

REGIONAL WORKSHOP ON
NATIONAL HUMAN RIGHTS MECHANISMS

Final Report

Hosted by
The Pacific Island Forum Secretariat
and the
Asia Pacific Forum of National Human Rights Institutions

Fiji Mocambo Hotel, Nadi, Fiji
28 February-01 March 2005

I. WORKSHOP OBJECTIVES

A regional workshop hosted by the Pacific Island Forum Secretariat and the Asia Pacific Forum of National Human Rights Institutions on national human rights mechanisms, was held in Nadi, Fiji on 28 February to 1 March 2005. It was attended by 23 officials from the Justice and/or Foreign Affairs Ministries of the governments of Australia, Cook Islands, Federated States of Micronesia, Fiji, Kiribati, New Zealand, Niue, Papua New Guinea, Solomon Islands, Tonga, Tuvalu and Vanuatu. Also, in attendance were representatives from the Asia Pacific Forum of National Human Rights Institutions (APF), Office of the High Commissioner on Human Rights (OHCHR), United Nations Development Programme (UNDP), United Nations International Children's Endowment Fund (UNICEF), United Nations Development Fund for Women (UNIFEM), United Nations Educational, Scientific and Cultural Organisation (UNESCO) and regional Non-Governmental organisations including the Citizens' Constitutional Forum (CCF), PIANGO, and the Pacific Concerns Resources Commission (PCRC).

The workshop was an initial practical step contributing towards the attainment of the "Pacific Vision" adopted by the Pacific Islands Forum (PIF) Leaders in Auckland in April 2004. The goal of the workshop was to enhance and improve institutional frameworks for human rights in PIF countries by increasing the internal capacities and knowledge of senior officials of both the Justice and Foreign Affairs Ministries of Forum countries.

Specifically, the workshop had three main themes:

- How is the human rights agenda in the Pacific developing and changing in response to regional and global political, economic and social developments?;
- What are national human rights mechanisms and how can they assist PIF members in promoting human rights; and
- How should the PIF, the APF and the international community respond to these issues, especially helping to strengthen the capacity of both government and civil society?

The themes of the workshop were designed to achieve the following objectives:

- Identify current and emerging human rights issues in Pacific Island countries;
- Assess existing and available international mechanisms and support for the PIF members;
- Discuss the processes, pitfalls and highlights of the establishment of human rights machinery and compare analysis of various forms of human rights machinery; and
- Identify priorities and needs for assistance of PIF members in human rights promotion and protection.

II. SUMMARY OF WORKSHOP PROCEEDINGS

A. Opening Ceremony

Ms Andie Fong Toy, Director, Political, International and Legal Affairs Division, PIF Secretariat and Mr. Kieren Fitzpatrick, Director, APF, welcomed the participants and observers of the workshop.

In her welcome address, Ms Fong Toy emphasised that ‘...the time is now right for Pacific Island Countries to more carefully address the means by which we protect and defend, promote and monitor our performance in human rights.’ This observation was shared by the Director of the APF who requested the participants’ sustained determination in addressing governance and human rights issues.

The opening address was delivered by the Honourable Mr Kaliopate Tavola, Minister of Foreign Affairs and External Trade of Fiji. Minister Tavola emphasised the importance of the workshop as ‘the first concerted attempt to implement the Pacific Island Leaders’ refreshed vision’ and a golden opportunity to discuss human rights issues that face the governments of the Pacific Island Countries and how these issues could be best resolved and safeguarded. He further outlined some of the challenges facing the Forum Countries that should be discussed and considered namely: (1) human rights and customary rights; (2) the universality, indivisibility, interdependence and interrelatedness of human rights; (3) the practicality of having a national human rights mechanism; and (4) involvement of non-governmental organizations and civil society in promoting human rights and why should governments need to develop workable collaborative arrangements with them.

B. Human Rights in the Pacific: Present Status and Realities and Emerging Issues

Ms Isabel Calvert of the PIF Secretariat presented a session on the present status, realities and emerging issues on human rights in the Pacific based on PIF members’ responses to a human rights survey conducted prior to the workshop.

It was noted that all the PIF members are parties to the Convention on the Rights of the Child (CRC) and a majority, to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). However, the level of ratification for the other main international human rights instruments by PIF members was low.

Based on the survey responses, the following are the key human rights challenges and concerns facing the Forum Countries:

- Lack of appreciation of the treaties and their purpose;
- Different and competing priorities of government;
- A low record of human rights abuse makes human rights a low government priority;
- Legislation which is inconsistent with the treaty provisions;
- Concern that a treaty provision might create other forms of discrimination;
- An assumption that national laws adequately cover most of the human rights principles;

- Lack of consultation, follow up action and information;
- Lack of technical expertise to revise laws to ensure conformity with the Conventions;
- Personnel, economic, financial and infrastructure resource constraints; and
- The burden of human rights reporting obligations on resource strapped countries.

In addition to the above challenges and concerns, other issues that had been raised by PIF members included good governance and equal participation, harmonisation of traditional values and international human rights standards, promotion and support provided to civil society, discrimination, violence against women, freedom of expression and the promotion and protection of the rights of ethnic minorities and labour.

Mr Jone Dakuvula, Program Director of the Citizens Constitutional Forum, presented a synopsis of the Concluding Statement and Recommendations from the Pacific Civil Society Human Rights Consultation held in Suva, Fiji on 1-3 June 2004. The outcomes of the consultation stressed:

- The primary responsibility of the States to respect, protect, promote and fulfil human rights
- The universality, indivisibility, interdependence and interrelatedness of all human rights;
- The resolutions of the United Nations General Assembly and of the Commission on Human Rights supporting and encouraging the establishment and development of national human rights institutions and regional arrangements in the Asia Pacific Region and the strengthening of national protection systems;
- The adoption by Governments, including Pacific countries, of the 2000 Millennium Declaration that included a commitment to strengthen the capacity of all countries to implement the principles of democracy and respect for human rights and the achievement of the millennium development goals;
- The need to develop a culture of human rights both among the general public and in the official sector and the important role that civil society organisations play in human rights promotion; and
- The proposal that Pacific Islands Governments take a rights-based approach to development – that is participatory, accountable, not discriminatory, empowering and based on relevant human rights standards.

C. Discussions and Outcomes of the Working Groups on Human Rights Issues in the Pacific

Participants were divided into three working groups and asked to discuss (i) additional challenges faced by their respective countries that had not been mentioned in the preceding session, (ii) the reasons why PIF members have become party to CEDAW and CRC and not the other main instruments and (iii) the requirements needed for them to become parties to these instruments.

In their report back to plenary, the additional challenges presented by the three working groups included human rights issues such as poverty, child abuse, discrimination against people with disabilities, regular changes in government, lack of government machinery to address human rights concerns, lack of understanding of human rights obligations and/or capacity to implement policies under the conventions and lack of public awareness due to poor communication between communities and the government.

It was noted that, in a majority of the countries represented in the workshop, women's organisations played an important role in the ratification of the CEDAW and CRC. The participants also cited the inclusion of provisions protecting fundamental human rights and freedoms in their respective constitutions as the main reason for the non-ratification of the International Covenant on Civil and Political Rights. Lack of knowledge and/or awareness by governments of the benefits in ratifying the key international instruments was another reason.

For PIF members to become party to these key international instruments in the future, they need awareness-raising of the provisions of these conventions at both government and community levels; technical assistance to review legislation to give effect to the conventions and assistance to meet the reporting obligations required under these conventions. They also identified the important role of non-government organisations in these processes.

D. Constitutional Rights and the Legal System

Professor Don Paterson of the School of Law, University of South Pacific, Vanuatu made a presentation on constitutional rights and the legal system and mechanisms to assist the promotion and advancement of human rights in PIF member countries. He provided a general overview of the extent and manner in which rights and freedoms are provided for in the written constitutions of Forum member countries, and how they guide the legislature, the executive and the judiciary. He broadly categorised the written constitutions of PIF members, in so far as fundamental rights and freedoms are concerned, into the following three groups: (i) those which do not have constitutional statements of fundamental rights and freedoms such as Australia, New Zealand and Niue but have rights developed solely by the courts and the legislature; (ii) those with general statements of fundamental rights and freedoms, as exemplified in the constitutions of the Cook Islands, Vanuatu and the Federated States of Micronesia; and (iii) those with more specific statements of rights and freedoms such as those in Fiji, Kiribati, Marshall Islands, Nauru, Papua New Guinea, Samoa, Solomon Islands, Tonga and Tuvalu.

Professor Paterson also highlighted some of the basic issues that need to be considered in the establishment of human rights mechanisms to promote and apply fundamental rights and freedoms, such as "who" is bound to observe these rights (will it only be States and persons performing public functions as in the case of Fiji, or, in addition, private individuals as is the case in Papua New Guinea and Tuvalu?).

E. International Institutions and Mechanisms

Representatives from the OHCHR, UNDP, UNESCO, UNICEF and UNIFEM presented an overview of their respective institutions' mandate and the support that they could offer to PIF members.

The OHCHR's Acting Regional Representative in Asia Pacific talked about the role of her office and the different branches under the OHCHR and their mandates. She reiterated the four areas that comprise OHCHR's regional framework for Asia Pacific: (i) national human rights action plans, (ii) national human rights institutions, (iii) human rights education and (iv) economic, social and cultural rights and the right to development. OHCHR support and assistance can be tapped for human rights training, assistance in developing national protection systems, awareness raising, treaty ratification and reporting, and the establishment and/or strengthening of national human rights institutions.

UNDP's human rights support includes policy advice, capacity building, and institutional support and assistance. UNDP highlighted their plans for a regional Pacific resource centre. UNESCO promotes the rights to education, opinion, cultural life and scientific programs, with 70% of its appropriation geared towards education. It has been involved in issues that pertain to national human rights institutions, youth and HIV/AIDS, gender equality and development, fight against racism, discrimination and xenophobia and human security and peace. UNIFEM can provide financial and technical assistance to advance the cause of women, particularly with respect to their political participation at all levels of governance. UNICEF, through a National Coordinating Committee on Children in ratifying member States, provides technical assistance on CRC training, reporting and/ or drafting of a national plan on children and facilitates the presentation of individual country reports to the CRC treaty monitoring body.

F. National Human Rights Mechanisms

Mr Walter Rigamoto, Chair of the Fiji Human Rights Commission (FHRC), provided an overview of the establishment, role and functions of the FHRC.

As a constitutional creation, the FHRC complies with the UN endorsed 'Paris Principles' which stress an institution's independence, pluralism and broad mandate. The FHRC's functions are three-fold: (i) public education; (ii) complaint resolution and (iii) adviser to, and monitor of, government compliance with international and national human rights laws and standards.

The presentation was followed by a discussion of the complaints and investigation processes of the Commission, including a comparative analysis of human rights complaints received between the period of 2003 and 2004, remedies available in the Human Rights Act for violations of human rights, the Bill of Rights of the Fiji Constitution and the highlights of the Commission's work.

G. Reports of the Working Groups on National Human Rights Mechanisms

The participants were again divided into three working groups. The first working group focused on protection of human rights in the region; the second on promotion of human rights in the region; and the third on monitoring of human rights in the region.

The issues discussed in each working group included mechanisms currently existing in the participants' respective countries to protect, promote and monitor human rights; the effectiveness or non-effectiveness of these mechanisms; and the ways by which these mechanisms could be further strengthened or supported.

For the participants in the protection group, the mechanisms that currently exist in their countries include the Constitution, institutions of State (for example, National Council of Women, Ombudsman, Human Rights Commission, Children's Commission), non-government organisations, paralegal groups and in special/extraordinary circumstances, international human rights organisations. The participants all shared the observation that some of these mechanisms are effective in the protection of human rights but that there is still room for improvement in their functioning.

In addition, the group recommended that regional and international organisations support human rights awareness-raising activities, nationally and regionally, in order for the human rights agenda to be prioritised by governments leading towards the establishment or strengthening of national human rights protection mechanisms. The group also considered the option of attaching national human rights institutions to existing Ombudsmen's offices.

The working group on promotion identified similar mechanisms as those earlier mentioned, but also included women's groups/crisis centres, human rights desks in government agencies, domestic legislation, the courts and the media. Some were highlighted as being particularly effective in their promotion of human rights such as the women's groups, but others were not. The working group acknowledged that the ineffectiveness of some of these mechanisms is attributable to factors such as lack of specific legislation, limited funding or lack of resources, lack of knowledge on existing international human rights norms and standards, lack of national coordination and communication problems.

To ensure more effective functioning of these mechanisms, the group recommended several courses of action, including the allocation of more funding and resources; improving the literacy, educational and information activities at rural levels; creation of coordinating bodies to monitor human rights promotional activities; establishment of closer links with non-governmental organisations; and vigorous outreach programs on human rights obligations. Technical and financial assistance was requested from international and regional human rights organisations.

Human rights monitoring mechanisms, as enumerated by the third working group, would include non-governmental organisations, Ombudsman offices, human rights units in Ministries, courts, Education Departments and National Coordinating Committees for the CRC.

For these mechanisms to be more effective in human rights monitoring, there is a need to: (i) identify and prioritise areas to be monitored; (ii) conduct national needs assessments involving all stakeholders on the nature of a human rights mechanism; (iii) include human rights in national development plans; (iv) establish national human rights institutions through legislation; (v) train judicial officers; and (vi) coordinate more closely with NGOs.

H. Institutional Responses and Next Steps

To address the needs demonstrated by the three working groups, representatives of the various international and regional organisations were called upon to respond on how they could assist PIF members.

The APF, as a human rights organisation in the Asia Pacific working at the international, regional and bilateral levels, has a specific practitioners' expertise to offer. It can provide practical and effective assistance to Forum Countries that are planning to establish national human rights machinery. The assistance is provided upon request and will be undertaken in coordination with regional and international organisations.

The support of the OHCHR is flexible and depends on the areas of priorities identified and requested by the individual PIF members. Its expertise includes the wide-breadth of international experiences that have been accumulated throughout the existence of the organisation.

The soon-to-open Pacific Sub-Regional Centre of the UNDP can offer its assistance in activities that involve conflict prevention and recovery, realisation by each PIF member of the United Nations Millennium Development Goals, and governance and human rights.

UNESCO likewise recognises the importance of working in partnerships with key human rights stakeholders at the national and regional arenas.

UNIFEM's Pacific Programmes which include Women, Peace and Security, Women in Politics and Progressing CEDAW Implementation in the Pacific, aim to empower women to participate at all levels of governance, in conflict prevention and resolution, and peace building among other concerns.

The PIF Secretariat clarified its role as the coordinating body and conduit to the PIF Leaders. It serves as the policy and administrative arm of the Forum in fostering cooperation among the governments and between international agencies in the areas of trade, investment, economic development and political and international affairs, including but not limited to facilitating the ongoing dialogue between all key players in human rights protection, promotion and monitoring.

III. WORKSHOP OUTCOMES STATEMENT

The Regional Workshop on National Human Rights Mechanisms, held on 28 February and 1 March 2005 in Nadi, Fiji was organised jointly by the Pacific Islands Forum Secretariat and the Asia Pacific Forum of National Human Rights Institutions (APF). Representatives from Pacific Islands Forum Member countries Australia, Cook Islands, Federated States of Micronesia, Fiji, Kiribati, New Zealand, Niue, Papua New Guinea, Solomon Islands, Tonga, Tuvalu and Vanuatu attended the workshop. Representatives from United Nations Development Program, UN Educational, Scientific and Cultural Organisation, UNIFEM, UNICEF and the Office of the UN High Commissioner for Human Rights also attended the workshop, along with representatives of regional NGOs working in the field of human rights.

2. The workshop was a result of the April 2004 Eminent Persons Group's Review of the Pacific Islands Forum which, *inter alia*, called on the Forum to encourage and support the work of Members in developing national human rights machinery. At their Special Leaders' retreat to consider the Eminent Persons Group's Report, Forum Leaders adopted a vision seeking "... a Pacific region that is respected for the quality of its governance, the sustainable management of its resources, the full observance of democratic values, and for its defence and promotion of human rights". This commitment was reinforced by the Leaders' decision to "encourage the development of national human rights machinery".

3. Over two days the workshop discussed the present status, realities and emerging issues of human rights protection, promotion and monitoring in the Pacific. The workshop examined national surveys; constitutional rights and Pacific legal systems; international institutions and mechanisms, how they operate and how they can support national efforts; and national human rights mechanisms – their roles, functions and strengths. The workshop also noted the outcomes of the Pacific Human Rights Consultation between civil society organisations, national human rights institutions and governments, held in Suva in June 2004.

4. The workshop identified a range of challenges facing Forum Island Countries in the promotion, protection and monitoring of human rights, including:

- limited "ownership" and awareness of human rights within both governments and communities, due in part to a lack of understanding of the relevance of human rights including economic, social and cultural rights, to the daily lives of the peoples of the region;
- multiple priorities of government competing for scarce resources, including economic and social development and environmental concerns, exacerbated by frequent changes in governments;
- a lack of economic, technical, institutional and human resources and capacity to pursue human rights at the national level;
- obstacles presented by the region's isolation, and the difficulty of governments in accessing international assistance;
- the variety of models of good governance and the machinery of government in Pacific nations;
- a lack of quality information on the benefits of becoming a Party to international human rights conventions;

- the heavy treaty based reporting obligations on governments; and
- the need to reconcile human rights with traditional and customary rights.

5. The Participants recognised the benefits of utilising alternative dispute resolution mechanisms, including through national human rights institutions, to resolve human rights issues in the most effective, efficient, and equitable means possible, in addition to utilising the institutions of the law.

6. The workshop recognised that the primary responsibility for promoting, protecting and monitoring human rights at the national level lies with national governments. The workshop identified that the following issues needed to be considered if establishing national human rights machinery:

- the possibility of using human rights legislation to set out detailed protections, including where relevant elaborating on rights provisions in existing Constitutions;
- the holistic nature of human rights and the need for any assistance to take this into account;
- the importance of establishing new human rights institutions in parallel with strengthening existing governmental and non-governmental mechanisms which play a role in human rights;
- the need for regional and international sources of assistance to complement and support national efforts;
- the significant role played by civil society in promoting, protecting and monitoring human rights;
- the need to mainstream human rights implementation and monitoring in government policy and practice;
- the need to build a culture of human rights through all levels of society;
- the limitations of formal human rights monitoring systems in most Forum Island Countries, although the workshop noted the good foundation provided by ad hoc monitoring mechanisms; and
- the desirability of extending regional human rights training programmes to all Forum Island Countries.

7. The workshop welcomed indications from several Forum Island Countries of their interest in pursuing national human rights mechanisms. The workshop recognised that national human rights commissions which comply with the “Paris Principles” are one of a range of possible mechanisms in this regard. As a first step, one option is for Forum Island Countries to consider conducting national human rights assessments. The assessments would identify existing capacities and priority needs in the government and non-government sectors, and present recommendations on the most appropriate models for human rights machinery in each country. As an interim measure, the workshop encouraged Forum Island Countries to consider establishing dedicated human rights desks in appropriate government ministries.

8. The workshop warmly appreciated the offers of assistance made by the Pacific Islands Forum Secretariat, APF, UN agencies and civil society organisations to assist Forum Island Countries in their efforts to protect, promote and monitor human rights

at the national and regional level, including the undertaking of national needs assessments.

9. The workshop acknowledged the role of the Pacific Islands Forum Secretariat in coordinating efforts to strengthen human rights machinery in Forum Island Countries and facilitating the ongoing dialogue between all key players.

10. The workshop requested the Pacific Islands Forum Secretariat to present its outcomes to the June 2005 Forum Regional Security Committee meeting. It also requested the Forum Secretariat to review implementation of the outcomes of the workshop, within twelve months.