-Pacific'.

Submitted by The Pacific Regional Rights Resource Team (RRRT/SPC). RRRT is part of the Secretariat of the Pacific Community (SPC), a programme under the Social Resources Division with core support from NZAID and AusAID. RRRT provides training, technical support, policy and advocacy advice in human rights, democracy and the rule of law to promote social justice and good governance throughout the Pacific region. See Annex A for a full description of RRRT's work.

November 2008

A. Introduction

1. This submission is confined to the Pacific Island countries and territories (PICTs) and region only. It does not cover Asia. Of the PICTs, only Fiji has a dedicated national human rights institution, although it is possible that a very few countries have desks in government departments that cover some aspects of human rights. Some Ombuds offices cover a few aspects of human rights but these are generally confined to administrative malfeasance. Various UN bodies and NGOs promote human rights education in the region and nationally. RRRT is a regional indigenous human rights body, with a dedicated focus on the broad range of civil, political, economic, social and cultural rights, and covers many of the functions of a regional human rights mechanism. However, it does not monitor individual violations of rights nor receive and investigate complaints.
2. This submission discusses the viability for a regional human rights mechanism for the PICTs. The mechanism would not include Australia and New Zealand, which each have well functioning human rights

institutions. For practical purposes, they should not be included in the initial regional mechanism, although options for them to join later should be made available.

B. Background

3. The Pacific currently has no UN-recognised human rights regional mechanism. For all human rights to advance significantly in the region there needs to be a regional body to access information and for individuals to access justice.
4. For longer term stability and social cohesion in the Pacific, the issue of human rights requires collective attention and strategic approaches. Prolonged periods of poor governance and disappointing economic growth combined with limited access to resources, a breakdown in traditional systems, political tensions and lack of opportunities have had negative social impacts across the region.
5. Of great concern has been the significant numbers of the population falling into poverty – in Fiji this has been estimated at 40%. One of the causes of poverty is the inability of the poor to exercise their basic rights. (Very often they do not even know that they have rights.) Continued ignorance and inattention to basic human rights will perpetuate poverty. Rights education is aimed at breaking this poverty cycle.

Pacific Human Rights Context

6. Any plan to promote rights in the region must take into consideration the following:
 - The significant steps that have been taken by Pacific Island states, including a Regional Implementation Plan with respect to the 2005

Pacific Plan, which commits Pacific Island states to protecting human rights, the rule of law, good governance and sustainable development.

- Human rights are not foreign to the Pacific. All PICT constitutions already contain a bill of rights.
- The relatively low level of UN treaty ratification by Pacific Island states, despite the welcome recent ratifications by Samoa and Vanuatu of the ICCPR.
- The potential value of a regional human rights charter and mechanism that reflect the human rights concerns and priorities of the Pacific region in advancing rights promotion and protection.
- The smallness of some of the PICTs makes it exceedingly difficult for them to establish and maintain a national human rights institution.
- Tradition and culture, for example Samoa's *matai* system, are of specific importance in the Pacific region and any discussion of human rights needs to acknowledge them. Nonetheless, there are common interest, threads and core values in the Pacific that accord with human rights values. The key is how to bring those concepts together.
- Rights have to be understood together with responsibilities.
- There are certain rights of particular significance for the people of the Pacific Islands (for example, the right to a quality environment) that might be reflected in any regional instrument.
- The impact of economic globalisation on the Pacific Island nations and its significance for effective human rights protection.
- The rights enshrined in the UDHR are complemented by the rights particular to the Pacific, and are not a derogation from them.

The impact of:

- Climate change in the region.
- Civil unrest in national states and in the region.

The need for:

- Judicial independence and upholding of the rule of law.
- Human rights training throughout the Pacific, including the training on the international human rights conventions.
- Civil society to play a central role in advancing human rights through cooperation with both governmental and intergovernmental institutions.

7. On the rare occasion where rights violations come before the higher level courts, they have generally been enforced. Most PICTs generally have independent judiciaries. More often than not, the courts have demonstrated a willingness to make findings consistent with the bill of rights where civil or political rights violations are concerned and where victims have been persistent about asserting their rights. Courts are expensive and available mainly to those who have the financial means to afford lawyers or who have access to well-resourced legal aid offices.
8. There are very few avenues for reporting rights violations in most PICTs and very rarely are human rights violations reported at all. Each issue has a bearing on the other. Apart from Fiji, which has a Human Rights Commission, the only avenues to obtain remedies in most countries are the mainstream courts, which require access to courts, lawyers and funds. Thus the structures and mechanisms for promoting and protecting human rights are extremely limited. Existing mechanisms like Ombuds offices have limited and poor enforcement powers and are inadequately resourced and funded. Most Ombuds' powers are also restricted to investigating administrative malfeasance, with some limited overlap to the area of human rights. All PICTs need national human rights mechanisms or a regional human rights mechanism for the protection of rights outside the court system. The primary mode of compliance should be through negotiation and dialogue, as a first step.
9. As many of our countries have basic bills of rights which protect mainly civil and political rights (while some also protect a very few economic, social and cultural rights) within their constitutions, and given that virtually all our countries have signed up to at least one UN human rights convention, the argument for a body to monitor human rights is an overwhelmingly persuasive one.

C. What is the best way forward for the PICTs?

10. There are two potential models for the way forward. The first is setting up a national human rights commission in each PICT, and the second, is a regional human rights mechanism. Both ought to be explored.

11. We do not see the two models as mutually exclusive but rather that the establishment of one promotes advancement of the other; both are mutually reinforcing. RRRT drafted the proposed Bill of Rights in the Solomon Islands Draft Constitution and included the establishment of a NHRI. In our strategic plan for the next 5 years, RRRT is committed to both NHRIs and to exploring the possibility of a regional mechanism.
12. Nevertheless we believe that the most appropriate **long term model** for a human rights mechanism in the Pacific region, with a mandate for promoting and defending human rights, is a regional human rights commission, set up under The Pacific Plan, and envisaged by it. A regional mechanism could be closely tied to the Pacific Islands Forum Secretariat (PIFS) which administers and monitors the Plan, although it can be later assessed whether this is appropriate. The mechanism need not start off by being a fully fledged commission but a simple mechanism.
13. A simple mechanism could be set up whose mandate may include supporting already existing domestic Bills of Rights and ratified international Conventions, as well as reaching consensus over the years on the content of a potential regional Pacific Island Charter. The Charter must not derogate from universal standards. Reaching consensus on a Charter and powers for the mechanism would necessarily require lengthy negotiations with all of the Pacific Island countries and territories (PICTs).
14. RRRT/SPC envisages a regional Pacific Human Rights mechanism which would initially be relatively simple. It would have a limited mandate such as education and training; assistance with reporting on, and implementation of, human rights Conventions and constitutional Bills of Rights; monitoring overall human rights compliance; and providing technical support to Governments and NGOs. These functions are very similar to the functions already being carried out currently by RRRT but we do not monitor nor investigate **individual** human rights violations and are confined to overall state compliance. Should a regional mechanism be established, RRRT as a programme, might be phased out. This would be a welcome move in terms of establishing a more sustainable Pacific-staffed and Pacific-based mechanism in the region.

15. We would expect these powers and capacity to expand over time, step-by-step, as resources permit, as PICTs became better familiarized with human rights law and processes, and appreciate the value that human rights bring to human development. Obtaining powers of investigation would be subject to subsequent negotiations with PICTs.
16. Although we support the establishment of national mechanisms in those countries that are able to comply with the Paris Principles, a regional Commission would have significant cost savings for PICTs in contrast to a National Human Rights Institution (NHRIs) for each PICT. Costs would be shared without duplication and unnecessary bureaucratic structures. The establishment of NHRI's for many of the smaller PICTs would be prohibitive. However, contributive costs on a user pays model such as that which exists with the University of South Pacific should be feasible. We would expect that a persuasive argument for PICTs to contribute to the working costs of a Pacific Regional Human Rights Commission (PRHRC) would exist in terms of international obligations to human rights and donor country expectations.

The population of the Pacific Islands will reach 9.5 million in 2008, and grows by 1.9% annually, a yearly growth of 180,000 people. The total population of SPC's 22 Pacific Island member countries and territories is estimated to reach 9,498,900 people by mid-2008. The population of the Melanesian countries will be 8,310,300, the region of Polynesia will have 655,300 people, and Micronesia will include an estimated 533,300 people. The largest individual country population is that of Papua New Guinea, which has an estimated 6,473,900 people, followed by the Fiji Islands with approximately 839,300 people. The smallest are Tokelau, with 1,200 people, and Niue, with 1,500 people (apart from Pitcairn Island, which has 66 people). Most of the population of the Pacific region live in the four largest countries: PNG, Solomon Islands, Fiji and Vanuatu.¹

A summary of the various forms and functions of other regional mechanisms are annexed to this paper as Annex C. The ultimate form for a Pacific regional mechanism to take will depend on what type of Commission PICTs want.

17. The preparation of a Pacific Charter of Human Rights or a Regional Commission does not necessarily require the ratification of all PICTs to

¹ SPC 2004.

bring it into existence (entry into force), although ideally the process of drafting should involve all. It may well be the case that some countries will ratify immediately and others later when they are ready.

D. Why is regionalism a better approach?

18. *The Pacific Plan* is based on the concept of regionalism: that is, countries working together for their joint and individual benefit. Regionalism under the Pacific Plan does not imply any limitation on national sovereignty. It is not intended to replace any national programmes, only to support and complement them. A regional approach should be taken only if it adds value to national efforts.

19. In the PIFS Regional Strategy Paper and Regional Indicative Programme for the Period 2008 – 2013, the PIFS has committed to the further analysis of the establishment of a regional ombuds office and human rights mechanisms. This is in addition to its continuing support for ratification and implementation of international and regional human rights conventions, covenants and agreements; and support for reporting and other requirements. However, neither the PIFS nor the governments of the region have the in-country capacity to provide the expertise required to fulfil all human rights obligations as mentioned in *The Pacific Plan*.

20. Tests for regional approaches

There are three ways of testing whether regionalism can add value to an initiative:

Market Test: Is the market providing a service well? If so, involvement by national governments and/or regional bodies should be minimal.

RRRT/SPC Response: The main regional support for human rights is provided by RRRT itself to both Governments and civil society organisations. Some human rights support is also provided by UN agencies with specific sectoral interests (e.g UNICEF Pacific on the Child Right's Convention, UNIFEM for CEDAW, OHCHR for general human rights, UNDP Pacific for rights based approaches to development etc). However, these organisations are not indigenous to the Pacific nor do they have sufficient local legal and other knowledge to understand the

Pacific contexts. These agencies are not able to build regional institutional knowledge that will stay in the Pacific, due to the fact that their experts come and go. Nor are they able to build local sustainable capacity. When a regional meeting of MPs met in October 2007, there was broad support for setting up a regional body. This support came especially from the MPs representing smaller countries in the region who believed it to be impossible for them to set up national commissions, given the small size of their countries and their limited resources. The informal resolution is annexed at the end of this paper as Annex B.

Subsidiarity Test: Can national or local governments provide the service well? If so, involvement by regional bodies should be minimal.

RRRT/SPC Response: RRRT provides human rights services to PICT governments because no PICT has adequate national capacity, and in most cases has none at all. NGOs can only provide government with limited support because they too lack capacity. See also the points made above under the title of “Market Test”.

Sovereignty Test: Does the proposed regional initiative maintain the degree of effective sovereignty held by national governments? Regional initiatives should shift only the management of services to regional bodies, not policy-making as well. Countries, not regional bodies, should decide priorities.

RRRT/SPC Response: A regional mechanism’s mandate will be decided by PICTs governments and its peoples. A regional mechanism can have forms and functions as decided upon by agreements as mentioned previously. A step-by-step approach could be taken as stated in the beginning of this submission. The mechanism could start off with a simple mandate and slowly over time acquire more sophisticated mandates. In time the mechanism could evolve into a fully fledged PRHRC.

We believe that the approach suggested by a regional mechanism satisfies all 3 criteria with ease as well as being cost effective. The overall costs and accountability responsibilities to the region, supportive

agencies and development partners, would be significantly less than dealing with several separate mechanisms.

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

E. Previous initiatives to set up a regional mechanism

21. The proposal to set up a human rights mechanism for PICTs has been around for more than 20 years. The first attempt was made in 1982 when the UN sponsored a seminar on National, Local and Regional Arrangements for the Promotion and Protection of Human Rights in the Asia Pacific Region in Colombo. The seminar was followed by a series of annual workshops. In 1985, LAWASIA, a non-governmental organisation comprising lawyers in Asia and the Pacific, started exploring the possibility of a regional mechanism for the Pacific at a meeting in Fiji. The meeting was attended by 63 government and NGO delegates but was overwhelmingly dominated by Asian, Australian and New Zealand delegates.
22. After various working party meetings, a Draft Pacific Charter of Human Rights was adopted at a meeting held in this country in 1989. The draft was modeled closely on the African Charter on Human and Peoples' Rights and provided for civil and political rights, and some economic, social and cultural rights. It foresaw the establishment of a commission to supervise implementation. As with some other outside initiatives, the LAWASIA efforts failed to gain any support from PICT governments. One commentator² stated the reasons for the failure of such initiatives as being:

² Muntarborn, V. "In Search of the Rights Track: Evolving a Regional Framework for the Promotion and Protection of Human Rights in the Asia-Pacific Region". Discussion Paper, OHCHR, June 2005, p9.

- Lack of follow-up and evaluation.
- Inadequate space for participation from stakeholders other than governments.
- At times those participating at the government level were not of high enough rank to have real impact.
- Some of the relevant agencies and personnel had not been brought on board. Lack of a regional commitment by governments.

23. To these reasons can be added more compelling contemporary political and social ones:

- The irrelevance of what was perceived as “Western” human rights values and the perceived clash with Pacific values ;
- There was little recognition of the value of ratifying international human rights treaties in the mid-1980s and hardly any of the core human rights treaties were ratified.
- The absence of a mandate for any particular regional organisation at the time to oversee the establishment of a regional mechanism envisaged by LAWASIA.³
- Most importantly the initiative was perceived to be driven by outsiders and not Pacific Islanders. Outside expertise, human and financial resources are needed but Pacific Islanders must lead the initiative.
- A key reason also was that NGOs had not been included nor brought on board. Even though a very few NGOs were at the meeting at Pacific Harbour, they knew very little about human rights and in any case they were given little political space to make any meaningful input.
- Another reason was just simple bad timing, tied in with a lack of local Pacific ownership of the concept. PICTs could not see the value of a regional charter of human rights nor a regional commission at that time. The Pacific has now gone beyond this stage.

24. Timing is critical. In stark contrast this time, in 2007 and 2008, Pacific Island MPs, judicial officers and NGOs have called for the setting up a regional mechanism,⁴ echoing goals in *The Pacific Plan*.

³ For example, regional organisations such as the Pacific Islands Forum or the Secretariat of the Pacific Community were not tasked with the necessary follow up.

⁴ Pacific Regional Consultation for Members of Parliament on the Pacific Plan (Strategic Objective 12.5), Human Rights Conventions & Standards and their Application to Domestic Law Policy & Practice (29 October – 2 November 2007); Regional Consultation for Judges & Magistrates on Human Rights

A renewed call for human rights mechanisms is now being made under Strategic Objectives 12.1 and 12.5 ⁵. Thus, unlike the 1980s when the call was identified more with interest and persons considered to be ‘outsiders’ to the Pacific region, the call this time around has been made by Pacific people and institutions from within the Pacific. We believe that the prevailing conditions in the region have changed and the time is now right to revive discussion and action on the long-standing need for a regional human rights mechanism for the Pacific region. Some of these improved conditions are:

- Better understanding of human rights by Pacific peoples and PICT governments. Although human rights knowledge is limited, it is still significantly greater than in 1985.
- The existence of organizations specifically dedicated to human rights dissemination, and/or activism and a larger number of NGOs who value and promote human rights through their own sectoral interests (the growing appreciation of rights based approaches).
- Greater number of ratification of human rights treaties/conventions and reporting under the treaties. See Annex D.
- Greater use of human rights standards by the courts.
- The greater use of the language of human rights by decision makers and PICT governments.
- In 1985-89 there was no in-house local Pacific Island expertise in the sense that all the human rights expertise was based mainly in Australia and NZ. That is no longer the case. There are both organizations (especially NGOs) and individuals who have a critical mass of human rights knowledge and this is growing day by day.
- In the 14 years that RRRT has been working in the Pacific islands there has been a gradual thawing of hostility towards the notion of human rights and a gradual appreciation of it over the years. One of the reasons for this is that human rights are being taught, disseminated, used and

Conventions & Standards and their Application to Domestic Law, Policy & Practice (3 – 7 December 2007); RRRT Regional Partner NGOs Meeting (14 – 15 February 2008)

⁵ Recommended in “The Pacific Plan for Strengthening Regional Cooperation and Integration” (2006), 12.1 Establishment of a regional ombudsman and human rights mechanisms to support implementation of Forum Principles of Good Leadership and Accountability, etc and 12.5 Regional support mechanism established by the 2006.

acted on by Pacific Islanders themselves. It is much more difficult for those Pacific Islanders resisting human rights to object to other Pacific islanders who promote human rights that “western values are being shoved down our throats.” The old adage, that the messenger is as important as the message, is never truer than in the promotion of human rights in this region.

The list is not exhaustive, however, more than 23 years have passed and much has changed in the Pacific since 1985.

F. A Pacific Regional Charter of Human Rights.

25. A long term goal for PICTs might be to develop a Pacific regional charter of human rights based on universal standards, under the auspices of a regional mechanism. The development of a Regional Charter could be one of the functions of a regional mechanism. In 1985 and thereafter, PICT governments were promoting the concept of a Pacific charter with “Pacific values” (similar to the so called “Asian values” notion), a clear signal at that time that it would be difficult to agree on a charter embodying universal standards. A regional charter ought not to derogate from (or be less than) international standards, nor to condone any notion of cultural relativism. Cultural sensitivity is different from cultural relativism, the former being an acknowledgement that Pacific island cultures are, like all cultures, idiosyncratic. Sensitivity in approach and form is critical. However Pacific peoples and Pacific culture are not so different that international human rights standards and norms ought not to be applicable to them. If anything we should be leveling up, not down, from our own Pacific Island conditions.
26. The Charter should reinforce the universal rights established by international human rights instruments but should also be expanded to recognise rights and duties that are peculiar to PICTs. In giving recognition to these rights and duties, care should be taken to ensure that they do not conflict with or whittle down universal rights. Some rights which may be considered peculiar to the Pacific (although perhaps not exclusively) are the right to fish as an essential component

of food security (fish is the only real source of protein for most Pacific Islanders).

27. Cultural rights are already a universal standard recognized in the International Covenant of Economic, Social & Cultural Rights (ICESCR). However, they may not be used, for example, to undermine rights to equality for women.

G. Why do we need a Regional Human Rights Commission in the Pacific?

28. It is not suggested that the establishment of a regional commission precludes the establishment of a national commission for those countries able to achieve that. The argument for a regional commission is not an either/or situation or a national versus regional one. Indeed, ideally both are desirable. However, for many PICTs this may be very difficult for resource reasons. There are several reasons why a Pacific Regional Human Rights Commission might be the most suitable long term mechanism for the Pacific:

1. *A regional mechanism takes better account of regional conditions and peculiarities*

The UN encourages the establishment of regional human rights mechanisms because the experience from other regions with such mechanisms is that they are better able to take account of regional conditions and peculiarities. For the Pacific such peculiarities may include the duty of individuals to their family and community – an area of concern given the often expressed view in the Pacific that human rights favour the rights of individuals over the rights of the community.

In essence, a regional human rights commission will not only complement the UN system at a regional level, but it will be more acceptable to Pacific people and have a greater capacity to promote human rights values because:

- There will be more state commitment to it, given the involvement of PICT government leaders in its formulation, inception and in its governance.
- It will instill a sense of ownership in people not only because their governments or organisations were involved in formulating it but also because it is more visible and accessible to them – the location of most offices of the UN in Europe have made it very difficult for Pacific people to identify with them. Even UN offices located in the Pacific are regarded as inaccessible.
- It will be staffed by the ‘sons and daughters of the region’, this will encourage an acceptance of human rights standards by the people and organisations in the region.
- The perception that human rights are Western concepts and therefore have no relevance to PICTs will be better addressed.
- It will provide an avenue for regional dialogue and the means to resolve regional human rights disputes.
- It will assist in the implementation of The Pacific Plan, UN Human Rights treaty commitments and other regional agreements.

In October 2007, Pacific Island MPs⁶ met in Auckland for a consultation on human rights issues.⁷ At the meeting, they called for the establishment of a regional human rights body to help Forum member countries with their obligations under The Pacific Plan to ratify, report on and implement international human rights conventions. The call by Members of Parliament was followed by a similar call in December 2007⁸ by Pacific Island judicial officials. The latest call was made in February 2008 by NGO representatives.⁹ Pacific Island MPs made specific mention of the following in calling for the setting up of a regional mechanism:

⁶ From the Cook Islands, Kiribati, Samoa, Federated States of Micronesia, Nauru, Niue, Papua New Guinea, Solomon Islands, Tuvalu and Vanuatu

⁷ The Consultation was organised by RRRT with support from the Forum Secretariat, the Commonwealth Secretariat and the UNDP – Pacific Centre and was held in Auckland. In most cases both opposition and government parties from each country were represented at the meeting.

⁸ From the Cook Islands, Tonga, Vanuatu, Samoa, Kiribati, Fiji, Solomon Islands and Tuvalu

⁹ The NGO representatives were part of a meeting organised by RRRT for its partner organisations in the Pacific region to discuss, amongst other things, the advocacy plans of these organisations in their countries in the next five years from the Cook Islands, Fiji, Kiribati, Samoa, Solomon Island, Tuvalu, and Vanuatu

This initiative should be driven by an indigenous regional human rights organisation of Pacific Islanders. This is critical for ownership by PIC governments and peoples because of the perception that human rights are alien to Pacific societies.

(See Annex B)

2. *It will help build and foster a Pacific human rights culture – legal and social*

A regional commission will facilitate and foster an appreciation of human rights values within the citizenry of PICTs, in both government and civil society. It will create the necessary environment for the dialogue regarding international human rights and Pacific culture. Hence, this will create a widespread body of human rights case law specific to PICTs.

3. *The Pacific Island region will soon be the only region without a regional mechanism*

In November 2007, 10 Asian countries signed a charter that moved a step closer to committing to promote human rights and democracy. One of the significant pledges in the charter is the setting up of a regional human rights body.¹⁰ If the Asians succeed in establishing a regional human rights body of their own, the Pacific region will be the only region in the world without such a commission.

The working group for an ASEAN human rights regional mechanism states that the benefits of such a mechanism would be that:

- ASEAN member states will be assisted to addressing human rights concerns in their respective areas of jurisdiction.
- International human rights laws will be observed and implemented by ASEAN countries who have agreed to them.
- ASEAN people will be helped to have a common understanding of universal human rights issues and perspectives.¹¹

¹⁰ <http://news.bbc.co.uk/1/hi/world/asia-pacific/7102992.sm> at 10 March 2007

¹¹ www.aseanhrmech.org at 18 April 2008

These reasons apply equally to the Pacific region.

For Pacific Island governments who are members of the United Nations¹², the lack of a regional mechanism should be a matter of concern as it constitutes non-compliance with the many resolutions of the UN which call for the setting up of such an institution. From 1986 to 1990 the United Nations General Assembly had passed three such resolutions. For example, Resolution 41/153 passed in 1986 and titled “Regional Arrangements for the Promotion and Protection of Human Rights in the Asian and Pacific Region” called upon states from the region to respond to the call for “regional arrangements”. The UN Human Rights Council (previously Commission) had also made nine similar calls.¹³ The lack of response to the calls by UN members in the Pacific region may raise questions about their commitment, as members of the international community, to their international obligations.

4. *Challenges of complying with The Paris Principles for small island states wishing to establish national human rights commissions*

The Paris Principles endorsed by the UN Commission on Human Rights¹⁴ and the UN General Assembly¹⁵ have become the foundation and reference point for the establishment and operation of national human rights institutions.

If PICTs do establish national commissions they need to comply with the minimum standards set out in the ‘Paris Principles’:

- Independence guaranteed by statute or constitution.
- Autonomy from government.
- Pluralism, including in membership.
- A broad mandate based on universal human rights standards.
- Adequate powers of investigation.
- Sufficient resources.

¹² All Pacific Island Forum members except Cook Islands and Niue are members of the United Nations.

¹³ Muntarbhorn, n2.

¹⁴ Resolution 1992/54 of 3 March 1992

¹⁵ Resolution 48/134 of 20 December 1993

These are important criteria and are the benchmark for standards. However the challenges of compliance with the Paris Principles for all our PICTs, let alone the smaller island states are manifold. It is difficult for countries like Tuvalu (pop 9561), Tokelau (pop 1466), Niue (pop 1679), Cook Islands (pop 11,900) or even Tonga (pop 97,784) to fully comply with such minimum standards on a national basis.

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

5. *A Regional Commission will have greater independence*

The additional advantage of a regional body is that it may provide redress where the national system is unable to deliver justice. A regional commission will also better ensure that no individual country will be able to assert control or influence on its work. As a regional body, with its own charter and rules, it will be more difficult for an individual country to influence or interfere with its work. A regional human rights body, appropriately staffed and mandated, is in a better position to operate with a greater degree of independence than would its national counterpart.

Another appeal of a regional human rights body in the Pacific context is that it will be better able to insulate itself from problems of cronyism or ‘*wantokism*’; and nepotism. This may be a problem with national institutions, especially in small countries, where the maintenance of social ties and close relationships are more important than

accountability, and where professionalism, transparency and ethics are often sacrificed in order to keep clan and other relationships intact.

A common challenge faced by officers in national public agencies who deal with complaints and investigations is that they are often not able to deal with their relatives or friends. A regional body will enhance the possibility of arms length decision making. It will be better able to have the trust and confidence of the people to deal with complaints independently, and thus empower people to take their grievances directly to it.

6. *The rule of law challenges faced by nascent democracies in the Pacific*

There are many rule of law challenges faced by national bodies in small countries. They are vulnerable to interference from government, militaries and, potentially, police forces as well. A regional Commission makes such problems less likely to happen and bodies less vulnerable to national political interference.

7. *Enables regional co-operation and realisation of the Pacific Plan and will provide a critical service to the Pacific Region*

The realisation of human rights is critical to the achievement of all 15 Strategic Objectives in the Pacific Plan, and in particular to those of: reduced poverty, improved health, improved education and training, improved gender equality, improved recognition and protection of culture, identities and traditional knowledge, improved transparency, accountability, equity and efficiency in the management and use of resources, improved political and social conditions for stability and safety, and increased national ownership and commitment to regional approaches, plans, policies and programmes. Virtually all of these objectives are also goals of human rights treaties.¹⁶ A regional human rights commission can play a crucial role in facilitating the realisation of the goals of The Pacific Plan.

The additional appeal of a regional human rights commission for the Pacific region is in the fact that it will provide a service which is

¹⁶ Jalal, PI “Pacific Culture and Human Rights: Why Pacific Island Countries Should Ratify International Human Rights Treaties” (2006) RRRT/UNDP (unpublished paper), p24 on www.rrrt.org

currently not available in most countries. With the exception of PNG, Solomon Islands and perhaps Samoa, the possibility of the rest of the countries being able to set up their own human rights bodies is remote given the size of their populations and resource constraints.

An example of a service which is not available in most PICTs is that of supporting governments for ratification, reporting and implementation of international human rights treaties. The Pacific Plan, as noted earlier, has highlighted this as an immediate need to be addressed. Overall, the Pacific region has the lowest rate of ratification globally¹⁷

8. *A regional commission can be resourced by Pacific Island specialists*

Most PICTs cannot afford specialised agencies, commissioners and staff. As with the case of a national Human Rights Commission, a regional Commission has the advantage of being resourced by specialists in human rights, including persons with experience in other UN bodies and human rights mechanisms. It is critical that not only lawyers but people from the NGO sector with a background in human rights are included as staff.

It is crucial that the regional human rights commission is led and staffed by qualified Pacific people. This is fundamental to receiving the support and acceptance of the people that it will serve. There now exists some degree of expertise within the Pacific Islands. This ought not to be taken to imply that expatriate expertise is not needed to train and mentor those who resource the regional mechanism.

9. *Financial constraints*

¹⁷ Of the main human rights conventions, only the Convention on the Rights of the Child (CRC) has been ratified by all the Pacific Island countries. For the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW), all except 3 countries (Nauru, Palau, Tonga) have ratified it. The International Convention on the Elimination of all Forms of Racial Discrimination (CERD) has been ratified by only four countries (Fiji, PNG, Sol Is, Tonga). Samoa has acceded to the International Covenant on Civil and Political Rights (ICCPR) whilst Vanuatu has ratified it. Solomon Island adhered to by succession the International Covenant on Economic, Social and Cultural Rights (ICESCR), and Tonga & Vanuatu have signed the Convention on the Rights of Persons Living with Disabilities (CRPLD). No country has ratified the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) or the Convention on the Rights of Migrant Workers and their Families (CMW)

Many worthy initiatives in the Pacific fail for want of financial and human resources. Thus, initiatives to set up national mechanisms fail due to a lack of resources, especially for small or resource poor island nations. A regional mechanism, however, will allow PICTs to pool their resources.

The reality is that there are severe financial and human resource constraints on the ability of the Pacific countries to ratify and implement international human rights conventions. For example, all countries relied on donor support when they prepared their reports for CEDAW and CRC¹⁸. A regional body appropriately staffed could be tasked with this responsibility. The added value is that the experience gained in one country by the regional body either in ratification, reporting or in the implementation, of international human rights treaties, could be used in other countries thus avoiding duplication.

10. *The relationship between national mechanisms and a Regional mechanism*

Most regions that have regional commissions also have members that have their own national human rights commissions. Both human rights mechanisms complement each other. Generally, national commissions have a close relationship to the regional body. Countries can also be members of both. For countries that have their own national mechanisms there may be direct access to the regional body or access after internal remedies fail. For countries that do not have a national body, there may be direct access to a PRHRC. In the Pacific it would be advisable for a regional commission to set up small offices in various countries or on a sub-regional basis, to enable ease of access. This would be a significantly cheaper option than having fully fledged national commissions in each country, having to be compliant with The Paris Principles.

A regional mechanism may lead to more NHRIs being established, as happened in the Americas. Whether or not national human rights

¹⁸ Jalal, PI, n16

commissions or analogous institutions at the domestic level should precede the development of a regional human rights system is a matter that should be addressed on a case by case approach. Within the Inter-American Human Rights system, for instance, at the time of its inception, national human rights institutions were virtually nonexistent. Rather, they were established as a result of the repeated calls in this regard which came from the Inter-American System as well as from UN bodies. Now almost every member of the Inter-American Human Rights Commission has a national institution.¹⁹ Advancement in one area will promote advancement in the other. In order to achieve the maximum effectiveness in the protection of human rights, both a regional system and a national institution should operate, if the resources permit.

H. Some challenges and strategies

29. The most practical challenge that will have to be addressed is funding. A regional body will be easier to maintain and it is in the economic interest of PICTs to support a regional body. This will encourage countries to contribute to the operational costs. A funding model to be considered might be the user/pay arrangements adopted by existing regional institutions. Current donor programme funds towards regional human rights programming could also be diverted to a regional human rights mechanism for educative and other programme areas already in existence and already receiving funding.

I. Conclusion

30. A simple regional human rights mechanism might in time become a fully fledged commission with powers to issue advisory opinions, promote human rights, receive complaints and hear and adjudicate disputes. In addition, it may also be tasked to assist in ratification, reporting and the implementation of human rights treaties. However, not all these mandates need be granted initially or all at once. The process should be a continuous one developing progressively over

¹⁹ Filipe Gonzalez, OAS Inter –American Commission of Human Rights at this Conference.

time. For example a regional mechanism could start off with a simple mandate of the promotion of human rights; providing technical support and policy advice; and support for ratification, reporting and implementing human rights Conventions. It could over time gradually take on more complex remedies to conciliate, issue advisory opinions, adjudicate and so on. The Charter should also take into account the mechanisms available in member countries and ensure that its constituent regional body recognises and complements their roles.

31. The lack of protection at the national level and the incapacity to provide redress justify a regional commission which should be appropriately structured, staffed and mandated to deal with these issues. As is the experience with other regional bodies, the threat of scrutiny by the regional body, let alone scrutiny of its reports by other member states, will persuade countries to pay closer attention to these violations.

32. A charter and regional human rights mechanism must be an initiative of the Pacific peoples as a whole. It must truly represent and consider all views of its constituents. The goodwill and support of development partners and international agencies is critical to the advancement of human rights in the Pacific and the ensuing benefits to all Pacific peoples.

Further: Please note that Ms Imrana Jalal, Human Rights Adviser with RRRT, has made a request to appear in person before the Committee early in 2009 in order to give further detail to this submission and to answer any questions that the Committee may have in respect to the issues for a human rights mechanism in the Pacific.