



ASIA PACIFIC FORUM
ADVANCING HUMAN RIGHTS IN OUR REGION

APF Submission to the Human Rights Sub-Committee of the Joint Standing Committee on Foreign Affairs, Defence & Trade

Inquiry into Human Rights Mechanisms
and the Asia Pacific

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1 Introduction

1.1 Inquiry's Terms of Reference

To inquire and report on international and 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
- Role of parliaments.

1.2 Focus of this Submission

This submission has been prepared by the Asia Pacific Forum of National Human Rights Institutions. The submission primarily focuses on the first two aspects of the terms of reference. It provides information on (i) the United Nations human rights system; (ii) developments relating to the establishment of pan-regional and sub-regional human rights mechanisms; and (iii) the role and functions of the Asia Pacific Forum of National Human Rights Institutions with regard to these issues.

2 Summary Points

- [1] Although the United Nations has demonstrated longstanding advocacy for, and support of, the establishment of an Asia-Pacific regional human rights mechanism, the Asia-Pacific remains the only region without a formal mechanism.
- [2] The Asia-Pacific region encompasses legal, social, political, cultural, religious, ethnic and economic diversity and complexity which present challenges for the establishment of a pan Asia-Pacific human rights mechanism.
- [3] It seems, at this point in time, highly unlikely that a pan-Asia Pacific human rights body/commission/mechanism will be established as had been originally envisaged. Instead, discussions and initiatives continue to focus on sub-regional (Asia and Pacific) mechanisms rather than a unifying or unitary pan-regional mechanism
- [4] Two inter-governmental organisations in the region (ASEAN and the PIF) have emerged, respectively, as the nexus of discussions around sub-regional human rights mechanisms. Related sub-regional inter-governmental agreements (the ASEAN Charter, and the PIF *Pacific Plan*) provide underpinning frameworks for the promotion and protection of human rights in each sub-region.

- [5] Progress towards the establishment of a sub-regional mechanism in Asia is considerably more advanced than is the case in the Pacific. In Asia, it is clear that the established, accredited and collaborating ASEAN/APF NHRIs provide a critical “building block” of capacity and capability which, in turn, allows and encourages incremental progress towards the establishment of a sub-regional human rights mechanism.
- [6] The APF is the only existing regional human rights body which includes an Asia-Pacific membership. APF has the full support of its member NHRIs to develop strategies and programmes to encourage and support the establishment of NHRIs in the region, provide significant human rights capability-building for those States without or unable to establish NHRIs, and to assist the development of sub-regional human rights mechanisms in both Asia and the Pacific.
- [7] There is a clear commonality of interest between the United Nations support for regional human rights mechanisms and Australia’s broader regional foreign policy and aid development priorities. In responding to these issues, the APF will continue to apply effective and sustainable aid development principles and practices in its responses to regional requests and human rights initiatives.
- [8] The APF does not consider that the evident current tendency towards sub-regional mechanisms need compromise any future momentum or regional consensus to progress a *pan* Asia-Pacific human rights mechanism. As a member driven organisation, the APF well positioned to continue to respond effectively to discussions at both the sub- and pan-regional levels.
- [9] The APF already functions, in an informal sense, as the sole existing pan Asia-Pacific human rights mechanism. With sufficient resources, the existing support of its member NHRIs, and in collaboration with key Australian and regional governmental and non-governmental partners and stakeholders the APF is crucially placed to continue to assist the development of sub-regional human rights mechanisms in both Asia and the Pacific.

3 The United Nations Human Rights System

3.1 The International Human Rights Framework

The Universal Declaration of Human Rights, adopted on 10 December 1948, is regarded as the basic cornerstone of the international human rights system. The human rights set out in the Universal Declaration represent common values drawn from the world’s diverse religious, humanist, political and cultural beliefs.

In the years since 1948, the rights in the Universal Declaration have been codified in a number of United Nations covenants and conventions and become part of customary international law. The UN human rights treaties are at the core of the international system for the promotion and protection of human rights.

Every UN member state is a party to one or more of the following major human rights treaties:

- The International Covenant on Civil and Political Rights
- The International Covenant on Economic, Social and Cultural Rights
- The Convention on the Elimination of All Forms of Racial Discrimination
- The Convention on the Elimination of All Forms of Discrimination Against Women
- The Convention Against Torture, and Other Cruel, Inhuman or Degrading Treatment or Punishment
- The Convention on the Rights of the Child
- The Convention on the Protection of the Rights of All Migrant Workers and members of their Families
- Convention on the Rights of Persons with Disabilities
- International Convention for the Protection of All Persons From Enforced Disappearance

The UN Human Rights Council is the main international body within the UN system to address human rights issues. The UN General Assembly established the Human Rights Council on 15 March 2006. Under the Council a range of human rights mechanisms and procedures operate, including the universal periodic review mechanism and various special procedures.¹

4 Regional Human Rights Systems

4.1 Overview

Since the end of the Second World War, national protection systems have been complimented by the rise of various inter-governmental regional systems

¹ Further information on the United Nations human rights system and international human rights law can be obtained at <http://www.ohchr.org/EN/HRBodies/Pages/HumanRightsBodies.aspx>

to promote and protect human rights. These regional systems are now found in Europe, the Americas and Africa. They are established by regional treaties stipulating key norms (the European Convention on Human Rights, the American Convention on Human Rights and the African Charter on Human and Peoples' Rights) and the establishment of machinery or mechanisms which range from regional human rights commissions to regional human rights courts and/or political bodies which exercise binding decision-making powers. The common feature enjoyed by these regional mechanisms is that they help to review the human rights situation and fill in gaps – in the absence of national remedies or where the national mechanisms are inadequate. In effect, they offer access to justice through pressure for accountability where the national system does not provide the necessary redress.

4.2 Africa

Established in 2001, the African Union (AU) is a supranational union consisting of fifty-three African states. The AU replaced the former Organisation of African Unity (OAU). The African Charter on Human and Peoples' Rights is the region's principal human rights instrument. It was unanimously approved at the OAU's 1981 Assembly. Pursuant to its Article 63 (whereby it was to "come into force three months after the reception by the Secretary General of the instruments of ratification or adherence of a simple majority" of the OAU's member states), the African Charter on Human and Peoples' Rights came into effect on 21 October 1986.

The African Commission on Human and Peoples' Rights (ACHPR) is a quasi-judicial organ of the African Union tasked with promoting and protecting human rights and collective (peoples') rights throughout the African continent as well as interpreting the African Charter on Human and Peoples' Rights and considering individual complaints of violations of the Charter. The Commission has three broad areas of responsibility:

- Promoting human and peoples' rights
- Protecting human and peoples' rights
- Interpreting the African Charter on Human and Peoples' Rights

With the creation of the African Court on Human and Peoples' Rights (under a protocol to the Charter which was adopted in 1998 and entered into force in January 2004), the Commission will have the additional task of preparing cases for submission to the Court's jurisdiction. In a July 2004 decision, the AU Assembly resolved that the future Court on Human and Peoples' Rights would be integrated with the African Court of Justice.

The Court of Justice of the African Union is intended to be the “principal judicial organ of the Union”, to take over the duties of the African Commission on Human and Peoples' Rights, as well as act as the supreme court of the African Union, interpreting all necessary laws and treaties. The Protocol

establishing the African Court on Human and Peoples' Rights entered into force in January 2004 but its merging with the Court of Justice has delayed its establishment. The Protocol establishing the Court of Justice will come into force when ratified by 15 countries.

4.3 Americas

The Organization of American States (OAS) is an international organization, headquartered in Washington, D.C., United States. Its members are the thirty-five independent states of the Americas. The Inter-American Commission on Human Rights (the IACHR) is an autonomous organ of the OAS, also based in Washington, D.C. Along with the Inter-American Court of Human Rights, based in San José, Costa Rica, it is one of the bodies that comprise the inter-American system for the promotion and protection of human rights. The IACHR is a permanent body which meets in regular and special sessions several times a year to examine allegations of human rights violations in the hemisphere. Its human rights duties stem from three documents:

- the OAS Charter
- the American Declaration of the Rights and Duties of Man
- the American Convention on Human Rights

The Inter-American Court of Human Rights was established in 1979 with the purpose of enforcing and interpreting the provisions of the American Convention on Human Rights. It hears and rules on specific cases of human rights violations referred to it and it issues opinions on matters of legal interpretation brought to its attention by other OAS bodies or member states.

4.4 Europe

The Council of Europe, founded in 1949, is an international organisation with legal personality recognised under public international law and has observer status with the UN. The seat of the Council of Europe is in Strasbourg in France. The Council of Europe is responsible for both the European Convention on Human Rights and the European Court of Human Rights. These institutions bind the Council's members to a code of human rights. Membership is open to all European states which seek European integration, accept the principle of the rule of law and are able and willing to guarantee democracy, fundamental human rights and freedoms.

The European Convention on Human Rights was adopted in 1950. All 47 member states of the Council of Europe have signed this Convention and are therefore under the jurisdiction of the European Court of Human Rights in Strasbourg.

4.5 Arab States

In addition to the above existing regional mechanisms the League of Arab States is in the process of establishing a regional mechanism.

The League of Arab States, is a regional organization of Arab states in Southwest Asia, and North and Northeast Africa. It was formed in Cairo on March 22, 1945 with six founding members and it currently has 22 members.

The Arab Charter on Human Rights was adopted by the Council of the League of Arab States on 22 May 2004. A first version of the Charter was adopted on 15 September 1994, but no State ratified it. The original version was widely criticised at adoption as failing to meet international human rights standards. Efforts were therefore made to modernise the text through a revised Charter leading to its adoption in 2004. The revised Charter is a substantial improvement on the original document, especially on issues such as state of emergency, fair trial, slavery, sexual violence, disability and trafficking. Some provisions in the new Charter, however, are still inconsistent with international human rights law, e.g. provisions for death penalties for minors; right to life derogated in states of emergency and no references to cruel, inhuman and degrading punishment, although torture is prohibited.

The Charter also provides for the election of a seven-person Committee of Experts on Human Rights to consider States' reports. The adoption of the revised Charter paves the way to the creation of a regional human rights mechanism for the Arab states, once the Charter comes into force. The new Charter requires 7 ratifications to enter into force.

5 National Human Rights Systems

5.1 National Human Rights Protection Systems

It is the national framework/system for the promotion and protection of human rights which most interrelates, and is accessible to, individuals. The system consists of a variety of mechanisms. The more formal machinery or mechanisms include the judicial system, parliamentary committees, national human rights institutions and/or ombudspersons. The non-formal actors include members of civil society, such as NGOs, active media and concerned individuals. Generally, they act as checks-and-balances to ensure equilibrium in the use of State power and to advocate and/or provide redress where there are grievances in relation to the implementation of human rights. Their roles vary in scope and content – and the quality of their impact varies according to the context in which they live.

The UN has identified the key features of what it defines as 'national human rights protections systems'. In the view of the UN the features essential to

maintaining a national environment of genuine and consistent respect for human rights are:

- Democracy: democratic institutions and processes that enable participation;
- The rule of law: including the incorporation of international human rights standards in the national constitution and laws;
- An independent and corruption-free judiciary that applies international human rights standards and jurisprudence;
- Good governance: effective structures of government at central, regional and local levels that recognise, respect and apply human rights standards;
- Specialised human rights institutions and formal procedures for accountability;
- Human rights information and education;
- An active civil society: i.e. citizens that engage, organise and participate;
- A focus on the most vulnerable parts of the population.

5.2 National Human Rights Institutions

National human rights institutions (NHRIs) are bodies that have been established by States through legislation and/or the constitution with a specific mandate to promote and protect human rights. Their functions generally include complaint handling, education and the monitoring of State compliance with human rights norms.

The first NHRIs were established in the 1970s, with many more established in the following decades. Today there are more than 90 NHRIs in operation around the world. Some NHRIs are established by a nation's constitution. More commonly they are created by parliamentary legislation. Models of NHRIs vary and the characteristics of a particular NHRI will, to some extent, reflect the political system of the State, its domestic legal system and cultural setting. In practice, all are 'administrative' bodies – that is, they do not have the power to 'make' laws or 'enforce' laws. NHRIs operate independently from government, although they may be required to report to government on a regular basis. The degree of independence which each NHRI enjoys will depend on a range of factors, including its legal framework, its membership and its financial resources.

While the nature and focus of their work may differ, NHRIs share a number of common functions. NHRIs (i) receive, investigate and/or mediate complaints of discrimination or human rights abuses; (ii) review national laws, policies and programmes to ensure that they are consistent with human rights standards; (iii) monitor a States' compliance with its own laws and with international

human rights standards and recommend changes when necessary and (iv) raise community awareness and understanding of human rights issues.

The potential role of NHRIs in the UN human rights mechanisms has been progressively recognised in the last few years. In 1993, the UN Vienna Declaration and Programme of Action encouraged the establishment and strengthening of NHRIs and the strengthening of UN activities and programmes to meet requests for assistance from States regarding the establishment or strengthening of NHRIs. The Vienna Declaration also emphasised the need to consider the possibility of establishing regional and sub-regional arrangements for the promotion and protection of human rights where they do not exist. Since 2006 NHRIs have formally been provided rights to participate directly in the work of the UN Human Rights Council and its subsidiary mechanisms.

5.3 International Standards for NHRIs (Paris Principles)

In 1991 the UN hosted a meeting in Paris involving representatives of NHRIs from around the world. The aim of the meeting was to develop a comprehensive set of principles to guide the establishment and operation of NHRIs. The resulting ‘Principles Relating to the Status and Functions of National Institutions for the Promotion and Protection of Human Rights’ – commonly known as the ‘Paris Principles’ – set out the minimum standards required by NHRIs to effectively fulfil their role. The Paris Principles, which have been endorsed by the former UN Commission on Human Rights (Resolution 1992/54 of 3 March 1992) and the UN General Assembly (Resolution 48/134 of 20 December 1993), describe the roles and responsibilities of NHRIs, how they should operate, their composition and their fundamental requirement of independence and pluralism.

The Paris Principles require that a NHRI have:

- a clearly defined and broad-based mandate, based on universal human rights standards;
- independence guaranteed by legislation or the constitution;
- autonomy from government;
- pluralism, including membership that broadly reflects the society the institution serves;
- adequate powers of investigation; and
- sufficient resources.

The Paris Principles serve as a common reference point and as an internationally agreed standard in relation to NHRIs. The Paris Principles form the basis for accreditation of NHRIs at the international level undertaken by the International Coordinating Committee of National Human Rights Institutions

(ICC). The outcome of the accreditation process determines whether a NHRI is deemed to be compliant with the minimum standards or not and therefore whether it can participate at the UN Human Rights Council.

6 The Asia Pacific Forum of National Human Rights Institutions

6.1 APF Members

Established in 1996, the Asia Pacific Forum of National Human Rights Institutions (APF) is a regional membership-based and membership-driven, organisation that supports, through cooperation, the establishment and strengthening of NHRIs.²

The APF is composed of independent NHRIs. Any NHRI in the Asia Pacific – stretching from the Pacific to the West Asia – can apply to join the APF. The APF Constitution establishes three membership categories: full members, candidate members and associate members. One representative from each of the full member NHRIs constitutes the APF Forum Council (Forum Council) which is the decision-making body of the APF. Decisions about membership are made by the Forum Council. Full members of the APF are those NHRIs that have been established in compliance with the minimum standards contained in the UN endorsed ‘Paris Principles’. The candidate and associate membership categories are provided to institutions that do not currently comply with the Paris Principles.

At establishment in 1996, the APF had four member institutions. The membership has now grown to seventeen member institutions in 2008 as follows:³

FULL MEMBERS

- **Afghanistan** Independent Human Rights Commission
- **Australian** Human rights Commission
- National Human Rights Commission of **India**
- **Indonesian** National Commission on Human Rights

² Further information on the APF can be found at www.asiapacificforum.net

³ Further information on each member institution can be found at www.asiapacificforum.net/members

- **Jordan** National Centre for Human Rights
- Human Rights Commission of **Malaysia**
- National Human Rights Commission of **Mongolia**
- National Human Rights Commission of **Nepal**
- **New Zealand** Human Rights Commission
- **Philippines** Commission on Human Rights
- National Human Rights Commission of **Korea**
- Human Rights Commission of **Sri Lanka**
- National Human Rights Commission of **Thailand**
- **Timor Leste** Office of the Provedor for Human Rights and Justice

CANDIDATE MEMBERS

There are currently no Candidate Members.

ASSOCIATER MEMBERS

- The **Palestinian** Independent Commission for Human Rights
- National Human Rights Commission of **Qatar**
- Human rights Commission of the **Maldives**

Membership of the APF is set to further increase with the States of Bahrain, Bangladesh, Pakistan, Papua New Guinea and Samoa having all made a commitment to establish a NHRI.

6.2 Role and Functions

The APF benefits from the expertise knowledge and support that member institutions contribute to the organisation, through participating on the Forum Council, at the annual meetings and in the delivery of expertise to support the establishment and strengthening of NHRIs. In turn, member institutions benefit from the cooperative relations established through the APF and the training programmes, staff exchanges and other services that are available to their Commissioners and staff.

The APF advances human rights in the Asia Pacific through its member institutions and, by facilitating the formation and growth of NHRIs through the provision of training, networking and resource sharing, plays a key role in developing regional and sub-regional human rights dialogues, networks and

practical programmes of support. The APF has a strong record in developing practical programs that improve the human rights of individuals and vulnerable groups in the Asia Pacific. Its work also includes the development of jurisprudence for the Asia Pacific through the APF's Advisory Council of Jurists. The APF provides support in response to requests from individual members, governments and civil society groups. In the absence of a formal inter-governmental Asia Pacific regional human rights mechanism the APF, through its member NHRIs, is uniquely positioned to directly influence the development of human rights law and practice in the Asia Pacific.

As a member-driven organisation, the APF focuses on developing practical and effective strategies and programmes for States with established NHRIs as well as for those States considering the establishment of NHRIs. Through its member NHRI network the APF maintains a high awareness of developments and initiatives to promote and protect human rights across the Asia Pacific region. These relationships and information conduits allow, for instance, the APF to focus in the Pacific – at the sub-NHRI level – on identifying and supporting viable options for the establishment of both national and regional human rights mechanisms. This strategy, applied across its membership region, also allows the APF to remain responsive to assisting in the delivery of practical programs to protect and promote human rights.

Across the Asia-Pacific, the work of the APF can be categorised under three broad areas:

- [1] Strengthening the capacity of individual APF member institutions to enable them to more effectively undertake their national mandates.
- [2] Assisting governments and non-government organisations to establish NHRIs in compliance with the Paris Principles.
- [3] Promoting regional cooperation on human rights issues.

6.3 Advisory Council of Jurists

At the Third Annual Meeting of the APF held in Indonesia in September 1998, APF members established an Advisory Council of Jurists (ACJ) to provide NHRIs with jurisprudential guidance on contemporary human rights issues. The ACJ advises the Forum Council on the interpretation and application of international human rights standards in the Asia Pacific region. The ACJ is comprised of eminent jurists who have held high judicial office or senior academic or human rights appointments. The establishment of the ACJ reflects the Forum Council's recognition of the need for access to independent, authoritative advice on international human rights questions, and the need for development of regional jurisprudence relating to the interpretation and application of international human rights standards. The ACJ has considered eight references: business and human rights (2008); environment and human rights (2007); education (2006); torture (2005); anti-terrorism legislation and the

rule of law (2004); trafficking of women and children (2002); the death penalty (2000); and the regulation of child pornography on the internet (2000).⁴

6.4 APF Partnerships

Since its establishment in 1996, the APF has developed strategic and operational partnerships with a wide range of international organisations, governments, non-government organisations, donors and private foundations and individuals.

The APF has an important strategic relationship with the United Nations. The APF participates in the Human Rights Council and works closely with the Office of the High Commissioner for Human Rights (OHCHR), particularly the OHCHR's National Institutions Unit. The OHCHR has consistently supported the development of the APF and emphasised its role in the promotion of regional co-operation in the Asia Pacific. The OHCHR's close partnership with the APF, and with individual institutions in the region, emphasises a shared interest in ensuring that individual NHRIs are compliant with the Paris Principles and have the capacity to effectively investigate and seek redress for human rights violations. For the OHCHR, which has significantly expanded its regional presence and country engagement, strengthening regional institutions to protect human rights is also a priority focus. For example the OHCHR's establishment of a Pacific Regional office in Suva, Fiji in 2005 reflected its ongoing concern that Pacific nations have acceded to few of the major international human rights instruments. The OHCHR has in recent times directed particular effort to encouraging greater participation by Pacific nations in the UN human rights mechanisms, including by encouraging Pacific nations to establish NHRIs and accede to international human rights instruments.

The APF also works with other organisations of the United Nations system. For example, the APF is currently collaborating with the regional office of the UN Development Program (UNDP) to develop and trial a capacity needs assessment project to support NHRIs in the Asia Pacific. The project aims to develop an approach that will see NHRIs and UNDP country teams undertake their own needs assessments and then share their ideas in order to identify achievable and sustainable steps to build the capacity of NHRIs. This joint project with the UNDP is seen as an important initiative that will provide a more solid basis for international support for NHRIs and for the institutions themselves to develop and work more effectively.

In addition to the above the APF works with a range of international organisations such as the Brookings Institution, the International Service for Human Rights, the Association for the Prevention of Torture and the Raoul Wallenberg Institute to conduct APF training programs and other activities. The APF also works closely with governments and non-government

⁴ Further information on the ACJ can be found at www.asiapacificforum.net/acj

organisations at the international, regional and national and local level, recognising the crucial importance of cooperation between all actors for the protection and promotion of human rights.

To support its activities the APF has developed and maintained a diversified base of donors. These donors include United Nations agencies, governments, foundations, non-government organisations and private individuals. The APF member institutions also contribute with membership fees.

The establishment and rapid growth of the APF both responded to and demonstrates the need for a regional mechanism to promote cooperation and mutual assistance on human rights issues. Since its establishment the APF has become the pre-eminent Asia Pacific regional mechanism for the promotion and protection of human rights. Within this diverse region the APF is the only organisation that provides NHRIs with a sustained opportunity to collectively learn from each other's experiences, strengthen each other's position and contribute to the regional protection and promotion of human rights. As the Asia Pacific region does not have a regional human rights treaty, commission or court, the APF provides the main framework through which NHRIs, governments, the UN, NGOs and other organisations can cooperate effectively to strengthen and establish NHRIs in the region.

6.5 The Australian Policy Context – Support to the APF

The Australian Government has supported the work of the APF, both financially with the provision of regular financial support through AusAID and politically through Government statements in a variety of international fora, since its establishment in 1996. Support for the work of the APF also enjoys a strong bi-partisan approach. This reflects Australia's interest in, and commitment to, the promotion and protection of human rights in the region. The provision of assistance to strengthen the institutional human rights capacity of States demonstrates Australia's commitment to providing practical and effective support for human rights. Such assistance is well regarded by countries in the region and in the wider international arena and is supported by the Australian public and non-governmental community. Support for the APF is also consistent with Australia's aid policy objectives. 'Governance' is one of the main priority sectors for Australia's aid programme and respect for human rights is recognised as a vital element of governance and sustainable development. Development and human rights are interdependent and mutually reinforcing. As a not-for profit organisation, the APF relies on donor and membership contributions to undertake its work. The support of the Australian Government, which currently provides approximately 30% of the APF's budget, has been consistently appreciated and welcomed by both governments and NHRIs in the region.

7 Asia Pacific Regional Discussions

7.1 The Asia Pacific Region

The Asia-Pacific region – home to 60 percent of the world’s 6.6 billion inhabitants – is confronted with a diverse range of human rights challenges. Long-standing conflicts continue in several parts of the region. Post-conflict transitions in other States remain constrained by insecurity and political uncertainty. Several countries are undergoing important processes of democratic, legal and institutional reform, but democracy has been set back in others through the reassertion of military authority. Many countries continue to enjoy rapid economic development, but this in turn creates pressures on marginalized and disadvantaged groups. At the same time poverty, gender inequality and patterns of discrimination remain deeply entrenched. High levels of internal and external migration within and outside the region pose particular protection challenges, as well as attendant problems such as human trafficking and exploitation of migrant workers. While many countries have well established legal frameworks and the elements of a national human rights protection system, serious gaps in capacity and political will undermine implementation and enforcement.⁵

The Asia-Pacific region is also at an important point in the development of national and regional human rights infrastructure and mechanisms. At the national level a growing number of countries in the region have NHRIs, although many of them lack capacity and several have had their independence and integrity compromised in recent years. At the same time, other countries are considering establishing such institutions. The APF has played an important role in fostering regional capacity to assist in the development of NHRIs and recently the NHRIs in the Association of Southeast Asian Nations (ASEAN) region have also begun to develop their own systems for transnational cooperation.

At the regional level, there are no Asia-Pacific wide organisations or conventions to promote or protect human rights. Sub-regionally, however, a number of initiatives are currently under consideration and development.

7.2 Asia Pacific Regional Human Rights Mechanism

Unlike Europe, the Americas and Africa, the Asia Pacific does not have a regional inter-governmental human rights mechanism. Perhaps reflecting its immense size and diversity, neither does Asia and the Pacific have a pan-regional inter-governmental human rights machinery which parallels those established in other regions of the world. Within its available capacity, this

⁵ OHCHR Human Rights Programme for Asia-Pacific (2008-2009)

ongoing absence is a periodic focus for the APF. For instance, in its 2005 report on torture, the APF's Advisory Council of Jurists commented on the absence of a single human rights instrument in the Asia Pacific and recommended that the APF instruct the AJC to undertake the task of drafting a regional or sub-regional agreement for the region.

The OHCHR continues to play a leading role in promoting the development of regional cooperation on human rights in the Asia Pacific and from 1990-2005 it has promoted regional cooperation through an annual Regional Workshop on Cooperation for the Promotion and Protection of Human Rights in the Asia Pacific Region. The OHCHR mandate flows from various initiatives to develop a regional human rights arrangement in the Asia Pacific since the 1960s. During that decade, the former UN Commission on Human Rights established a study group to consider the possibility of establishing regional human rights commissions in all parts of the globe, implicitly also in the Asia-Pacific. This was bolstered in 1968 by the Commission's request to the UN Secretary-General to organise regional seminars in those regions where there were no regional human rights commissions to discuss avenues for their establishment.⁶ Attempts to establish a human rights mechanism for the Asia Pacific region were progressed in 1982 when the UN sponsored a seminar on national, local and regional arrangements for the Protection and Promotion of Human Rights in the Asia Pacific Region in Colombo. The seminar was followed by a series of annual workshops, also hosted by the UN, involving government representatives from the region. In 1977 the UN General Assembly (UNGA) also began to pass resolutions on "regional arrangements for the promotion and protection of human rights". This was further supported, in 1978, by the UNGA resolution for the establishment of regional arrangements based on regional machinery. The call for regional arrangements continued from the 1970s into the 1980s per UNGA resolution 34/171(1979), UNGA resolution 35/197(1980) and UNGA resolution 36/154(1981)⁷. In the Asia Pacific region, from the first regional workshop held in Manila in 1990 to the Beijing workshop in 2005, thirteen such annual workshops have been held under the auspices of the OHCHR.

The main focus of these annual regional workshops has been to develop a 'step by step building blocks' approach to the development of regional arrangements. This particular strategy was adopted by regional Member States at the 1998 meeting held in Tehran, Iran. The governments of the region adopted a "Framework for Regional Technical Cooperation" based on a step-by-step approach with four "building blocks" or "pillars" to develop:

- [1] National human rights institutions;
- [2] National human rights action plans;
- [3] Human rights education; and

⁶ Muntarhorn, 2005

⁷ *ibid*

- [4] The realisation of economic, social and cultural rights and the right to development.

In an OHCHR commissioned analysis of the outcomes of the annual regional workshops, Professor Muntarbhorn (2005) noted that “the pillar which responds most closely to the search for ‘regional arrangements’ is the development of national human rights commissions with its network under the APF”. Professor Muntarbhorn concluded that the most successful “building block” of the framework had been the setting up of NHRIs. In particular he noted that:

... the APF and its network of national human rights institutions are the closest that the Asia-Pacific region has come to a regional arrangement or machinery for the promotion and protection of human rights ...

Professor Muntarbhorn therefore recommended that the framework should:

... continue to support the pillar on national human rights institutions and the APF network as part of the regional programme, based on a sustainable partnership relationship.

Under current circumstances, the APF and its network of NHRIs are often seen as representing the closest that the Asia-Pacific has come to a regional arrangement or machinery for the promotion and protection of human rights. However, it is important to recognise that the APF is not a formal inter-governmental body along the lines of the regional human rights systems found in Europe, the Americas and Africa.

7.3 Sub-Regional Human Rights Mechanisms

A recent focus of the OHCHR annual regional meetings has been to explore the possible development of sub-regional human rights mechanisms based on the existing inter-governmental organisations of the Association of Southeast Asian Nations (ASEAN), the South Asian Association for Regional Cooperation (SAARC) and the Pacific Islands Forum (PIF). Observers such as Muntarbhorn (2005) have raised the possibility that the relative progress of discussions relating to ‘regional arrangements’ at the sub-regional level may provide at least partial evidence that macroscopic (pan Asia-Pacific) regional arrangements may not be feasible.

8 Asia

This section of the information paper focuses on recent developments in Asia and, in particular, South East Asia.

8.1 The Association of South East Asian Nations (ASEAN)

The Association of Southeast Asian Nations (ASEAN) was founded in 1967 by the ASEAN Declaration (“Bangkok Declaration”). Its original members were Indonesia, Malaysia, Singapore, Thailand and the Philippines. Brunei joined in 1984. Vietnam became a member in 1995, while Laos and Myanmar/Burma became members in 1997. In 1998, Cambodia joined ASEAN. The original aims and purposes of ASEAN were laid down in the 1967 Bangkok Declaration. They included the acceleration of economic growth, social progress, cultural development and the promotion of regional peace and stability, coupled with respect for justice and the rule of law. The ASEAN Vision 2020, adopted by the ASEAN Leaders on the 30th Anniversary of ASEAN, agreed on a shared vision of ASEAN as a concert of Southeast Asian nations, outward looking, living in peace, stability and prosperity, bonded together in partnership in dynamic development and in a community of caring societies. In 2003, the ASEAN Leaders resolved that an ASEAN Community shall be established comprising three pillars, namely, ASEAN Security Community, ASEAN Economic Community and ASEAN Socio-Cultural Community.

8.2 The ASEAN Charter and the Proposed Regional Human Rights Mechanism

Numerous differences are evident between the Asian and Pacific sub-regions in terms of their respective progress towards the establishment of sub-regional mechanisms. In either context, progressing dialogue and agreement about regional mechanisms can raise complex issues about identity, sovereignty, the under-pinning relationships between states, and the ways and extent to which understandings about “human rights” are shared, and negotiated, by a community of regional states. In ASEAN, these discussions are relatively advanced and in this section, it can be seen below, that this progress has been supported over a considerable period, by a series of key events and agreements⁸. These include:

- In 1993, the ASEAN Inter-Parliamentary Organisation (AIPO) stated that “*it is...the task and responsibility of member states to establish an appropriate regional mechanism on human rights*” in its Declaration on Human Rights.
- The goal of creating an ASEAN Charter was first officially acknowledged in November 2004 when the Vientiane Action Programme (VAP) stated that “*We recognise the need to strengthen ASEAN and shall work towards the development of an ASEAN Charter*”. In December 2005, the leaders of ASEAN issued the Kuala Lumpur Declaration on the Establishment of the ASEAN Charter, wherein they committed themselves to establishing a Charter “*to serve as a legal and institutional framework of ASEAN to support*

⁸ Much of the summary information in this section has been collated by the OHCHR Office for South East Asia.

the realisation of its goals and objectives". This declaration stated inter alia that the Charter would reaffirm "*The promotion of democracy, human rights and obligations, transparency and good governance and strengthening democratic institutions*" and set up an Eminent Persons Group (EPG) to provide practical recommendations on the creation of the Charter.

- The Fifth Workshop on the ASEAN Regional Mechanism on Human Rights, held in Kuala Lumpur in June 2006, reaffirmed the importance of establishing NHRIs in compliance with the Paris Principles in all ASEAN countries, noting the important role of the APF in providing assistance to states considering the establishment of a national institution.
- In December 2006, the EPG presented its report recommending that the founding principles and objectives of ASEAN be updated to include "*respect for human rights and fundamental freedoms*". The report stated that ASEAN needed to strengthen "*the sense of ownership and belonging among its people*", including enhancing the participation of civil society organisations and human rights groups.
- In January 2007 the ASEAN EPG noted that "*the establishment of an ASEAN human rights mechanism is a worthy idea that should be pursued*".
- The Leaders of ASEAN subsequently endorsed the EPG report at the 12th ASEAN Summit in Cebu, Philippines in January 2007 with the Cebu Declaration on the Blueprint of the ASEAN Charter, and directed a High Level Task Force (HLTF) to begin drafting the Charter ready for signature at the 13th ASEAN Summit to be held in Singapore in November 2007.
- The HLTF met for the first time in February 2007 and began drafting the Charter based on the Leaders' directives from the 11th and 12th ASEAN Summits, the EPG Report and other key ASEAN documents.
- In March ASEAN foreign ministers agreed that the HLTF could include a draft enabling provision in the ASEAN Charter to create a human rights commission as an organ of ASEAN, and requested that the HLTF draw up its terms of reference.
- It was agreed at the First Regional Conference on Building Networks to Strengthen ASEAN Human Rights Cooperation and at the Fifth Workshop on an ASEAN Regional Mechanism on Human Rights that, in cooperation with the four established NHRIs in the South-East Asian region as well as the OHCHR Regional Office in Bangkok, a series of workshops would be organised on regional human rights mechanisms based on the experiences of Africa, Europe and Latin America. The first seminar was held in February 2007 in Bangkok with senior ASEAN officials and representatives of NHRIs as well as some civil society organisations.
- In June 2007, the "ASEAN Four Forum" or the NHRIs of Indonesia, Malaysia, Thailand and the Philippines formally pledged to have a regional

strategy in enforcing the promotion and protection of human rights in a Declaration of Cooperation. This includes how to advise their respective governments on the steps that can be taken in establishing an ASEAN human rights mechanism. With the assistance of the European Commission these four NHRIs have embarked on a project entitled: “Enhancing the role of National Human Rights Institutions in the development of an ASEAN Human Rights Mechanism” and have held periodic Forum meetings and working group meetings to develop the concepts for some sort of sub-regional mechanism⁹.

- In June 2007 the 7th Workshop on the ASEAN Regional Mechanism on Human Rights brought together representatives from government agencies, NHRIs, and civil society groups from ASEAN member-states. ASEAN NHRIs attended as participants and the APF Secretariat attended as an observer. While the need for a regional human rights body was universally recognised, no consensus was reached on the powers it should be given or its composition. The *Summary of Proceedings*, which includes the conclusions and recommendations from the workshop, highlighted the need:
 - [1] For ASEAN member countries that have not already done so to establish NHRIs.
 - [2] To involve/ consult with NHRIs in the development and operation of the ASEAN human rights body: and
 - [3] For a more formal dialogue between ASEAN and ASEAN NHRIs.
- During the 40th ASEAN Ministerial Meeting held in Manila from 21 July to 2 August 2007, the foreign ministers of ASEAN came to an agreement on the creation of a regional human rights “body”.
- An ASEAN Charter was signed by all member states at the 13th ASEAN Summit on 20 November 2007. The Charter aims to give the inter-governmental organization a legal personality and to establish more clearly its institutional framework and rules of procedure. The Charter also stipulated the establishment of an ASEAN human rights body (Article 14) in conformity with the purposes and principles of the ASEAN Charter relation to the promotion and protection of human rights and fundamental freedoms.
- In an address at the opening of the 14th Annual Workshop of the framework on regional Cooperation for the promotion and protection of Human rights in the Asia-Pacific Region, held in Bali Indonesia in July 2007, the (then) UN High Commissioner for Human Rights, Ms. Louise Arbour, stated: “*I believe that an ASEAN Human Rights Mechanism can articulate a common*

⁹ Muntarbhorn, 2005

approach to a complex problem, an approach that will assist ASEAN Member States, from a position of shared regional values, to address shortcomings in their national frameworks.....Finally, I believe that an ASEAN human rights mechanism will serve as the inspiration and model for further progress within the other sub-regions of this broad and diverse Asia-Pacific region". Ms Arbour, together with the UN High Commissioner for Refugees, Mr. Antonio Gueterres, further welcomed the adoption of the ASEAN Charter in November 2007 and the commitment to establish an ASEAN human rights body.

- Recommendations from the June 2007 7th Workshop on the ASEAN Regional Mechanism on Human Rights have been referred to ASEAN's High-Level Panel (HLP). The decision to establish the HLP was made by ASEAN Foreign Ministers in February 2008. The HLP has been requested to draft the Terms of Reference (ToR) of the regional human rights body.
- HLP timeline for the ToR of body:

Date and Venue	Actions
21 July 2008, Singapore	1 st HLP Meeting.
14-16 August 2008, Bangkok, Thailand	2 nd HLP Meeting. The HLP agreed that it is important to engage with all relevant stakeholders in ASEAN in the drafting of the ToR process.
September 2008, New York	The HLP provided an interim report on the progress of work to the Foreign Ministers at the Informal ASEAN Ministerial Meeting.
11-12 September 2008, Manila, the Philippines	3 rd HLP Meeting. The HLP had a consultation with Working Group of an ASEAN Human Rights Mechanism, Solidarity for Asian Peoples' Advocacy (SAPA) and the ASEAN NHRI Forum.
2-4 November 2008, Singapore	4 th HLP Meeting.
13-15 November 2008, Bali, Indonesia	5 th HLP Meeting.
15-18 December 2008, Chiang Mai, Thailand	The HLP to submit the first draft of the ToR of the body to the ASEAN Foreign Ministers during the 14 th ASEAN Summit.

July 2009	The ToR of the body is expected to be finalised
December 2009	The establishment of the AHRB during the 15 th ASEAN Summit

- The ASEAN NHRI Forum jointly wrote and finalised a draft ToR for an AHRB at the Technical Working Group (TWG) Meeting of ASEAN NHRI Forum, in Cebu, Philippines, 28-30 April 2008. The proposed ToR for an AHRB was submitted to the High Level Panel and civil society organisations on several occasions.
- During the 3rd High Level Panel (HLP) Meeting in Manila from 11-12 September 2008, the four ASEAN NHRIs submitted a Position Paper on the ToR of the ASEAN Human Rights Body (AHRB) to the HLP. The Position Paper emphasizes that the AHRB should have a complementary role and work in partnership with existing NHRIs particularly in monitoring human rights situations and treaty compliance at the national level. ***The Position Paper is at Annex 1.***
- The latest development was that on 12 November 2008, two of the ASEAN NHRIs attended a meeting with ASEAN Human Rights Mechanism, Solidarity for Asian Peoples' Advocacy (SAPA) on the sidelines of the 5th HLP Meeting, to discuss the drafting of the ToR of the AHRB.

The main challenge will be to ensure that the ASEAN human rights mechanism is a credible, meaningful and accessible entity. There are fears, particularly from civil society organisations, that the powers of the mechanism will be geared to promotional activities such as education and technical assistance rather than offering genuine protection of human rights and enabling the peoples of ASEAN to request help and access the ASEAN mechanism for assistance.

8.3 Other Asian Developments

In addition to the developments in ASEAN, the SAARC region has undertaken human rights activities. While there is no commitment to the establishment of a regional human rights mechanism, SAARC has adopted a number of human rights related regional conventions such as the 2002 Regional Convention on Combating the Crime of Trafficking in Women and Children for Prostitution and the 2004 'Social Charter'.¹⁰

¹⁰ See www.saarc-sec.org

In the North East Asia region the current 6-party talks on the North Korean nuclear issue may provide a framework for future cooperation on human rights issues. If the North Korean nuclear issue is resolved, the 6-party process for cooperation and discussions on the security context may develop an agenda for human rights concerns.

9 Pacific

9.1 The Pacific Context

Although there are currently no accredited NHRIs in small Pacific states, the APF remains committed to encouraging and supporting the development of national human rights mechanisms. This approach assists and supports the increased engagement by Pacific states with international human rights standards and mechanisms which has been evident over the past decade.

However, the geographical, political, development and human rights circumstances of the region are complex and continue to influence regional discussions about the appropriateness of existing national systems for the promotion and protection of human rights in Pacific States and territories. Customary law is still the most significant existing mechanism for human rights protection and promotion in many small Pacific states and this has clear implications for dialogue on possible regional human rights mechanisms.

In June 2004 a 'Pacific Human Rights Consultation' (the 2004 Suva Consultation) was held in Suva, Fiji. This consultation was organised by the OHCHR, the APF, UNDP and the Commonwealth Secretariat and was hosted by the Fiji Human Rights Commission. It was attended by over 80 regional participants. The participants welcomed the decision of the Pacific Island Leaders to encourage the development of national human rights machinery, but expressed the view that although customary law should not take precedence over international human rights, human rights programs and rights-based interventions must be delivered in a culturally appropriate manner.

For Pacific peoples, the interaction of culture (including cultural expression, respect for cultural diversity and promotion and protection of culture, language and tradition) and cultural identity with the promotion and protection of human rights remains a significant issue within which both the traditional strengths of Pacific peoples – the importance of family relationships, resilience, the sharing of resources and a co-operative approach to economic and social activity – is often seen to be a necessary precursor to the discussion about national and regional human rights mechanisms.

The concept of a Pacific Charter for Human Rights has been discussed in the region for some time and is sometimes proposed as the precursor of a regional human rights commission. In 1985 LAWASIA, a non-governmental organisation comprising of lawyers from Asia and the Pacific, started exploring

the possibility of a regional mechanism for the Pacific at a meeting in Fiji. A draft Pacific Charter of Human Rights - modelled closely on the African Charter on Human and Peoples' Rights – was subsequently adopted at a meeting held in Samoa in 1989. The Charter foresaw the establishment of a commission to supervise implementation.

To date, there has not been strong or unified regional political support for a regional Charter and the issue will require considerable further discussion and negotiation. As Ms Imrana Jalal (2008) has noted, any regional Charter ought not to derogate from (or be less than) agreed international standards and not condone any form of cultural relativism. Rather, any final 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 Pacific Island states.

These debates continue within and across a region which continues to face significant human rights issues including in relation to employment, freedom from discrimination, protection and equal treatment of women, children, people with disabilities and those living with HIV/AIDS, the right to health, environmental degradation, the rights of those detained, and incidents related to tribal or land disputes.

9.2 Pacific Islands Forum (PIF)

The **Pacific Islands Forum** (PIF) is the regional economic and political inter-governmental organisation. PIF was founded in 1971 and it comprises 16 independent and self-governing states in the Pacific. PIF is the region's political and economic policy organisation and a mechanism for the promotion and protection of human rights across the region. Headed by a Secretary General and based in Suva, Fiji, the PIF Secretariat is the Forum's administrative arm.

In 2004, Pacific Islands Forum leaders adopted a vision for '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'. The specific inclusion of 'human rights' in the Pacific Leaders vision statement was provided by an Eminent Persons' Group Review of the Pacific Islands Forum. Forum Leaders endorsed the recommendations of the Eminent Persons' group, including the recommendation regarding the establishment of national human rights machinery, and noted that this may be done in consultation with the APF.

The leaders agreed to give effect to the vision through the development of a "Pacific Plan" which was subsequently developed and endorsed in 2005. In terms of the development of regional human rights machinery, strategic objectives 12.1 and 12.5 of the Pacific Plan commits the Pacific Leaders to:

Support for the regional consolidation of commitments to key institutions such as audit and ombudsman offices, leadership codes, anti-corruption institutions and departments of attorney general, including through judicial training and education. This set of objectives includes the establishment of a regional ombudsman and other regional human rights mechanisms to support the implementation of the Forum's accountability and leadership principles, a regional audit service to support integrity and oversight and a regional anti-corruption agency with associated legislation.

9.3 Human Rights Mechanisms in the Pacific

In 2005 the New Zealand Human Rights Commission (NZHRC) and the Pacific Islands Forum Secretariat (PIFS) addressed a longstanding information deficit about national human rights mechanisms in relation to Pacific states. This regional research and dialogue project supported the April 2004 decision of Pacific Island Forum leaders to “encourage the development of national human rights machinery” in Pacific Island Forum member States and a related objective was to assist in stimulating and informing debate and discussion about the establishment of practical human rights mechanisms both within states and the Pacific region.

As the Hon John von Doussa, former President of the Australian Human Rights Commission (2003-2008) has noted, “Pacific Island States each have national constitutions that entrench into their domestic legal systems many fundamental civil and political human rights, and in some cases, economic, social and cultural rights. Moreover, most of these rights are enforceable against government authority and coupled with the right to a remedy for their violation, available through the courts”.

The 2005 NZHRC and PIFS research confirmed that even in the absence of accredited NHRIs, a range of mechanisms for human rights promotion and protection are already in place both nationally and across the region. Drawing on the 2005 research, Ms Joy Liddicoat, Commissioner, NZHRC noted that mechanisms for human rights protection can, and do, take a variety of forms both within Pacific states and across the region. These forms include cultural systems (such as village or island councils), justice systems (including courts and the judiciary), specific human rights institutions (such as national human rights institutions), or executive or parliamentary systems (such as human rights promotion or human rights education functions within a government department or other agency).

Currently, established forms of human rights infrastructure fall into six broad categories:

- [1] National constitutions: many Pacific countries have constitutional documents which guarantee fundamental human rights and incorporate the principle of the rule of law including Papua New Guinea, Vanuatu,

Nauru, the Republic of the Marshall Islands, Fiji, Kiribati, Samoa, Solomon Islands and Tuvalu.

- [2] Parliamentary systems: Pacific expressions of the parliamentary foundations of democracy do vary, but are generally underpinned by respect for electoral participation and contested national elections.
- [3] Governance structures and systems: national laws, regulations, government policies, and service administration through government administration provides the machinery through which human rights can be delivered by government agencies. These structures and systems include ministerial offices, leadership codes, public sector codes of conduct, and other policies and practices related to the exercise of governance powers.
- [4] Legal systems; legal systems to support the rule of law vary including both traditional courts and associated legal systems and judicial court systems
- [5] Active civil society: civil society groups, including non-governmental organisations, exist throughout the region and play an active role in critical analysis of and advocacy for promotion and protection of human rights
- [6] Regional infrastructure and initiatives: the Pacific Islands Forum has a Secretariat which services the Forum and governments of the region. There is a range of inter-governmental regional agreements (including multi-lateral and bilateral agreements). Regional and international aid and development agencies operate in the region and increasingly these work with both civil society groups and governments on human rights related matters

Pacific States are free to give their own unique expression to both the international standards for national human rights mechanisms and for regional mechanisms and arrangements for promotion and protection of human rights. However, the opportunities to do so exist in relation to an international human rights framework which needs to more closely consider the particular resource constraints, or the challenges of distance and capability, which are frequently faced by Pacific states.

Progressing the debates about both national and regional human rights mechanisms will require care and the application of appropriate methodologies and approaches which acknowledge and respect the views of people across the region. As Liddicoat (2008) has described:

“Dialogue and research needs to carefully delineate between cultural sensitivity and cultural relativism in the articulation of human rights. This is critical to ensuring that dialogue can address the concerns of some in the region that human rights are a Western construct and threaten custom and tradition in the Pacific. Such dialogue is necessary to encourage a unique Pacific expression of a system for

protection of human rights which does not derogate from international minimum human rights standards”.

Across the region – and provided that progress towards establishing national and regional mechanisms must be guided by the particular human rights issues and priorities in each state and the overall regional context – there is a desire for more progress to promote and protect human rights. By emphasising a participatory process for Pacific contexts, and engaging in meaningful dialogue with regional partners, opportunities exist to build upon the human rights promotion and protection activities already being carried out by government and civil society actors across the region. Regional stakeholders have also indicated a strong preference for more partnerships between government and civil society groups in dialogue on human rights mechanisms.

9.4 National Institutions and / or Regional Institutions

National and regional human rights mechanisms are not mutually exclusive and, in the Pacific, these decisions need not be shaped by an “either/or” requirement. In the absence of either accredited NHRIs or a formally agreed sub-regional mechanism in the Pacific the APF has focused on strategies, and forms of assistance and support, which utilise partnership and collaboration with key regional stakeholders to assist, when requested, regional discussions about which mechanism is a priority. The establishment of national mechanisms does not preclude the establishment of a regional mechanism. Under ideal circumstances, both are desirable and – with the possible exception of very small Pacific States – both may be attainable over time. For very small states in the region, the discussions around national institutions and/or regional mechanisms involve significant additional complexities around available (and sometimes diminishing) human and material resources. Under these conditions, very small States are very likely to require carefully considered advice and support from larger Pacific states and a range of regional stakeholders as they develop appropriate strategies. Capacity and capability collaboration, and the sharing of human and material resources, are options which very small Pacific States may choose to consider as they reflect upon their relationships with, and obligations to, the broader regional and global human rights context.

Another important element of these discussions is the relationship between national and regional mechanisms, and any contingencies which may exist between the two forms of human rights machinery. As noted elsewhere in this submission, the four existing ASEAN NHRIs continue to play a role not only in the possible establishment of other NHRIs in the region but also, and significantly, have provided a crucial “building block” – and a critical mass of capability and capacity – to enable progression of the debate around a sub-regional mechanism.

Strong national machineries will foster stronger regional machineries and vice versa. However, regional consultations suggest there may be resistance to the development of a regional mechanism if national mechanisms which are

already under-resourced are not also supported. Experience from dialogue on national human rights mechanisms also suggests that attempts to impose 'template mechanisms' from elsewhere will either be resisted or will fail.

Necessarily, Pacific states will make their own decisions about the forms and scope of national and/or regional human rights machinery. As participants at the recent *Strategies for the Future: Protecting and Promoting Human Rights in the Pacific* Symposium in Apia, Samoa noted, thorough and systematic consideration of the variety of available options is required across the region. The Workshop summarised these options as:

- The pending human rights desk at the Pacific Islands Forum Secretariat
- A regional human rights commissioner
- A regional human rights commission
- Co-operative delivery of human rights services across the region
- Assistance from regional human rights organisations such as the APF

The APF will continue, within available capacity, to respond to requests for assistance and support from a variety of regional stakeholders as Pacific States lead and shape the issues and considerations which must be taken into account in the continuing debate around national and regional mechanisms. As with options for national human rights mechanisms, regional mechanisms can take a variety of forms.

The Pacific Islands Forum is the dominant inter-governmental organisation in the region and the relevant elements of the *Pacific Plan* demonstrate its clear vision for, and commitment to, the promotion and protection of human rights across the region. Pacific leaders have recognised that assistance, including from the APF, is required to reach these objectives and to give effect to this vision through the *Pacific Plan*. Drawing on its strong partnership relationships with key stakeholders, the APF is playing a significant role in a joint project which focuses on building the internal capacity of PIF to provide strategic regional human rights advice to its member States. Building on technical transfers and staff capability-development programmes developed and delivered to the PIF by the New Zealand Human Rights Commission, the APF has worked with partners to secure, for the first time, the establishment of a senior human rights advisor in the PIF structure. This new role will provide the PIF with much-needed human rights capacity and capability which will benefit member States across the Pacific region. The success of this initiative endorses the partnership and dialogue approaches which APF applies in the region and provides a strong indication of the potential for regional partnerships and coalitions to achieve effective, strategic, and sustainable, human rights outcomes in the Pacific.

10 Recent and Pending Discussions

There have been numerous trans-regional and sub-regional meetings and workshops concerned with the establishment of NHRIs and/or regional human rights mechanisms. Recent and pending discussions provide an indication of contemporary initiatives:

10.1 Regional Workshop on the Establishment of NHRIs in Asia

The OHCHR, in cooperation with the Philippines Commission on Human Rights, organized a Regional Workshop on the Establishment of NHRIs in Asia, which was held in Manila, the Philippines from 15 to 17 October 2007. The objective of the workshop was to strengthen the capacity of Member States to establish a NHRI by providing relevant methodological tools developed by the UN as well as lessons learned from NHRIs at the international and regional levels. Senior Government representatives from Bangladesh, Cambodia, China, Japan, Lao, Myanmar, Pakistan, Singapore and Vietnam, which have not yet established a NHRI, attended the meeting. A concluding statement stressing the importance of NHRIs in the region was adopted.

10.2 Protecting Rights in the Pacific

A conference titled 'Strategies for the Future: Protecting Rights in the Pacific' was held from 27 to 29 April 2008 in Apia, Samoa. It was attended by representatives of civil society organisations, NHRIs, international human rights organisations, Members of Parliament, jurists and academics based in nine Pacific Island states together with international experts. The aim of the conference 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 region. Participants discussed a range of issues particularly relevant for the region including culture and language, education, health, environment, and the rule of law. In addition they examined the prospects for a Pacific human rights mechanism supplemented by presentations on existing regional mechanisms in Africa, Asia, the Americas, and in Europe.

Participants, whilst welcoming recent ratifications by some Pacific Island states of the ICCPR, concluded that there was a need to strengthen rights protection and promotion mechanisms in the region. They also committed themselves to ensuring that universal standards were implemented in the region whilst not neglecting Pacific values. Pacific island governments were urged to translate commitments in the Pacific Plan into practical action.

10.3 5th Annual Consultative Meeting of the ASEAN NHRI Forum

The 5th Annual Consultative Meeting of the ASEAN NHRI forum will be held from 20 to 22 January in Bangkok, Thailand and hosted by the NHRI of Thailand. Issues for discussion include the background and development of the ASEAN human rights mechanism and the formal role of NHRIs in the process. The APF has been invited to participate at this meeting.

10.4 Regional Workshop on the Establishment of National Human Rights Mechanisms for the Pacific Region

A regional workshop on the establishment of national human rights mechanisms in the Pacific region will be held in Apia, Samoa in April 2009. The workshop is being organised by the OHCHR, in cooperation with the APF and with the Government of Samoa. Building on recent developments relating to human rights in the Pacific, the main objective of the workshop is to strengthen the capacity of member states to human rights mechanisms by providing relevant methodological tools developed by the United Nations and sharing lessons learned from the experiences of NHRIs.

10.5 Establishment of NHRIs

The APF and the OHCHR are working in partnership to support the commitments of States in the region to establish NHRIs. During the remainder of 2008 and 2009 the OHCHR and APF are responding to the requests for assistance from the States of Bahrain, Bangladesh, Cambodia, Pakistan, Papua New Guinea and Samoa to assist in the establishment of NHRIs.

11 Role of Parliaments

Although this submission has not focused on the role of parliaments in jurisdictions across the Asia-Pacific region, the role of parliaments, parliamentarians and legislators remains crucial to the promotion and protection of human rights. In all regional settings, parliamentarians and legislators either play – or potentially could play – a critical role in the incremental “building block” approach to the establishment and/or maintenance of NHRIs and their compliance to the “Paris Principles”, alternative forms of sub-NHRI national human rights machinery, and to the progression of discussions around sub-regional human rights mechanisms.

Numbers of parliamentarians in the Pacific (for instance, the recent regional consultation for parliamentarians from eleven Pacific Island countries on the Pacific Plan and human rights) and in Asia (where ASEAN parliamentarians supported the quick ratification of the ASEAN Charter and have called for the creation of an ASEAN Human Rights Body) have actively engaged with, and

supported, developments relating to human rights framework developments in their respective regions.

In terms of the APF, the participation of parliamentarians in APF activities, and in particular, attendance at our annual meetings has been encouraged and supported. Over the last five years, for example, the Australian Government's delegation to APF annual meetings has been headed by the Chairperson of the Human Rights Sub-committee of the Australian Parliament. Australia's parliamentary representation is joined by senior parliamentary representatives from the State hosting the annual meeting and various regional governments. The APF would be interested in exploring how to further strengthen the participation of parliamentarians in its activities and we will continue to cooperate with regional partners and stakeholders to assist capability and capacity building strategies and workshops for parliamentarians and legislators.

POSITION PAPER OF
THE NATIONAL HUMAN RIGHTS INSTITUTIONS OF INDONESIA,
MALAYSIA, PHILIPPINES, AND THAILAND
ON TERMS OF REFERENCE OF
THE ASEAN HUMAN RIGHTS BODY

Submitted at the meeting with the HLP on 10 September 2008

The Network of four National Human Rights Institutions (NHRIs) in Southeast Asia is comprised the Human Rights National Commission of Indonesia (Komnas HAM), the Human Rights Commission of Malaysia (SUHAKAM), the Commission on Human Rights of the Philippines (CHRP), and the National Human Rights Commission of Thailand (NHRCT).

The Network congratulates the High Level Panel (HLP) on the Drafting of the Terms of Reference (ToR) of the ASEAN Human Rights Body (AHRB) to their engagement with the civil society organizations and the existing NHRIs in the process of drafting the ToR, and hopes that the meaningful dialogue will continue in the spirit of co-operation and sincerity towards the establishment of the AHRB.

In May 2008, the Network proposed and submitted the ToR for the AHRB to the ASEAN Secretariat, and in light of the recent development, it highlights important elements which should be seriously considered by the HLP as follows:

General Principles

The AHRB should be an independent deliberative body that provides an effective level of promotion, protection and monitoring of human rights throughout the ASEAN region. The formation of the AHRB should be undertaken in a transparent and participatory manner, as well as an inclusive process of consultation with all stakeholders, including the NHRIs and the civil society.

Mandates

Independence of the AHRB must be ensured, taking into account the minimum standards as stipulated in the Paris Principles.

The AHRB should have both promotion and protection functions. The AHRB should also have, at the initial phase, a role to monitor the implementation of international human rights obligations and the respective treaty bodies' recommendations at national level of ASEAN Member States.

The protection function of the AHRB should include human rights situation analysis of the ASEAN sub-region, which can be undertaken through country visits and the assessment of the impacts of the Blueprints for the ASEAN Communities i.e. Political and Security, Economic and Socio-Cultural.

Assurances of Efficiency and Effectiveness

The AHRB should be adequately funded and supported by staff members and facilities.

The Relationship between the AHRB and the NHRIs

The AHRB and the NHRIs have a complementary role in promotion and protection of human rights in the region. As such, the AHRB should work in partnership with existing NHRIs, particularly in monitoring human rights situations and treaty compliance at the national level. In addition, the AHRB should coordinate with and involve the NHRIs in its activities at the national level. The NHRIs can render expertise and advice in establishing a national human rights institution in ASEAN Member States which still do not have one.

In Member States with existing NHRIs, the selection of the AHRB members should involve the active participation of the NHRI.

The Network emphasizes the importance of continuous engagement and cooperation with the HLP towards the finalization of the ToR.

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