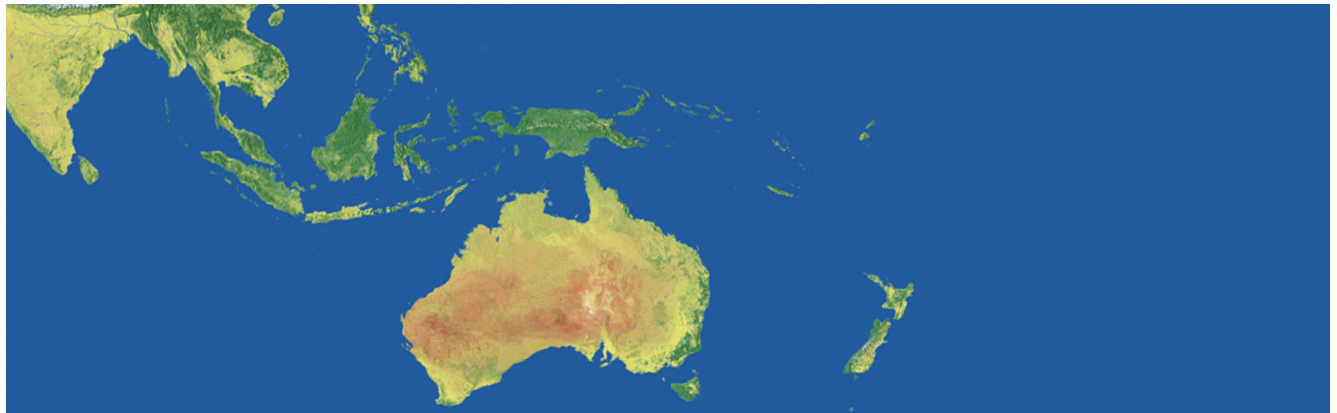


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# A REGIONAL HUMAN RIGHTS MECHANISM FOR THE PACIFIC?

Lessons learnt from developments in other regions



From 6 to 10 September 2010 human rights defenders across the Pacific came together for a consultation attended by the UN Special Rapporteur on the situation of human rights defenders. The meeting was organised jointly by Pacific Regional Resource Team (RRRT) based in Suva, Fiji; OHCHR Pacific Regional Office and ISHR. One of the key outcomes of the consultation was the agreement that the human rights situation in the Pacific Islands requires additional focus. It is not given much attention internationally and the common association made between 'Asia' and 'Pacific' frequently results in the latter becoming effectively invisible.

The Pacific region has by far the lowest level of ratification of major international human rights treaties in the world. This is partly the result of limited financial and human resources, and a focus on other priorities.<sup>1</sup> With limited access to the UN treaty-monitoring bodies, the universal periodic review (UPR) is especially important and was seen by defenders as a means of focusing attention on their particular human rights concerns. However, a main focus of debate at the consultation was the development of a regional human rights mechanism, including the role of civil society in bringing this about.

## REGIONAL HUMAN RIGHTS MECHANISMS

With regional human rights mechanisms already established in the Americas, Europe, Africa and one for Arab States, the last major geographic area without its own such mechanism is the Pacific. Existing mechanisms provide a broad spectrum of experiences to draw from – from the earliest Inter-American Commission on Human Rights (IACHR) to the most recent ASEAN Intergovernmental Commission on Human Rights (AICHR). The processes to set up and develop these regional human rights mechanisms have been informed by the engagement of local civil society. The challenges faced in defining the mechanisms' mandates, structures and methods of work could provide useful lessons for the Pacific. Defenders could draw on these as they consider the needs, interests and available resources in their region, and what kind of mechanism may work for them.

To be credible and able to meet both promotion and protection requirements effectively, a regional human rights mechanism should have a minimum set of characteristics, including:

- Being able to receive and decide upon individual and interstate complaints
- Transparency and wide dissemination of documentation related to decisions and recommendations
- Potential for developing additional mechanisms, such as special procedures and subsidiary bodies on specific themes or groups. For example, this could include the development of a court empowered to make binding decisions and grant reparations in the case of human rights violations
- Cooperation with international human rights mechanisms, so as to reinforce the existing human rights framework
- Independent commissioners or representatives

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<sup>1</sup> Pacific Culture and Human Rights: Why Pacific Island Countries should ratify international human rights treaties. P Imrana Jalal, Pacific Regional Rights Resource Team (RRRT / UNDP), April 2006, p. 6.

The Office of the UN High Commissioner for Human Rights (OHCHR) has developed a comprehensive list of what it considers to be minimum powers, responsibilities and structure a regional human rights mechanism should have.<sup>2</sup>

## KEY ISSUES FOR CONSIDERATION

### Requirement of a normative framework

Which comes first the commission or the convention? This question has been addressed differently in the various regions. The most developed regional mechanisms now have normative human rights frameworks in place which the mechanism works to implement. In the case of AICHR the development of the instrument – the still to be elaborated ASEAN Declaration of Human Rights – is subsequent to the mechanism. Whilst AICHR will be working within the parameters of the ASEAN Charter, there is concern that there was not a common understanding of the relevant human rights standards prior to establishing the mechanism.<sup>3</sup>

### Sovereignty

Any regional mechanism is likely to prompt concerns around infringements of national sovereignty or autonomy. The international human rights framework establishes agreed principles and norms that transcend strict national concerns, including through mechanisms allowing for submission of communications by individuals against the State, and a regional human rights mechanism should reinforce this.

For States, establishing a regional human rights mechanism can meet several objectives related to the promotion and protection of human rights. Where States are required to report to a regional mechanism or respond to communications, any resulting recommendations may be more acceptable to the State, and therefore more effective, if they come from the region itself rather than outside. The work of a regional mechanism can also help further implementation of international human rights standards at the national level.

### Regional values

The particular needs and interests of a region, defined along with civil society, affect the form of its human rights mechanism and are central to creating 'ownership' of the process and result. For example, one of the purposes of AICHR is 'to promote human rights within the regional context, bearing in mind national and regional particularities and mutual respect for different historical, cultural and religious backgrounds, and taking into account the balance between rights and responsibilities.'<sup>4</sup>

However, references to regional values must be in line with international human rights norms<sup>5</sup>. Failure to live up to the principle of universality of human rights could lead to justification of abuses, in the name of tradition and culture.

### National versus regional human rights mechanism

National human rights institutions (NHRIs) can act as driving force for change. In 2007 four Asian NHRIs committed themselves to developing joint regional strategies, which included advising respective governments to take steps to establish a regional human rights mechanism.<sup>6</sup> Pacific Islands have limited structures promoting and protecting human rights, and limited resources to put them in place. Only Fiji amongst the Pacific Islands has a NHRI. While credible mechanisms at national level are still essential components for ensuring the defence of rights, this does not preclude the development of a regional body, as seen in many other regions.

### Evolution

One of the principles of AICHR is the 'adoption of an evolutionary approach that would contribute to the development of human rights norms and standards in ASEAN'.<sup>7</sup> The continued development of the mechanism to effectively promote and protect human rights is important, as other regional mechanisms have shown. However, an evolutionary approach risks delays in responding to urgent human rights issues. By indicating fuller human rights protections could be forthcoming at some unspecified time this risks remaining simply a promise; or act as a means to establishing a weak mechanism with, for example, with a mandate for promotion but not protection of human rights. However, a constantly evolving formulation presents an opportunity for civil society to continually push for more positive developments.

## HOW CAN CIVIL SOCIETY CONTRIBUTE TO THE DEVELOPMENT OF REGIONAL HUMAN RIGHTS MECHANISMS?

The full involvement of civil society in development of human rights instruments and mechanisms is essential for the credibility and legitimacy of systems. This is best achieved through formal recognition of their role in the process, to allow for ongoing and systematic collaboration as mechanisms develop.

Development of the Inter-American human rights system has benefited from considerable civil society involvement, a role which has become institutionalised. For example, NGOs play a

2 Principles for Regional Human Rights Mechanisms (Non Paper) <http://bit.ly/d0TyQi>.

3 Report of Expert Dialogue with Civil Society and NHRIs on Regional Human Rights Mechanisms in Africa, the Americas and Europe, Jakarta 4-5 May 2009, p. 15. Available at <http://bit.ly/d6P4Be>.

4 Terms of reference of ASEAN Intergovernmental Commission on

Human Rights, para. 1.4. Available at <http://bit.ly/a7472B>.

5 Including the Vienna Declaration and Programme of Action, as adopted by the World Conference on Human Rights on 25 June 1993, in particular article 5.

6 NHRIs of Indonesia, Malaysia, the Philippines, and Thailand. Declaration of Cooperation, 28 June 2007, <http://bit.ly/aAkOVR>.

7 Terms of reference of ASEAN Intergovernmental Commission on Human Rights, <http://bit.ly/a7472B>.

role in vetting candidates for the Inter-American Commission on Human Rights. In Africa, advocacy by NGOs has been pivotal in the creation of new institutional human rights mechanisms such as special rapporteurs, working groups, and the African Court on Human and Peoples' Rights.

Civil society also played a role in pressing for the establishment of the AICHR mechanism. Through public campaigns, diplomatic briefings, and expert meetings and consultations, the need for 'The ASEAN human rights commission with TEETH! Accountable, Effective and Independent'<sup>8</sup> was clearly communicated. However, a year since its establishment in October 2009, concerns about the mechanism's mandate, structure and effectiveness continue. The development of the mechanism will depend on continued civil society pressure and engagement.

Raising awareness about the existence of the mechanism, its potential value, and its current weaknesses are all potentially part of the role of civil society actors.

## THE PACIFIC: WHERE ARE THINGS AT?

In the Pacific, discussions around the development of a regional human rights mechanism have been on civil society and government agendas for many years. However, it was not until the Pacific Plan, endorsed by leaders of the Pacific Islands Forum Meeting in October 2005, that regional institutions such as the Pacific Islands Forum had a human rights mandate which included exploring options for a regional human rights mechanism.

In the outcome statement from their regional consultation, Pacific Island human rights defenders said 'We see the value of developing a Pacific regional human rights mechanism and we urge our States to endorse its development'. To assist with maintaining meaningful engagement in the process, defenders resolved to establish a regional human rights defenders network. Supporting the work of defenders and strengthening national and regional human rights defenders' networks will require funding. Concerns were expressed at the consultation about changes to donor policy in the region made without consultation with affected NGOs or an analysis of the impact. Such cuts could substantially undermine the potential for civil society advocacy on behalf of a credible regional mechanism.

## CONCLUSION

In the Pacific divergent cultural traditions, a lack of funds and near absence of national human rights institutions are all challenges to sustaining momentum behind a drive to establish a regional human rights mechanism. An analysis of

the various models for human rights mechanisms is currently being carried out with the aim of identifying which model might best suit the Pacific. Consultations on options including civil society are then envisaged. This will require resources. As the initiative develops, sustained and formalised involvement of civil society will be key in pressing for a mechanism that is both independent and progressive.

### Interview with Mr Rafendi Djamin: Indonesian Representative for AICHR. Previously Coordinator of the Coalition of Indonesian NGOs for International Human Rights Advocacy

**ISHR:** *What advice would you give Pacific civil society in regard to establishing a regional human rights mechanism?*

**Mr Djamin:** The first thing defenders need to do is approach their government to know what its position is on establishing such a mechanism. Defenders then want to establish the aims they have and assess what they consider possible, given the reality of their region. They need to get agreement amongst themselves on these points. Thirdly, there is a need to increase awareness of the need for such a mechanism within the region. A clear proposal will help create momentum for the mechanism at regional level.

**ISHR:** *What challenges do you foresee them facing and what should they look out for?*

**Mr Djamin:** I think civil society organisations need to avoid confrontational approaches when lobbying governments on the establishment of a regional mechanism. Civil society needs a strategy which should include the following elements:

- awareness raising among people about the need for such mechanism
- identifying countries that are open to the idea, where alliances can be created

There is no need to have a national human rights institution in place before you establish a regional mechanism, as these processes are unrelated.

**ISHR:** *Do you see AICHR 'evolving'? Can regional civil society organisations play a part in pressing for this development, maybe in particular in regard to the protection part of AICHR's mandate?*

**Mr Djamin:** It is only through pressure from civil society organisations on member States and AICHR members that we can push to include protection in the mandate of the AICHR, and make this body effective. Including protection in the mandate is essential to the credibility of the body. The role of civil society organisations will be crucial to make this mechanism effective. ■

8 <http://bit.ly/b5MssF>, Bangkok: 200 civil society organisations demand 'ASEAN human rights commission with teeth!: accountable, effective and independent' 23 June 2009.