

National Human Rights Institutions Pathways for Pacific States

Pacific Human Rights Issues
Series: 1



PACIFIC ISLANDS FORUM SECRETARIAT



Human Rights
Commission
Te Kāhui Tika Tangata



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FOREWORD

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 leaders agreed to give effect to the vision through the Pacific Plan, which was endorsed in 2005.

At their meeting in October 2006, leaders agreed that greater attention be given to implementing international conventions on human rights as essential tools to underpin improvements in institutional governance.

This study paper is the first in a series related to human rights and has been developed in partnership with the Pacific Islands Forum Secretariat. I have been very grateful for the support of members who participated in the development of this research. In particular Samoa, Niue and Tuvalu assisted with consultations. Helpful comments were received from the Cook Islands, the Republic of the Marshall Islands and Australia, and both Palau and Kiribati have expressed interest in dialogue about the issues raised in this research. I am also extremely grateful to the New Zealand Human Rights Commission for initiating and leading this study paper.

The second paper in this series will focus on ratification of international human rights treaties and has been prepared by the Office of the United Nations High Commissioner for Human Rights Pacific regional office.

I welcome these papers as a contribution to dialogue in the region.



Greg Urwin
Secretary-General,
Pacific Islands Forum Secretariat



EXECUTIVE SUMMARY

Human rights mechanisms in the Pacific vary widely. There is a broad, if not comprehensive, infrastructure for the promotion and protection of human rights in the Pacific. Yet, the region faces significant human rights issues, for example in relation to employment, freedom from discrimination, protection and equal treatment of people living with HIV/AIDS, violence against women and children, the right to health (including water and housing), environmental degradation and associated climate change concerns, the rights of those detained, and incidents related to tribal or land disputes.

At the same time, Pacific states are challenged to ensure that their limited resources are conserved, achieve value for money and show a return for effort across national, regional and international commitments. The effectiveness of existing human rights mechanisms is hampered in some states by, for example, limited funding or inadequate resources (including human resources), lack of knowledge of existing international human rights norms and standards, lack of national co-ordination, and communication problems.

The desire to make progress on national human rights institutions (NHRIs) is coupled with caution. Small Pacific states would like more assistance with how to make progress and what this means in practice. We conclude that the international human rights framework provides small Pacific states with an opportunity to give their own unique expression to the international standards for NHRIs (“the Paris Principles”).

This research is therefore focused on practical suggestions for the ways forward. For example, we suggest that a “building blocks” approach be taken to incremental growth of NHRIs as resources and capacity development allow. Such an approach might also allow for “nesting” an NHRI in another public institution, with clear plans for its eventual separate identity. Graduated international accreditation provides some support for this approach.

Innovative approaches are needed in the region to address resource concerns, including collaborative approaches to human rights promotion and economies of scope rather than scale. Participatory processes need to take account of Pacific contexts and to build on good work related to the rights of children and young people, women, disabled people and vulnerable or marginalised groups.

Dialogue about NHRIs in the Pacific needs to draw on the strengths of both Pacific peoples and human rights promoters and acknowledge that culture, language and tradition have a particular importance (and that these are key human rights issues).





Introduction

In 2004, Pacific Islands 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 leaders agreed to give effect to the vision through the Pacific Plan, which was endorsed in 2005.

Initiatives for the first three years include steps to support or establish regional consolidation of commitments to key institutions such as audit and ombudsman offices, customs, leadership codes, anti-corruption institutions and departments of attorneys-general. Milestones for this initiative include establishment of a regional ombudsman and other human rights mechanisms (Strategic Objective 12).

There are at least three broad concerns that arise repeatedly in dialogue about human rights in the Pacific. The first relates to how progress can be made given the competing and significant demands upon the limited resources of small states. The tasks needed to ensure progress can appear daunting when compared to the often limited financial and human resources available. The lack of resources is frequently cited as a major obstacle to both establishing and maintaining support for NHRIs. This research paper aims to assist by making practical suggestions in the Pacific context. While there is a diversity of countries in the Pacific, not all of the issues raised in this paper are common to countries across the region. The focus in this paper is small Pacific states.

The second concern relates to international treaty body reporting obligations for Pacific states. The Pacific region has the lowest ratification rates worldwide of the core international human rights treaties. Many states are con-

cerned about the perceived onerous nature of reporting obligations, the size of the task and, consequently, the benefits of ratification. The Office of the United Nations High Commissioner for Human Rights is seeking to assist through a project from its regional office for the Pacific. We consider the related issue of the role of NHRIs in treaty body reporting and implications for dialogue about forms of NHRIs in the region.

The third concern is the interface between custom and human rights in the Pacific. In 2006 the New Zealand Law Commission published a study paper, *Converging Currents: Custom and Human Rights in the Pacific*. The study is a very useful contribution to human rights dialogue in the Pacific and we consider how aspects of that study might specifically assist dialogue about forms of NHRIs.

Together, these three streams of work aim to assist discussion of these concerns among Forum Island countries and broadly assist implementation of the Pacific Plan.

METHODOLOGY

The project began with consultations in Samoa, Tuvalu, and Niue, focusing on country context, practical experiences, prospects and challenges for human rights promotion and protection, and suggestions for pathways forward. A draft research paper was prepared and widely distributed for comment. Submissions were received from Pacific Government officials, non-governmental organisations and institutions and individuals. These submissions strongly affirmed the thesis of the research and made useful suggestions for better incorporating issues in the region or drawing on helpful experience from elsewhere in the world. In 2007, this final paper will be the basis for dialogue in those Forum Island countries which have expressed an interest in the project.

OVERVIEW

The Framework, the first section, introduces the research and provides background information. Prospects and Challenges, the second section provides a broad overview of some existing mechanisms for human rights promotion and protection in the Pacific. The third section Building Human Rights Institutions sets out the international standards for NHRIs and canvasses the prospects and challenges for human rights promotion and protection in the region. Implications for dialogue about forms of NHRIs in the Pacific are outlined. The report then outlines detailed examples of forms of NHRIs in the Asia Pacific and Caribbean regions, drawing particularly on the experience of the Asia Pacific Forum of National Human Rights Institutions and the OHCHR National Institutions Unit. Practical suggestions for pathways forward are made. The report concludes with brief comment on the role of NHRIs in international treaty body reporting.







The Framework

Promotion and Protection of Human Rights in the Pacific

Within the international human rights framework the elements essential for the effective protection, promotion and fulfilment of human rights are:

- Democracy.
- The rule of law and an independent judiciary free of corruption.
- Effective structures of governance.
- Specific processes for monitoring human rights and other forms of accountability.
- Recognition of the vulnerability of particular groups and individuals.
- Active, involved citizens.

The mechanisms for the promotion and protection of human rights in the region include national constitutions, parliamentary systems, governance structures and systems (including at national, district, village and island levels), legal systems (including the judiciary), an active civil society, and regional mechanisms (including national, bilateral, multilateral and regional co-operation and commitments and agreements). The efficacy and efficiency of these mechanisms for promotion and protection of human rights are highly contested and Pacific leaders have acknowledged, in the Pacific Plan, that more, and better, work is needed.

NATIONAL CONSTITUTIONS

Constitutional foundations for the protection of human rights exist in many Pacific states. These vary widely depending on history and country context and in form and detail. Most of the constitutional foundations, with a few exceptions, focus on selected aspects of civil and political rights.

Constitutional protections, which are both supreme law and entrenched, include those in the Cook Islands (relating to Fundamental Human Rights and Freedoms), Papua New Guinea (Division Three on Basic Rights), Kiribati (Protection of Fundamental Rights and Freedoms of the Individual), the Federated States of Micronesia (the Declaration of Rights), Samoa (Fundamental Rights), Fiji (Chapter 4 Bill of Rights and Chapter 5 Social Justice) and Solomon Islands (Protections of the Fundamental Rights and Freedoms of the Individual). Similar provisions are to be found in the constitutional documents of the Republic of the Marshall Islands (Bill of Rights (Constitutions, Article II)), Nauru, Tonga, Tuvalu and Vanuatu.

Across the Pacific a wide range of village and island councils as well as provincial and district governance structures and systems also exist and many have been in place for centuries. Some have been given recognition in constitutional provisions or in specific legislation, such as that dealing with local administration.

PARLIAMENTARY SYSTEMS

Pacific expressions of the parliamentary foundations of democracy vary but are generally underpinned by respect for democratic processes. Pacific electoral participation rates vary, but are generally high, and many states have contested national elections. However, diversity of representation remains an issue in national and local legislatures for some groups, especially women. Parliamentary processes form part of the constitutional system of checks and balances. Parliamentary committees with responsibility for draft laws, financial reviews and budgetary debates are a key mechanism for protecting democratic participation.

GOVERNANCE STRUCTURES AND SYSTEMS

The reality of the mechanisms for human rights protection and promotion is not reflected in constitutional provisions alone. Governance structures and systems are the means by which a wider range of human rights are promoted and protected. Pacific leaders have stressed the importance of good governance and the defence and promotion of human rights. Efforts to enhance the quality of governance, while managing competing demands on limited resources, remain a high priority.

Other governance structures and systems include Government administration through ministerial offices, leadership codes, Government departments, public sector codes of conduct, electoral commissions and delivery of services through departments, ministries or publicly owned corporations and service providers. Ratification of international human rights treaties, international and regional co-operation agreements, national laws, regulations, Government policies and practices together weave a more complex and state-specific expression of human rights and the means for protecting them, particularly in relation to economic, cultural and social rights.

More recently, national development plans and national sustainable development strategies have been prepared to assist in achieving the Millennium Development Goals. These plans and strategies increasingly incorporate aspects of regional and international commitments for economic security, sustainable development, environmental protection and eradication of poverty. Such plans assist Government efforts in implementing these commitments, which have human rights foundations. Some Pacific states have offices with particular functions in relation to national development plans, such as audit and planning.

Some special mechanisms exist to guide public service conduct and enable complaints by individuals, such as public service commissions. Other specialist offices have objectives related to the promotion of the human rights of particular groups. For example, in Papua New Guinea

focal points have been established for children and women within the Department of Justice and the Attorney-General. The international law division of the State Solicitor's Office also houses a project on the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). In the Law Reform Commission branch of the same department there is a national technical adviser whose task is to review legislation that might be discriminatory and to incorporate the principles of equality between men and women in law reform. In the Cook Islands, the Ministry of Internal Affairs and Social Services has a designated disability officer and the Ministry of Education has a special needs adviser.

Ombudsman's offices exist in countries in the region including Papua New Guinea, Vanuatu, Solomon Islands, the Cook Islands, and Samoa. In Papua New Guinea the Ombudsman Commission is established by the constitution with three primary functions: to perform what might be called the "traditional" ombudsman functions of dealing with complaints of maladministration, to investigate alleged discriminatory practices and to administer the Leadership Code.

In some cases the legal framework for these mechanisms is in need of reform. In small Pacific states, laws, regulations or ordinances frequently date from colonial administration. Some legal frameworks struggle to accommodate the current range of developments and in others few or no legislative provisions exist to protect key human rights, for example in relation to private-sector employment.

National human rights plans are another tool which states can use to give expression to human rights priorities and to articulate the tangible outcomes sought from human rights protection and promotion. Australia published its second annual National Action Plan in December 2004. The New Zealand Human Rights Commission released *Mana ki te Tangata: The New Zealand Action Plan for Human Rights in March 2005*.

LEGAL SYSTEMS

Legal systems to support the rule of law vary. Most

constitutional documents which guarantee fundamental human rights contain provisions for a High Court or Supreme Court including Vanuatu, Nauru, the Republic of the Marshall Islands, Fiji, Kiribati, Samoa, Solomon Islands and Tuvalu. In others, such as Tonga, the Federated States of Micronesia and the Cook Islands, the courts exercise jurisdiction in relation to constitutional matters, including human rights. National Supreme Courts or High Courts exist alongside lower courts and administrative and other tribunals with particular jurisdictions.

An independent, impartial and corruption-free legal system is essential for the protection and promotion of human rights. The judiciary has a critical role to play in upholding the rule of law. Within the region, there are some processes for judicial appointment, along with programmes for judicial training and support, including the use of circuit judges. Judicial exchanges between states are becoming more frequent and a Pacific Judicial Development Programme has been initiated by AusAID and NZAID in conjunction with judiciaries of the Pacific region.

Most legal systems are administered by a Government department such as a Ministry of Justice, with court registries and Justice officials (including probation officers and justices of the peace). Crown Law Offices and People's Lawyer or Public Solicitor's Offices also exist in some states. There is a wide range of law-enforcement agencies and officers, border security services, customs, immigration and other security services such as prisons.

Legal systems must also be accessible to the public. Some states have provision for publicly funded legal aid, but often funding is limited both in the kinds of cases that qualify for legal aid and in the amount available. Barriers to access to legal systems exist, and there are few community legal centres offering free services to the public.

There are many forms of traditional courts with accompanying traditional legal systems. The Pacific Plan has identified the need to consider how best to reconcile these with formal legal systems.

CIVIL SOCIETY

Civil society groups and non-governmental organisations (NGOs) have been established in many parts of the region. The existence of these groups and their strength are key measures of how human rights are promoted and protected. Civil society plays an active role in the critical analysis of, and advocating for, policy development and changes in service delivery, thus assisting the realisation of human rights in the region. Some actively promote human rights in education and advocacy programmes and have a specific rights focus in some or all aspects of the services they provide, such as the environment, health, trade, work, the rights of women, children and young people, people with disabilities, and issues of good governance.

There are national councils of women in Vanuatu, Samoa, Tuvalu, the Cook Islands, Fiji and Papua New Guinea. In some cases such councils are working in partnership with Government departments to deliver national plans of action or specific services. For example, in Solomon Islands, the National Council of Women is supported by the Department of Home Affairs. In others, for example in Tuvalu, the Women's Council operates a weekly human rights radio programme.

Other groups, alliances and coalitions exist, such as those supporting the rights of children and young people or disabled people. National co-ordinating committees have also been established in some states to assist in developing international human rights treaty body reports or for oversight of domestic implementation. The effectiveness of this at community and village level is variable.

Paralegal groups, domestic violence crisis centres, unions and other groups representing workers are active. Churches and other religious groups and organisations also play a role in promoting aspects of human rights.

Promotion of human rights is carried out by some Government agencies, non-governmental organisations, civil society groups, international organisations and NHRIs, where these exist. Such promotion appears to be sporadic and there is no regional human rights promotion strategy.

There are some NHRIs in the Pacific region, such as those in Australia (the Human Rights and Equal Opportunities Commission), New Zealand and Fiji. Such institutions are generally responsible for human rights promotion, including human rights education and advocacy.

REGIONAL INITIATIVES

The Pacific Islands Forum provides the focal point for regional co-operation and integration between Governments. The development of the Pacific Plan in 2005 provided a renewed and specific focus for co-operation. Regional mechanisms also include national, bilateral, multilateral and regional co-operation and commitments. These include the Pacific Agreement on Closer Economic Relations, the Regional Private Sector Organisation, Pacific Islands Countries Trade Agreement (PICTA), the Cotonou Agreement and others. Regional co-operation has also occurred at the parliamentary level, with increased inter-parliamentary interactions, regional parliamentarians groups and regional electoral commissions' interactions

Regional and international aid agencies and international human rights organisations also work in the Pacific. Increasingly these agencies and NGOs are taking a human rights approach to their development work and in their work with local partners.

Civil society and NGO activities have also had a regional focus with initiatives such as the Pacific Islands Human Rights Consultation in Suva, Fiji, in 2004. This was the first human rights consultation of its kind in the Pacific region and was a significant achievement, with more than 80 participants from Governments, civil society groups, NGOs, NHRIs and international and regional organisations attending. A collaborative regional effort resulted in the publication of the *Pacific Human Rights Law Digest*. Launched in 2005, the Digest is a compilation of landmark cases where human rights conventions have been applied in Pacific courts.

The Pacific Regional Rights Resource Team is a United Nations Development Programme project that provides

training, technical support and advocacy in human rights across the region. The Pacific Association of Non-Governmental Organisations (PIANGO) also has a regional focus with members from a diverse range of Pacific countries, many of whom carry out human rights promotion activities.

Human Rights Issues

While a range of mechanisms exist to protect and promote human rights, there are human rights issues in the region. There are concerns that human rights protections are fragile and that efforts to promote human rights are extremely variable.

The Pacific has not experienced the kind of gross and systemic violation of human rights seen elsewhere in the world, such as extra-judicial killings and widespread torture. However, in 2006 the Pacific was affected by incidents of civil unrest in Tonga and Solomon Islands and actions by military personnel in Fiji to take control of the Government, leading to concerns about human rights violations.

Concerns about human rights issues in the Pacific are not new. During the Pacific Human Rights Consultation in Suva in 2004, a number of pressing human rights issues were identified. These were echoed in the Forum Members Regional Workshop on National Human Rights Mechanisms in Suva in 2005. These issues included (in no particular order):

- The need to continue improving good governance and participation in decision-making.
- Restrictions on freedom of expression and information.
- Right to freedom from ethnic and racial discrimination and the rights of migrant workers.
- Discrimination against women, particularly in relation to equal access to political and economic opportunities, access to adequate housing and secure land, protection from violence and equal legal protection.
- Children's rights, including concerns about neglect and abuse of children.

- Protection and equal treatment of people living with HIV/AIDS.
- The rights of persons with disabilities.
- Labour rights.
- Environmental degradation and associated concerns such as climate change, land alienation and exploitation, water resources and loss of biodiversity.
- Equal economic development and fair distribution of national income and wealth.
- The right to education.
- The right to health, such as the provision of adequate medical services and improving health care, especially to mothers.
- Cultural issues and how these relate to human rights.
- The rights of prisoners.
- Communal and individual rights.
- Violence or civil unrest, for example, in relation to land disputes.
- Human rights violations by public agents such as the police.







Prospects and Challenges

The Possible and the Potential

This section outlines the international standards for NHRIs, considers prospects and challenges for human rights promotion and protection in the Pacific and raises some implications for dialogue about forms of NHRIs in the region.

INTERNATIONAL STANDARDS FOR NHRIS

In 1991 a United Nations-sponsored meeting of NHRIs was held in Paris. There a detailed set of principles was developed on the status of NHRIs, now commonly referred to as the Paris Principles. The Principles were subsequently endorsed by the United Nations Commission on Human Rights and adopted by the United Nations General Assembly in December, 1993. The Principles have become the benchmark against which NHRIs are measured. A copy is included as an appendix.

The Principles are widely recognised and accepted as setting the minimum standards for NHRIs. Both the United Nations and the Asia Pacific Forum of National Human Rights Institutions (APF) require compliance with the Paris Principles before an NHRI can be recognised as a full member. Both also provide technical and other assistance during establishment and in day-to-day operations.

In 1995 the Office of the United Nations High Commissioner for Human Rights (OHCHR) developed a more detailed Handbook on National Human Rights Institutions. This elaborated on a number of the Principles, for example on the criteria for appointment of members. In 2001, the Commonwealth Secretariat published *National Human Rights Institutions: Best Practice*. Amnesty International has also developed recommendations for effective NHRIs.

The Paris Principles serve as a common reference point and the only clear internationally agreed standard in

relation to NHRIs. The minimum standards in the Paris Principles cover four areas:

- **Competence and responsibilities:** An NHRI should have a broad mandate (with a constitutional or legislative basis) and clear jurisdiction including: reporting to the Government on human rights; ensuring harmonisation of national laws with international human rights standards; promoting ratification of international human rights instruments; assisting with state reports to international treaty bodies; regional and other co-operation; and human rights promotion, including education.
- **Composition and guarantees of independence and pluralism:** Both NHRI members and staff should reflect the plurality of civil society. Independence should be guaranteed and the NHRI should not be subject to financial control that might affect its independence.
- **Methods of operation:** NHRIs should be accessible, have the confidence of civil society and consult others responsible for human rights issues.
- **Status of NHRIs with quasi-judicial competence:** Where an NHRI can hear and consider complaints, the Paris Principles set out particular procedures that should be available for investigation, amicable settlement and binding decisions.

While the Paris Principles provide important guidance, they set a minimum standard. The result of a set of negotiations, the Principles are not without limitation. There has been criticism about the vagueness of some elements, the stringency of others, and gaps.

It is equally clear that states have the autonomy to determine how best to reflect the international standards in their own particular context. Indeed, it has been said

that “a national institution cannot be bought off the peg: it must be made to measure”. (Stanley de Smith).

Decisions by states must be based on their own particular context and in the light of relevant prospects and challenges for human rights promotion and protection. We consider some of these prospects and challenges next, aware that views on these matters vary widely and may be highly contested.

Prospects

Debate continues about the prospects for more effective and efficient promotion and protection of human rights in the Pacific within existing mechanisms. For example, at the conclusion of the Forum Regional Workshop on National Human Rights Mechanisms in 2005, it was suggested that to ensure more effective functioning of these mechanisms, several courses of action should be taken. These include the allocation of more funding and resources; improving literacy, educational and information activities at rural levels; creation of co-ordinating bodies to monitor human rights promotional activities; establishment of closer links with non-governmental organisations; and vigorous outreach programmes on human rights obligations.

Suggestions for using existing human rights mechanisms to further human rights promotion and protection have included:

- Encouraging Governments to accept and factor human rights issues into internal policy decisions and laws.
- Addressing concerns about human rights by showing that human rights and traditional values are not necessarily in conflict with each other.
- Ensuring more consistent and fair police and enforcement processes and practices.
- Improving legislative frameworks and knowledge about rights and how to access them.
- National Governments establishing a co-ordinating group to address human rights issues, review human

rights activities, develop action plans and ensure better NGO liaison (building on models such as national co-ordinating committees for the reporting on the Convention on the Rights of the Child).

- More exchanges between Forum members.
- Continued technical and financial assistance and support from regional and international organisations, such as donor agencies, for human rights awareness-raising activities, nationally and regionally.

Within existing mechanisms there have also been suggestions for more effective human rights monitoring through: (i) identifying and prioritising areas to be monitored; (ii) conducting national needs assessments involving all stakeholders on the nature of a human rights mechanism; (iii) including human rights in national development plans; (iv) establishing national human rights institutions through legislation; (v) training judicial officers; and (vi) co-ordinating more closely with NGOs and civil society.

THE PACIFIC CONTEXT

In consultations for this project, participants identified a range of prospects for promotion and protection of human rights in their own countries. In Samoa, emphasis was placed on the importance of champions who have credibility with the Government, village chiefs and the public. One interviewee noted, for example, that the strengthening of human rights would need “*a person of standing in the community, a matai, someone who can use diplomatic skills, but take it out to the villages*”.

In Tuvalu, there was considerable interest in, and support for, technical assistance from NHRIs in the region to work with the Tuvalu Government, including senior officials. The recent adoption of a Leadership Code was a positive development and plans for an Ombudsman's Office with up to three commissioners were well advanced. These developments were providing an improved environment within which to make progress on human rights promotion and protection. The prospects of working with traditional leaders were also emphasised. *Fale Kaupule*

(Council of traditional leaders) leaders were keen to work in a collaborative way. However, a functioning and effective judicial system, including lawyers and magistrates, was seen as a necessary adjunct to progress.

In Niue, emphasis was placed on carefully raising human rights awareness and focusing on human rights and freedoms related to language, culture and tradition and religion. There was a strong desire for the Government to work with civil society and to develop partnerships, before introducing any new laws or making fresh Budget demands. Legislation to establish an Ombudsman's Office was being prepared, but some expressed concern that this was externally, rather than internally, driven.

Challenges

The Forum Regional Workshop on National Human Rights Mechanisms in 2005 highlighted some key human rights challenges and concerns facing Forum members such as:

- Multiple and competing priorities of Governments, including economic and social development and environmental concerns.
- A comparatively low level of human rights abuses, making human rights a low priority for many Governments, with a resulting lack of "ownership" of human rights issues across government within states.
- A variety of models of good governance and machineries of government across the region.
- An assumption that national laws cover most human rights principles, when in fact there is legislation which is inconsistent with international standards.
- Lack of appreciation of international human rights treaties and their purposes.
- Concerns that international standards might create other forms of discrimination.
- Lack of economic, technical, institutional and human resources and expertise to pursue human rights at a national level, including revising laws to ensure these meet international standards.

- The burden of human rights reporting obligations on small states and the lack of quality information on the benefits of becoming a party to international human rights treaties.
- Lack of consultation, follow-up action and information.

Across the Pacific, small states face the challenge of significant demands placed upon comparatively small resources, and the new and increasing demands from national, regional and international developments. Some demands arise from the fixed nature of some costs of government. These costs include parliamentary services, the public service, judicial systems (including courts, judicial officers and judicial administration), security (such as the police and prison services), and provision of health and education services, social services, international security and foreign affairs. The indivisible nature of the requirement for these services means that small states can face higher costs per person to provide them, unless alternatives are developed or efficiencies can be made. This is exacerbated in the Pacific with the geographical spread of those states that comprise islands spread across vast expanses of ocean and the transport, communication and service delivery challenges for those in remote areas.

Small country size may also mean that steps are needed to try to confine the size of the Executive to reasonable limits. Ministerial portfolios are frequently multi-faceted, placing high demands on ministerial offices. Similar issues arise for administrators and personnel, with a small number of Government agencies having broad and often complex responsibilities for both service delivery and policy development. With a small number of personnel and multiple demands, there is limited reserve capacity for new or increasing work demands, which can quickly lead to overextension. The problem of limited human resources can also be compounded by difficulties in retention or shortages in key occupational areas.

On the one hand there may be challenges in having a range of institutions with overlapping functions. On the other hand, the sheer range of institutions may cause

confusion. Different institutions may develop different approaches to the same sorts of issues. Competition for scarce resources may also lead to energy being diverted among individual institutions, whereas a collaborative approach may yield a better overall result.

THE PACIFIC CONTEXT

SAMOA

Most interviewees said they did not believe there are serious breaches of human rights, but the majority identified banishment — which is the “ultimate village sanction” — as quite common. Specific human rights issues identified included:

- Violence against women, including sexual abuse and domestic violence.
- Protection of the rights of children and young people, for example protection from sexual abuse and incest; issues for 12- to 21-year-olds including substance abuse, teenage pregnancy and reproductive rights; the “growing community of cast-offs” (children from broken homes living in Apia); and concerns about boys’ under-achievement at school.
- Issues relating to police competence and administration.
- Health issues, particularly adequate communication with patients.
- Women’s health, especially women in remote areas.
- The lack of women as religious leaders.

There was broad acceptance that human rights needed to be progressed but almost universal agreement among interviewees that promotion of human rights needed:

- To be framed in a Samoan context and not as a Palagi or “Western” concept.
- To acknowledge and complement customary practice and tradition.
- To be delivered in terms of “benefits” to Samoa.

It was noted that “*basically there is a need for greater awareness of vulnerable, disadvantaged and marginal*

people in society” and that there was “*definite political will*” for strengthening human rights. But how this was to be done was another issue.

For example, there was frequent mention of the need to “*reframe*” or “*restate*” human rights in order to “*give human rights the status they deserve*”. One person commented that “*the concept of rights in Samoan is ‘aia, aia, tatou’, which is very strong language*”. On the other hand it was noted that “*it is very difficult to be different in Samoa*” and that there is a need for greater human rights protection for the “*voiceless people in society, to prick people’s consciences and as a cheaper alternative to legal action*”.

There was significant agreement about the need for greater human rights education in schools, for village councils, in the development of pulenu’u (Central Government representatives) and in the wider community. However, there were positive and negative examples of how well human rights outreach has worked in Samoan villages. Experiences with implementation of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and the Convention on the Rights of the Child (CRC) in Samoa were highlighted as examples where “*the issues of the rights of women and children have taken a while to take root. The benefits need to be promoted in terms of education [and] the basic needs of children.*” One interviewee noted that if strengthening of human rights in Samoa “*starts off with greater emphasis on education than complaints handling, it is more likely to be accepted*”.

NGOs had a strong desire for more effective relationships with the Government.

“The one message we want you to hear and put in your report is that NGOs are happy and willing to work with the Government. [A desire to work together for shared outcomes] fits with one of the characteristics of Samoa which is consensus decision-making.”

Women’s rights were seen as both a traditional mechanism and as an area for strengthening and progressing

human rights. Women's special place in the village hierarchy was identified as a place *"to get things done"*. One interviewee said that *"perhaps not enough is done to recognise their special role and there is a need to acknowledge the women's council as an equivalent, enhancing role to the matai structure"*. There was also acknowledgement that NGOs in Samoa are largely female-driven and, while there is a risk of burnout and overload for some NGO leaders, they are at the forefront of debate and activities to progress human rights.

It was also clear that the media have a significant role to play. In Samoa the media are actively promoting human rights and disseminating information in news, current affairs and newspaper columns. Coverage of relevant forums or significant meetings was topical. Court reporting on criminal sentencing was extensive in comparison to other jurisdictions. However, it was noted that there are limitations to the English-language media for people in villages and those in rural areas. For many, Samoan-language radio was the primary means of news communication.

In Samoa there was mixed opinion about NHRIs being the right machinery at the moment. Caution seemed to centre on experiences with the implementation of the CRC and CEDAW and a perception that some existing human rights mechanisms have been largely ineffective. Alternative suggestions included a human rights foundation or an eminent persons' group to start a nationwide conversation about human rights. Comments included:

"The current need in this society is a clear understanding of what human rights are. We need an environment so that Samoans can talk to each other sensibly."

"Before there is any progression of human rights thinking, there needs to be real ownership and identification that this is our world."

TUVALU

The human rights issues appeared to be similar to those facing others in the region. These issues included employ-

ment, discrimination, freedom of religion, freedom of speech (including freedom of the media), environmental problems leading to right-to-life issues, the right to justice (including due process), economic rights, civil and political rights for prisoners and security personnel and the tension between traditional rights and civil rights. Concerns were expressed about the right to health and the lack of appropriate medical care in health centres and hospitals. Those consulted expressed this as a "right-to-life" issue.

Avenues for redressing human rights violations in Tuvalu were limited for a variety of reasons. The court system was experiencing difficulties due to a lack of personnel, civil society groups had limited resources and facilities to take up complaints, and there were few alternative avenues for redress. In addition, people who developed skills in civil society were quickly recruited to the public sector where their skills were also needed. Traditional systems for conflict resolution and redress were under stress and experiencing difficulties dealing with the problems facing young people and the serious environmental issues affecting the physical future of Tuvalu. Leaders considered there were some matters, such as serious criminal offending, that it was simply inappropriate for them to deal with.

Challenges arose from perceptions of human rights held by traditional leaders, partly based on past experiences and court proceedings. Concerns were expressed that human rights were a source of conflict with traditional leaders and that their authority was being affected by taking disputes to court.

In Tuvalu, there were initial concerns about the resource implications for the Government of establishing an NHRI. All Government officials, and some civil society members, queried the cost implications of establishing and maintaining a national human rights mechanism. Many expressed reservations about the feasibility of assuming responsibility for establishing and maintaining such an entity. The issue of competing needs for very limited resources was raised along with the issue of ensuring independence of

a Government-funded mechanism. There was a desire to explore options for financial and other support from regional and international aid agencies and other international organisations, for example the Asia Pacific Forum of National Human Rights Institutions.

On the other hand, there appeared to be general agreement that a mechanism to act as an alternative forum for dispute resolution was needed, especially given the ineffective functioning of the court system and the resulting pressure on the *Fale Kaupule*. There was particular interest in conciliation processes. However, it was considered that before any mechanism could be set up in Tuvalu, the capacity and resources of both the Attorney-General's and the People's Lawyers offices would need to be built up and at least one working magistrate needed to be appointed.

Concerns were expressed that any new mechanisms might preserve the status quo rather than making progress on areas of concern. Reservations were raised about a new and separate mechanism when existing mechanisms needed to be supported and strengthened.

NIUE

Interviewees identified a range of human rights issues including: employment-related rights, particularly for migrant workers and the lack of modern labour laws; violence against women, in particular domestic violence; discrimination between Niueans, permanent residents and non-permanent residents; alcohol abuse and parental sanction of young people drinking to excess; the general lack of awareness of human rights; the impact of globalisation on Niue and resulting concerns about threats to language, culture and national identity; protection of Niuean intellectual property in a global telecommunications context; concern about the outdated state of legislation and the lack of a Niuean Bill of Rights or modern constitution; and concerns for the welfare of prison inmates.

There were limited court sittings in Niue and no lawyers available to offer legal assistance to the general public or

those charged with offences. Legal aid is not available and while justice officials assisted individuals as far as possible (such as accepting complaints with a minimum of formalities), they were inevitably constrained by their role as administrators of the court system. In many cases church leaders played a vital advocacy role.

The Niue Association of Non-Governmental Organisations had one voluntary member but no premises or physical resources. While there was a strong desire to work with the Government and to focus specifically on human rights promotion and protection, there were few people available to help. Church leaders were concerned about human rights being used as a framework for conflict and there had been some local issues with new religions being established without consultation. Some expressed frustration about the lack of progress in reporting on the Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of the Child, confusion about the Government agency leading implementation, and difficulties in understanding the relevance of these international standards for villages.

A key challenge was to make the connection between human rights and the retention of language, culture and tradition so as to build an understanding of how this connection might support and strengthen Niuean language and culture initiatives. Another challenge was to overcome the perception of human rights as related only to "justice" issues.

In Niue there are severe human resource shortages, resulting in many people having multiple roles. For example, the Secretary of Justice, in addition to administrative responsibilities for the Justice Department, is also:

- Registrar of the Court (including the Land Court and with administrative responsibility for court sessions when the New Zealand judge visits on circuit).
- Registrar of Births, Deaths and Marriages.
- Registrar of Incorporated Societies.
- Chief Electoral Officer.

The issue of multiple roles is not unique to Niue and is also a challenge for other Governments in the Pacific region.

Concerns were expressed about establishing another institution given the small pool of people who might be available and the already overburdened Budget demands. With a resident population of around 1400 people, there is clearly finite capacity and the view was that a strong case would need to be made for a new institution. The current pressures on the administration of justice resulted in the view that any work towards an NHRI could not be done by simply passing a law. One interviewee said:

“We don’t need a new institution. We need people to help us make things work.”

Another commented that it is “people who bring these rights into meaning”, not laws. However well intentioned, legislation, without community awareness, would likely result in a lack of connection with, and ownership of, any new institution.

Emphasis was placed on carefully raising human rights awareness and supporting the desire for the Government to work with NGOs before enacting any laws or making fresh Budget demands. A gradual process consisting of small but sustainable steps was preferred.

There was support for working first with existing civil society groups to build their capacity and capability with the support of the Government. Some considered a demonstration of support for Niue from others in the region through specific in-country activities was also needed in order to build support among those in Niue.

Culture, Custom and Human Rights

Forum Islands Countries have stressed the importance of culture “as it represents the expression and identity of the people and the foundation of the richness of our cultural diversity, traditions and customs”. Culture is also a fundamental human right and FICs have emphasised human rights as one of the seven areas that deserve immediate attention in the Pacific Plan.

THE PACIFIC CONTEXT

Discussion about the relationship between custom and human rights continues in the region. Concerns about this relationship have been expressed, both from those who are concerned that human rights might threaten custom and from those who consider that aspects of custom might not accord with human rights. In practice, real issues do arise. For example, during consultation in Tuvalu, concerns were expressed about a recent case involving freedom of religion and the appropriate method for resolving the conflict in a way that respected local culture and custom.

In Samoa, some considered that despite higher-court rulings there was an unsettled relationship between customary practice and constitutional rights, which had been highlighted in banishment cases. There was a spectrum of views about a proposed commission of inquiry to examine inconsistencies between the application of the Village Fono Act and the Constitution of Samoa. NGOs appeared to favour a broader review of all legislation that related to human rights and constitutional protection and their relationship with customary laws. Another view was:

“There is an assumption always that village practices and customs contravene human rights, which I’m critical of. We need to try to define human rights within the environment in which Samoans live.”

In Niue, there was interest in exploring how the international human rights framework, which protects the rights to language and culture, could assist language initiatives and support efforts to retain and strengthen Niuean culture.

The New Zealand Law Commission study paper, *Converging Currents: Custom and Human Rights in the Pacific* focuses on two objectives of Pacific leaders, namely maintaining local values and customs and implementing universal human rights. The study is a timely contribution to the on-going dialogue about custom and human rights in the region. Its thesis is:

“...that custom and human rights can be harmonised by looking at the shared, underlying values of both”.

The study notes that:

“The dignity of all persons, caring concern for all persons, robust debate, respect for other beliefs and the desire to free people from fear and want point to aspirations shared by custom law and human rights. These areas of commonality provide a basis on which custom and human rights can work together.”

In considering how harmonisation of custom and human rights might occur, the study concludes:

“Harmonisation will enhance custom by bringing it into line with changing social conditions and ensuring that it continues to reflect the underlying values of Pacific communities. Far from threatening custom, human rights can help it to develop and therefore survive in a modern world. Harmonisation will also assist cultural legitimisation of human rights by presenting them in a way that reflects the values of Pacific societies.”

Dialogue must continue about how the particular rights of vulnerable groups and individuals (such as women and children and young people) are protected within the framework of custom and human rights. The Law Commission’s study is a valuable contribution to that dialogue.

NHRIs can assist by establishing relationships with relevant groups and cultural leaders. For example, the New Zealand Human Rights Commission has used dialogue as a tool for assisting public debate about human rights, culture and custom related to the Treaty of Waitangi. This can also be used in other areas, such as religion, by encouraging interfaith dialogue to build understanding and tolerance.

NHRIs can also be given a specific statutory role which recognises the role of traditional leaders. For example, the Fiji Human Rights Act makes specific provision for working with traditional leaders where disputes arise. In addition, NHRIs can offer dispute-resolution services that are alternatives to formal court processes, providing a forum for more culturally relevant and appropriate conflict resolution.

Dialogue about NHRIs in Small States

International standards for NHRIs must be considered in the light of prospects and challenges for human rights promotion and protection in the Pacific. Small Pacific states face challenges to ensure that their limited resources are conserved, achieve value for money and show return for effort across national, regional and international commitments. The effectiveness of existing mechanisms is limited by, for example, an absence of specific legislation, limited funding or inadequate resources, lack of knowledge of existing international human rights norms and standards, lack of national co-ordination, and communication problems.

Despite the challenges, prospects remain good. Interest in progress remains and there is almost universal agreement that more work is both needed and desired. There are good suggestions for how to improve existing human rights mechanisms and more dialogue is desired about the development of NHRIs. From our research and consultations, we consider there are a number of matters that must be taken into account in any such dialogue:

THE STRENGTHS OF PACIFIC PEOPLES

- Traditional Pacific values are closely linked to the importance of family relationships, resilience, the sharing of resources and a co-operative approach to economic and social activity. These strengths should be acknowledged and drawn upon in any dialogue about NHRIs.
- Discussion about NHRIs should draw upon existing collaborative efforts so that dialogue about NHRIs reflects the best of human rights practice.
- More progress can be made if cultural expression, respect for cultural diversity and promotion and protection of culture, language and tradition are acknowledged as having a particular importance in the Pacific.

APPROACHES TO RESOURCE CONCERNS

- The physical remoteness of many islands suggests the costs of human rights promotion and protection will need to be shared within states. The feasibility of service delivery through or with existing services should be fully explored.
- Pacific peoples have many traditional skills and customary knowledge for gathering and distributing scarce resources for shared outcomes. These skills should be acknowledged when considering how to use limited resources to best effect for the shared outcome of human rights promotion and protection.
- Economies of scope, rather than scale, may need to be developed so that agencies already working in a particular area, such as health promotion, are able to contribute to human rights promotion and protection with an NHRI.
- Existing resources should be pooled to avoid duplication of effort and ensure the best use of existing expertise.
- Priorities for new resource allocation should be considered in light of what is already being done well by others, such as civil society groups.
- Efforts should be made to minimise risks of skill retention or loss by developing human rights expertise among wider and more diverse personnel including the private sector and civil society.

PARTICIPATORY PROCESSES FOR PACIFIC CONTEXTS

- Dialogue about forms of NHRIs should take account of and have respect for human rights promotion currently being carried out by women's organisations and other groups and ensure participation of women, young people, disabled people and vulnerable or marginalised groups.
- Efforts should be made to build upon work by the media to promote human rights, with account taken of the need to ensure promotion is accessible in the languages and media appropriate for Pacific peoples.

- Progress towards establishing NHRIs must be guided by the particular human rights issues and priorities in each state and the overall regional context.

Taking these into account, and drawing on our consultations, the next section discusses practical suggestions for ways forward.





Building Blocks

Seeking Pacific Models

This section looks at the range of forms of NHRIs and particular elements of the Paris Principles and assesses each of these in light of consultation and suggestions for pathways forward. Guidance from the Paris Principles, best-practice assessments and experience from the NHRIs in the Asia Pacific region and human rights mechanisms in other regions are referred to, along with consultations, and suggestions or recommendations from other regional meetings.

Neither the Paris Principles nor other guidelines stipulate a model NHRI. It would not be feasible to do so, since NHRIs are national institutions and must reflect their own context, including constitutional and legal framework, political and social situation and history. The result is that no two NHRIs are the same. They differ in form, mandate, powers, functions, composition and in many other ways. This provides an opportunity for small Pacific states to give their own unique expression to the Paris Principles.

Whatever form they take, to be recognised as NHRIs under international standards all must comply with the Paris Principles. With 12 NHRIs in the Asia Pacific region meeting these standards it is clear the task is not insurmountable. However, accreditation under the standards may take time. The International Co-ordinating Committee of National Human Rights Institutions for the Promotion and Protection of Human Rights (the ICC), which oversees accreditation of institutions to the United Nations under the Principles, has three categories of membership:

- Full: Fully in compliance with the Paris Principles.
- Observer: Not fully in compliance with the Paris Principles or not enough information is available to make a determination.

- No status: Non-compliant with the Paris Principles.

Membership may change over time and observer status can provide a useful basis for an institution to engage with other institutions, build capacity and develop expertise, competence and capability over time.

The Asia Pacific Forum of National Human Rights Institutions (APF) has three categories of membership:

- Full members: Institutions that fully comply with the Paris Principles. Full members are the key decision-makers of the APF. They elect a “Forum Councillor” to the APF peak decision-making body, the Forum Council, and a jurist to sit on the APF Advisory Council of Jurists.
- Candidate Members: Institutions that do not completely comply with the Paris Principles but could do so within a reasonable time. Admission as a Candidate Member requires a commitment from the applicant institution that active steps will be taken to meet the Paris Principles.
- Associate Members: Institutions that do not comply with the Paris Principles and are unlikely to do so within a reasonable period. Associate Member institutions must, however, possess a broad human rights mandate and only one institution will be admitted per member state of the United Nations.

We make some comments next about the establishment of NHRIs and consider the range of forms of NHRIs taking into account the four areas of the Paris Principles: competence and responsibilities; composition and guarantees of independence; methods of operation; and status of NHRIs with quasi-judicial competence.

Foundations

Although not an element of the Paris Principles, experience has shown that the process for establishing an NHRI is as important as the outcome. The Commonwealth Secretariat's Best Practice guidelines emphasise that the process of establishing NHRIs should be seen as critical to success. Without adequate processes for establishment, NHRIs are at risk of failing to have widespread support.

Government support is a particular area where dialogue is vital. There is an inevitable tension between the state's role in securing the human rights of its citizens and the role of NHRIs in promoting and protecting human rights. Although not referred to in the Paris Principles, an effective working relationship between an NHRI and a Government is essential if, in practice, the mutual goals of human rights promotion and protection are to be fully realised.

A key challenge is to make this tension healthy with mutual benefits, rather than a source of conflict. For example, Government agencies will have difficulty being effective in promoting and protecting human rights without the specialist advice or assistance that an NHRI can provide. Likewise, an NHRI cannot effectively carry out its functions if it is subjected to undue pressure or unfair control by Government agencies. Finding ways to work within the accepted boundaries of public accountability, and from a basis of mutual respect, requires Government leadership and support for a constructive working relationship.

That relationship should begin to be developed during any establishment phase through discussions and agreements about roles and responsibilities. Legal clarity about these can then be reflected, for example, in legislation establishing an NHRI. Once established, Government support can take a variety of forms including leadership on human rights issues, promotion of legislation establishing NHRIs, transparent and contested selection and appointment processes for members, and respect for the role of NHRIs in assisting good governance. As one commentator has noted:

"The relationship between the state and a national institution requires careful management — on both sides. The institution will, for maximum effectiveness, want to have its advice and recommendations taken seriously. It will want the state to listen and to act. Equally, a state will, having established an institution, wish to make full use of its expertise and honour its work...The two parties may not always agree. But a clear understanding of their respective roles will lubricate the wheels of communication." (Hosking)

The OHCHR has been offering support in some areas, particularly through its country teams in different parts of the world. Ensuring widespread participation and representation of diverse organisations and communities is critical and the OHCHR has commented that "the consultation process should be transparent, adequate, effective and properly resourced". Examples of processes for establishing NHRIs include:

- A broad-based steering committee co-ordinated by a Government agency such as a Ministry of Justice or Attorney-General's office.
- A scoping exercise or needs analysis.
- A working group with representatives of civil society, Government agencies, legal advisers and others (which may carry out a scoping exercise).
- A widespread and participatory consultation exercise (including parliamentary consultation).

Consultations may also take place in the context of other important issues. For example, consultation during the preparation of national development plans may also include human rights areas of particular concern.

Both Papua New Guinea and Solomon Islands have been actively considering the establishment of a national human rights institution. The APF, OHCHR and the United Nations Development Programme (UNDP) have been assisting with these initiatives along with discussions in Vanuatu. In Papua New Guinea, a three-day conference developed a comprehensive set of recommendations

which were subsequently reflected in draft legislation (although legislation has not yet been passed).

Whichever approach is used, there should be adequate time for considering the issues so that questions may be asked and answered and so that there is confidence of widespread support for any proposals. Consultation should be transparent and properly resourced. The Commonwealth Secretariat's *Best Practice Guidelines* suggest that the establishment of NHRIs should be a national project and offers the following areas for consultation:

- The national human rights situation.
- The legal basis for the institution.
- The mandate and powers of the institution.
- Measures to ensure independence, pluralism and adequate resources.
- The staffing, structure and geographical location of the institution.
- The method of appointment of commissioners.

At any time, but especially during the establishment phase, assistance is available from the OHCHR National Institutions Unit, the APF and the UNDP. Within the region, both the New Zealand and Fiji Human Rights Commissions have been requested to provide assistance to discussions by Forum Island Countries about NHRIs. The support of the international community is also helpful, and relevant organisations, including possible donors, should be kept informed of progress.

THE PACIFIC CONTEXT

Consultations in the Pacific have consistently emphasised the need for adequate involvement of all stakeholders in discussions about NHRIs. In-country discussions about this project emphasised that awareness-raising and consultation should take place in small, sustainable steps. For example, consultation with villages was considered critical, together with traditional leaders and relevant church groups. Consultation should involve local media and be in relevant languages. Adequate time must also

be allowed for those with village, island, church and other responsibilities so that they can attend and participate in consultation processes that are appropriate for them.

Collaborative ways of working are not new to the Pacific. Indeed, some Government departments, civil society groups, non-governmental organisations and national institutions, where these exist, have already demonstrated that collaborative approaches to human rights are both the most desired and effective ways of working.

National development plans and strategies exist or are in development in many Pacific states. These plans can also include components related to human rights, including strategies for funding and allocation of resources. In the long term, these might create a basis for a national human rights action plan.

SUGGESTIONS:

- Ensure adequate time is allowed for dialogue about the establishment of NHRIs and that processes are participatory.
- Ensure national dialogue occurs in a manner that best suits the particular state. Possible examples include: Establish a human rights foundation and an eminent persons' group to start a nationwide conversation about human rights, including use of champions and those who have credibility with Governments, among village chiefs and the general public, such as matai and traditional leaders.
- Provide more opportunities for NGOs and civil society organisations to work in partnership with Governments on dialogue about NHRIs.
- Use regional resources on human rights as a platform for further discussion.
- Develop human rights awareness and consultation processes around human rights issues that are relevant in the Pacific and are country-specific, such as around protection and strengthening of Pacific languages, traditions and culture.

- Include a brief review of existing in-country human rights mechanisms in consultations so this is accessible and there is common knowledge of what exists, what works well and what might need improving.
- Review existing national development plans and strategies to assess any human rights elements and consider whether these should have a separate human rights focus.

Competence and Responsibilities

The Paris Principles emphasise that NHRIs should be “*vested with competence to promote and protect human rights*.” This means: strong, clear legal foundations and a broad mandate.

The Commonwealth Secretariat’s *Best Practice Guidelines* suggest the legal foundations for NHRIs should be entrenched in the constitution or clearly stipulated in enabling legislation. The preferred foundation is a constitutional one. The less preferable alternative is an ordinary act of Parliament. The requirement for a legislative or constitutional foundation is designed to provide a sufficient level of independent legal status to allow an NHRI to perform its functions without confusion or interference from the Government or other public or private entities. Presidential decrees or other Executive orders are not preferred because of concerns that Executive orders can more easily be changed than constitutional or other laws.

For this reason, the Asia Pacific Forum of National Human Rights Institutions (APF) has tended not to extend full membership to institutions established under decrees. Reflecting this, the Human Rights Commission of the Maldives, which was established by presidential decree on 10 December 2003, has resolved not to apply for membership until empowering legislation has been passed by the Majlis (Parliament) that complies fully with the Paris Principles. However, in 2006, an amendment law was passed that provided a broad mandate and investigation powers.

It is possible therefore, and in some cases appropriate, for a state to consider how to develop proper legal

foundations over time and there is flexibility for this within categories of membership of the APF. This suggests that it is possible to take a “building blocks” approach and develop an institution over time, provided there is a commitment to do so in the long term and a clear pathway for development. In some cases, amending an existing law may provide a useful first step.

The legal foundations given by states vary depending upon the particular constitution, its history and whether legal protections can be afforded in other equally significant ways. In the Asia Pacific region, there are four NHRIs that are constitutional bodies: the Philippines, Fiji, Thailand and Afghanistan. The Philippines commission was the first NHRI set up under a constitution and continues to function under an Executive order passed in 1987. Elsewhere — for example in Mauritius, an island with a population of 1.3 million — the NHRI has been fully accredited as an institution under the Paris Principles, but the relevant law is not constitutional.

The Paris Principles indicate that the mandate of NHRIs should be as broad as possible, recognising the universality and indivisibility of human rights and referring to internationally agreed human rights standards. The mandate should extend to the public and private sectors and promotion of accession to international human rights treaties (including promoting harmonisation with domestic law where applicable). The definition of “human rights” should be broad and purposeful and might include:

- The human rights in the constitution, or Bill of Rights.
- Other legislated human rights.
- The rights in ratified international human rights instruments.
- The rights in international human rights instruments not ratified by the state.

The New Zealand Human Rights Commission also has a broad mandate to “*promote and advocate respect for, and an understanding and appreciation of, human rights in New Zealand society*”. More specific mandates are given

to “encourage the maintenance and development of harmonious relations” and the promotion and protection of equal employment opportunities. The Fiji commission has a particularly broad mandate, covering the Bill of Rights, anti-discrimination provisions in its founding legislation and international human rights instruments (including those that have not been ratified).

However, in practice, NHRIs with broad mandates will inevitably have to focus activities and may not be active in all areas of their mandates at all times. Some NHRIs in the Asia Pacific region do have narrower mandates, including Indonesia (“basic” rights and “human rights and freedoms”), Malaysia (“fundamental liberties in the constitution”) and the Philippines (civil and political rights).

Outside the region, some Ombudsmen institutions have human rights mandates and have been admitted to the International Co-ordinating Committee of National Institutions (ICC). In the Asia Pacific region Ombudsmen are mostly focused on maladministration in the public sector.

The Commonwealth Secretariat’s *Best Practice Guidelines* do not recommend the inclusion of anti-corruption or maladministration jurisdiction. It is thought this complicates the NHRIs’ mandate, as that role requires stronger powers that may conflict with the collaborative and recommendatory approach taken by most NHRIs. Government maladministration is usually dealt with by Ombudsmen and, as noted earlier, a number of countries with NHRIs, such as Australia, Fiji and New Zealand, have separate Ombudsmen institutions. Similarly, in Jamaica, the office of the Public Defender is established by statute and mandated to protect and enforce the rights of citizens in relation to acts of maladministration. In Antigua, Bermuda and Barbados, Ombudsmen’s offices are also founded under ordinary statute.

However, the mandate of the Timor Leste Office of the Provedor for Human Rights and Justice does include maladministration, and other options are possible. For example, in Fiji, the Ombudsman is the administrative head of the Human Rights Commission and in Papua

New Guinea the Ombudsman’s Office has a limited mandate under the constitution over human rights (although it has not sought ICC membership).

While the effectiveness of the Ombudsman’s offices across the region varies, in the short term at least this may, for some states, be the most realistic base for developing NHRIs.

The Paris Principles require that an NHRI have jurisdiction to do the following:

- Encourage and promote human rights through human rights education.
- Advise Government and legislators on human rights and make recommendations.
- Work with and consult appropriate persons, Government and non-governmental organisations and international organisations.
- Monitor compliance with human rights treaty obligations and promote ratification of human rights treaties.
- Inspect custodial facilities and places of detention.
- Co-operate with other NHRIs and relevant international organisations.

Some of these matters are detailed and would not be suitable for inclusion in constitutional law and separate laws have been passed in a number of countries including Fiji, Australia, Thailand, New Zealand and Afghanistan. The result is that in some cases there are both constitutional provisions and more specific enabling legislation.

In New Zealand, the courts have recognised that while the Human Rights Act is an ordinary statute, it has a special status which the courts must take into account when deciding cases. The Act sets out detailed functions and powers, jurisdiction for complaints of discrimination (including prohibited grounds and areas), prohibitions on racial and sexual harassment, processes for dispute resolution and other procedural matters.

THE PACIFIC CONTEXT

While a requirement for constitutional and legislative foundation is fundamentally important, the development and passage of laws is not without its own issues in the Pacific. Key concerns include the pressure on parliamentary time and lack of skilled parliamentary drafters. In some small states a significant amount of law dating from colonial administration remains in force, and the task of updating the statute book may be a large and daunting one. Obtaining high legislative priority can be difficult where the issues do not appear to be pressing, for example in small states where there are no apparent or severe human rights violations.

In some small states scepticism exists about a focus on legislation, particularly if it is seen to be driven by external rather than in-country priorities and concerns. For example, in Niue one person commented that “it is people who bring these rights into meaning, not laws”. With a small number of people available to carry out the necessary work, there is also a risk that a focus on the legislative process will divert limited resources from the steps needed to establish and maintain community support.

Tuvalu has a constitution, with an entrenched Bill of Rights, as well as enforcement provisions. Unique constitutional protection is afforded to the balancing of traditional and democratic rights. Judicial processes are in place, but in practice there is a significant backlog of civil and criminal cases awaiting court determination. With severe shortages of legal personnel, the justice system is unable to move quickly in cases that could be reconciled if dealt with promptly.

All of these factors suggest that the establishment of an NHRI should be well planned and allow sufficient time for legal foundations to be laid in light of the country context. Such planning should be informed by in-country consultations and include consideration of how progress can be made within the existing legislative framework and how progress can be made gradually. The development

of an NHRI over time is not without potential pitfalls. For example, it can be difficult to sustain interest and momentum over a long period and there may be conflicting priorities or operational demands. Planning would need to take account of these factors and keep the situation under review.

In relation to the mandate of NHRIs, there are also particular contextual issues in small Pacific states. Low levels of awareness of human rights, human rights issues that do not appear pressing, and existing advocacy by civil society groups and NGOs on specific human rights issues such as women and children’s rights can create an environment in which a broad mandate appears to suggest duplication of existing work or work that is of low priority. Some existing human rights machinery, such as Ombudsmen’s Offices, work well and are highly respected, such as in Papua New Guinea. In other countries the office is inactive or seen as ineffective.

Jurisdiction also needs to take account of local contexts. For example, a decision may be needed on whether detailed legislation is appropriate or whether more general empowering legislation is adequate in light of other related laws.

SUGGESTIONS:

- Adopt a “building blocks” approach to growth of NHRIs. For example, integrate development into existing planning and budget processes and anticipate short-, medium- and long-term development. Progress could be made as human and financial resources are planned for, secured and developed.
- Consider the range of options for incremental growth. For example, consider “nesting” an NHRI within an existing institution, with clear capacity and capability to development plans for its eventual separate identity.
- Develop a designated human rights capacity such as a human rights officer, human rights desk or focal points in a relevant Government agency, focusing on particular aspects of human rights and with a clear

programme of work. This might be complementary to other national human rights machinery or a step towards creation of an NHRI.

- Consider, as part of an incremental growth strategy, an NHRI beginning with a narrow mandate focused on human rights promotion and expanding the mandate over time and in light of proven performance. Promotion and protection roles and responsibilities might develop over time and best be spread or shared among well-respected and effective existing public sector and civil society groups at particular stages.
- Consider partnership and collaboration with civil society groups, traditional and other leaders and the private sector for human rights promotion, particularly during establishment and in the medium term.
- Law reform takes time, suggesting that legislative foundations for NHRIs should be well planned and have broad parliamentary support (which should be sought during any establishment phase). Consultation should begin well before legislation is developed or needed. Consideration should be given to developing mandates of other mechanisms or to progressive law reform.
- Ensure human rights promotion is guided by the priorities in each state.

Independence

Independence is a core concept in the Paris Principles for several reasons. Firstly, independence ensures that members and staff are not biased and are directed to carry out their duties fairly and impartially. Secondly, independence and fairness are needed to ensure the NHRI has the confidence and support of the public and the Government. Thirdly, independence ensures functions can be fulfilled without fear of interference from the Government or other public or private entities. The importance of independence is reflected in the accreditation process of the International Co-ordinating Committee of National Institutions and the system for assessing the various categories of membership of the Asia Pacific Forum of National Human Rights Institutions.

In practice, independence can be protected in a variety of ways such as security of tenure for members, independence over investigations and reporting processes, budgetary control, hiring of staff, and security of funding and infrastructure. Adequate financial and human resources and appropriate internal working procedures (including proper annual and other accounting practices) are also needed.

Independence is not the power to act with impunity. The OHCHR handbook emphasises that NHRIs must be accountable for their work, transparent in their operations and willing to engage in robust discussions about activities. Financial autonomy must be coupled with clear systems of financial accountability and reporting, including parliamentary reporting. Best practice indicates that NHRIs should be subject to audit and the reporting processes that apply to any agency in receipt of taxpayer funds, but ministries and Government departments should not be able to affect or limit effectiveness by applying inappropriate administrative restrictions or financial controls.

In practice, the requirements of proper accounting and reporting work reasonably smoothly for NHRIs and Governments. The New Zealand Human Rights Commission makes an annual report to Parliament and establishes an annual memorandum of understanding with the responsible Minister against which it reports throughout the year.

While it is the primary obligation of states to provide adequate funding for NHRIs, there is a great deal of international assistance available. For example, the Maldives have been able to obtain assistance through technical co-operation programmes with the United Nations through a three-year project to support the Commission. Other partners — such as other NHRIs, international agencies and donors who help in funding specific projects — can also assist.

Pluralism

The OHCHR handbook emphasises that for an NHRI to be effective, its members and staff should reflect the community they are mandated to serve and be people with expertise, integrity and credibility in the eyes of both the Government and the public. The Paris Principles refer to a pluralistic membership and stipulate appointment of people who can be representatives of:

- Non-governmental organisations, trade unions and social and professional organisations (such as associations of lawyers, doctors, journalists and eminent scientists).
- Trends in philosophical or religious thought.
- Universities and qualified experts.
- Members of Parliament.
- Government departments (if included, these representatives should participate in an advisory capacity only).

Each state must consider how best to reflect the pluralism of its own society. In the Paris Principles, there is no prescribed or ideal number of members. Across the Asia Pacific region the number of members in NHRIs varies widely and includes full-time and part-time members. The Paris Principles emphasise that appointment processes should be transparent and include consultation with civil society and parliamentary representatives. Pluralism can also be obtained by proactive employment policies that result in a diversity of staff reflecting the community in which the NHRI is operating.

In practice the means for securing pluralism vary widely even in large states. To help ensure pluralism, some NHRIs have established one or more advisory groups to assist with particular work programmes.

THE PACIFIC CONTEXT

In practice, independence ultimately depends on the quality of appointments and the relationships between the NHRI and the Government. The possible tensions noted earlier need skilled navigation, an understanding of the

shared goal of human rights promotion and protection, and a commitment to mutual respect. In Tuvalu, Government representatives indicated it was preferable for NHRIs to be independent as complaints were likely to be against the Government and an institution too closely aligned with it would cause confusion.

In small Pacific states the concept of independence has a number of practical implications. With a small, sometimes tiny, pool of people available to be considered for selection, it is inevitable that those seeking appointment and those making the appointments will be well known to one another, from the same village or island and/or related.

Multiple roles mean that a person employed in the public sector, running a private business and on the board of a local community group may effectively represent public, private and civil society interests at the same time. In addition, they may have a village or island leadership role or title in their own right and belong to a particular church or religious group. Conflicts of interest are inevitable and frequent.

In small Pacific states more work is needed to ensure these interests can be harnessed as strengths and not perceived as weaknesses that undermine perceptions of, or actual, independence. Where conflicts do arise, transparency and accountability will be important so that any conflicts of interest are dealt with openly.

The requirement for pluralist representation and diversity can also cause difficulties given the small numbers of available people and workforce fragility due to pressures from internal and external skills competition. Movement of workers between civil society, private and government sectors is also frequent.

SUGGESTIONS:

- Consider country exchanges of personnel such as Ombudsmen, members and staff of existing regional NHRIs and the Asia Pacific Forum of National Human Rights Institutions, relevant United Nations personnel, civil society leaders and others who can assist in

building capability and capacity and developing skills for managing issues of independence and pluralism in practical ways.

- Offer NHRIs and the APF the opportunity to examine innovative human rights education pilot projects, such as the Pacific Children's Project in Samoa, so that experience can be shared within the region.
- Demonstrate support for small Pacific states by establishing meaningful relationships with local counterparts and support their efforts to attract and retain skilled personnel.
- Consider whether pluralistic representation might be achieved in innovative ways and through existing mechanisms such as local public or civil society officers, island councils and traditional leaders.

Paths for the Pacific

The United Nations OHCHR handbook emphasises that the way an NHRI operates is critical to its effectiveness. Linked to pluralism and independence is the importance of an NHRI being accessible to as many organisations and members of the public as possible. A diverse membership, and a diverse staff, can build confidence that the NHRI is working for all parts of society, not just some. This also enhances the prospect of civil society confidence and increases the likelihood of collaboration and mutual support between civil society and the NHRI.

The Paris Principles refer to NHRIs developing effective relationships with NGOs given the “fundamental role played by non-governmental organisations”. In practice, many NHRIs have agreements with NGOs to work together and have collaborative projects.

Both the United Nations and the Commonwealth Secretariat guidelines emphasise that accessible ways of working are also important. Access for the full range of people means being able to respond to the customs and cultural needs of communities, providing services for no or minimal cost, responding to local issues and providing tailored human rights education. Access for disabled peo-

ple and those in remote areas, and the design and delivery of services for those with a range of literacy skills, will also be important.

THE PACIFIC CONTEXT

Accessibility is a key issue in small Pacific states. Many people live in remote areas. It is important to avoid “parachute training” where people visit for brief periods, carry out training workshops, then leave and never return or provide follow-up. Accessibility in this context means working with the media to distribute information and with a commitment to on-going relationships with communities in remote areas. Ensuring that information is available in a range of languages is especially important and poses challenges for some parts of the region given the fragility of some languages or the small populations among which these are spoken. Small Pacific states might also benefit from sharing experiences with small island states in other parts of the world, such as the Caribbean, which face similar issues.

SUGGESTIONS:

- Support the development of human rights awareness programmes centred on the human rights issues of most direct relevance to small Pacific states, such as protection and promotion of language, tradition and culture, employment, safety and security, freedom from discrimination, freedom of religion, and issues relating to the right to health, the right to life, environmental concerns, and justice-related rights.
- Ensure that human rights promotion engages in a constructive dialogue about custom and human rights.
- Provide more information about the structure, functions, mandate and programmes of existing NHRIs in the region.
- Offer staff exchanges and placements with existing NHRIs (including human rights mechanisms in small island states in other parts of the world) to relevant senior Government officials and NGOs in order to build understanding of the work of NHRIs.

Guardians of Rights

The Paris Principles state that NHRIs *may* be authorised to hear and consider complaints. Guidelines for procedures in these cases are provided. There is an emphasis on the principle of “amicable settlement through conciliation or, within the limits prescribed by law, through binding decisions or, where necessary, on the basis of confidentiality”.

Where an NHRI is given authority to hear complaints it needs appropriate legal powers, including the power to investigate complaints and conduct inquiries (with an emphasis on amicable settlement) and provide remedies for human rights violations.

THE PACIFIC CONTEXT

It is up to individual states to determine whether an NHRI will have jurisdiction to hear complaints. That issue would need to be considered in light of the functioning of other parts of the justice system, existing human rights mechanisms and how these were working.

For example, in Tuvalu, there was considerable support for the development of a forum for alternative resolution of disputes in appropriate cases. Difficulties with the administration of justice, pressure on the Fale Kaupule processes and the lack of a sitting magistrate were causing considerable delays. There was support for mechanisms of conciliation, premised on a legal framework for appropriate enforceability, rather than the adversarial court structure. However, the provision of an alternative forum for dispute resolution could not go forward without addressing the capacity and resource issues of the offices of the Attorney-General and the People’s Lawyer and having a working magistrate appointed.

SUGGESTIONS:

- Provide more information about how NHRIs resolve disputes and the powers for investigation and prosecution of complaints.
- Provide information about how conciliation processes can work effectively alongside, and not in conflict with,

existing traditional forms of dispute resolution.

- Provide opportunities for senior officials and traditional leaders to observe NHRI dispute-resolution practices.







International Reporting

Meeting obligations, managing responsibilities

International human rights treaty ratification and related implementation and reporting obligations are a significant concern for Pacific states. The Pacific region has the lowest ratification rates worldwide of the nine core international human rights treaties. Among the 16 Pacific Islands Forum member states, two have ratified six of these treaties, one has ratified four, two have ratified at least three, nine have ratified two, and two have ratified one treaty (the Convention on the Rights of the Child). A separate paper will be published in this series that looks at ratification in the region: *Ratification of International Human Rights Treaties: Added Value for the Pacific Region*. OHCHR 2007.

A full discussion of the concerns and challenges related to ratification and implementation is not possible in this paper. However, the prospects and challenges for human rights promotion and protection and the related dialogue about human rights mechanisms and NHRIs raise issues of direct relevance to treaty reporting, ratification and implementation. In addition, the Paris Principles stipulate that an NHRI should have power to “encourage ratification” of international human rights instruments and “ensure their implementation”. Pacific Islands Forum leaders, at the Forum meeting in Suva in October 2006, agreed that greater attention be given to implementing international conventions on human rights (Pacific Plan Initiative 12.5). Mention should therefore briefly be made of those matters.

This paper notes that concerns about financial constraints, finite human resources, competing domestic priorities and competing regional and international obligations are part of the dialogue about NHRIs. These concerns also inform the dialogue about reporting obligations. The international guidelines on reporting are sometimes seen as onerous,

geared more directly for larger states or based on assumptions that are not relevant in the Pacific (for example, about the size of the Executive or the data that is available for reporting purposes). The Regional Workshop on Human Rights Mechanisms in July 2005 noted the burden of human rights reporting obligations on small states and the lack of quality information on the benefits of becoming a party to international human rights treaties.

Experience in some Pacific states shows that even with considerable support from United Nations agencies and other groups, the process for reporting takes time (sometimes years), requiring extensive consultation and information-gathering. This can make it difficult for states to maintain momentum during the reporting process. Changes in Government or among ministers, movement of key personnel and traumatic environmental events (such as cyclones) can all result in extensive delays, with a resulting frustration or ambivalence about the importance of reporting.

On the other hand, there have been good collaborative efforts to produce such reports. For example, NGOs in Samoa, Papua New Guinea, Fiji and the Cook Islands have worked with Governments, sometimes leading efforts to develop treaty body reports in relation to the Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of the Child. In some cases, civil society groups also work with Governments towards collaborative implementation of the treaty standards.

NHRIs in the region assist Governments with monitoring and reporting obligations. For example, in New Zealand the Human Rights Commission provides information about human rights issues, data on complaints of discrimination,



human rights promotion, and comments on progress over the reporting period. NHRIs provide assistance and advice to the Government and to Parliament, more generally, for example, about the human rights implications of new proposals. NHRIs also have a role in promoting ratification of human rights instruments and may engage with international treaty bodies.

In some cases, treaty bodies have issued general recommendations relating to national institutions. For example, the Committee on the Rights of the Child has issued a general recommendation that states should report on any “independent body established to promote the rights of the child”. The Committee for Economic, Cultural and Social Rights has recommended that the mandates of NHRIs extend to economic, cultural and social rights.

SUGGESTIONS:

Consultation for this project shows that dialogue about NHRIs and their role in treaty reporting needs to take account of the particular issues facing small states. Practical suggestions for ways forward include:

- Ensure that dialogue about NHRIs for small states builds understanding of treaty ratification, implementation and reporting in the Pacific context.
- Provide opportunities for small states to consider how to develop treaty ratification, implementation and reporting capabilities.
- Provide information from the United Nations OHCHR National Institutions Unit about the role of NHRIs in treaty reporting.
- Share the experiences of NHRIs in the region.
- Consider placements or exchanges for officials with responsibility for managing state reporting responsibilities with their counterparts in countries in the region which have reporting experience.
- Explore experiences of composite treaty reporting and consider whether this might be more appropriate for some small Pacific states.

- Provide opportunities for Pacific states with experiences of the treaty body reporting process to share these with others in the region.



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Appendice

The Paris Principles

COMPETENCE AND RESPONSIBILITIES

1. A national institution shall be vested with competence to promote and protect human rights.
2. A national institution shall be given as broad a mandate as possible, which shall be clearly set forth in a constitutional or legislative text, specifying its composition and its sphere of competence.
3. A national institution shall, inter alia, have the following responsibilities:
 - a. To submit to the Government, Parliament and any other competent body, on an advisory basis either at the request of the authorities concerned or through the exercise of its power to hear a matter without higher referral, opinions, recommendations, proposals and reports on any matters concerning the promotion and protection of human rights; the national institution may decide to publicize them; these opinions, recommendations, proposals and reports, as well as any prerogative of the national institution, shall relate to the following areas:
 - (i) Any legislative or administrative provisions, as well as provisions relating to judicial organizations, intended to preserve and extend the protection of human rights; in that connection, the national institution shall examine the legislation and administrative provisions in force, as well as bills and proposals, and shall make such recommendations as it deems appropriate in order to ensure that these provisions conform to the fundamental principles of human rights; it shall, if necessary, recommend the adoption of new legislation, the amendment of legislation in force and the adoption or amendment of administrative measures;
 - (ii) Any situation of violation of human rights which it decides to take up;
 - (iii) The preparation of reports on the national situation with regard to human rights in general, and on more specific matters;
 - (iv) Drawing the attention of the Government to situations in any part of the country where human rights are violated and making proposals to it for initiatives to put an end to such situations and, where necessary, expressing an opinion on the positions and reactions of the Government;
 - b. To promote and ensure the harmonization of national legislation regulations and practices with the international human rights instruments to which the State is a party, and their effective implementation;
 - c. To encourage ratification of the above mentioned instruments or accession to those instruments, and to ensure their implementation;
 - d. To contribute to the reports which States are required to submit to United Nations bodies and committees, and to regional institutions, pursuant to their treaty obligations and, where necessary, to express an opinion on the subject, with due respect for their independence;
 - e. To co-operate with the United Nations and any other organization in the United Nations system, the regional institutions and the national institutions of other countries that are competent in the areas of the promotion and protection of human rights;
 - f. To assist in the formulation of programmes for the teaching of, and research into, human rights and to take part in their execution in schools, universities and professional circles;
 - g. To publicize human rights and efforts to combat all forms of discrimination, in particular racial discrimination, by increasing public awareness, especially through information and education and by making use of all press organs.

COMPOSITION AND GUARANTEES OF INDEPENDENCE AND PLURALISM

4. The composition of the national institution and the appointment of its members, whether by means of an election or otherwise, shall be established in accordance with a procedure which affords all necessary guarantees to ensure the pluralist representation of the social forces (of civilian society) involved in the promotion and protection of human rights, particularly by powers which will enable effective co-operation to be established with, or through the presence of, representatives of:
 - a. Non governmental organizations responsible for human rights and efforts to combat racial discrimination, trade unions, concerned social and professional organizations, for example, associations of lawyers, doctors, journalists and eminent scientists;
 - b. Trends in philosophical or religious thought;
 - c. Universities and qualified experts;
 - d. Parliament;
 - e. Government departments (if these are included, their representatives should participate in the deliberations only in an advisory capacity).
5. The national institution shall have an infrastructure which is suited to the smooth conduct of its activities, in particular adequate funding. The purpose of this funding should be to enable it to have its own staff and premises, in order to be independent of the Government and not be subject to financial control which might affect its independence.
6. In order to ensure a stable mandate for the members of the national institution, without which there can be no real independence, their appointment shall be effected by an official act which shall establish the specific duration of the mandate. This mandate may be renewable, provided that the pluralism of the institution's membership is ensured.

METHODS OF OPERATION

Within the framework of its operation, the national institution shall:

- a. Freely consider any questions falling within its competence, whether they are submitted by the Government or taken up by it without referral to a higher authority, on the proposal of its members or of any petitioner;
- b. Hear any person and obtain any information and any documents necessary for assessing situations falling within its competence;
- c. Address public opinion directly or through any press organ, particularly in order to publicize its opinions and recommendations;
- d. Meet on a regular basis and whenever necessary in the presence of all its members after they have been duly convened;
- e. Establish working groups from among its members as necessary, and set up local or regional sections to assist it in discharging its functions;
- f. Maintain consultation with the other bodies, whether jurisdictional or otherwise, responsible for the promotion and protection of human rights (in particular ombudsmen, mediators and similar institutions);
- g. In view of the fundamental role played by the non governmental organizations in expanding the work of the national institutions, develop relations with the non governmental organizations devoted to promoting and protecting human rights, to economic and social development, to combating racism, to protecting particularly vulnerable groups (especially children, migrant workers, refugees, physically and mentally disabled persons) or to specialized areas.

ADDITIONAL PRINCIPLES CONCERNING THE STATUS OF COMMISSIONS WITH QUASI- JUDICIAL COMPETENCE

A national institution may be authorized to hear and consider complaints and petitions concerning individual situations. Cases may be brought before it by individuals, their representatives, third parties, non governmental organizations, associations of trade unions or any other representative organizations. In such circumstances, and without prejudice to the principles stated above concerning the other powers of the commissions, the functions entrusted to them may be based on the following principles:

- a. Seeking an amicable settlement through conciliation or, within the limits prescribed by the law, through binding decisions or, where necessary, on the basis of confidentiality;
- b. Informing the party who filed the petition of his rights, in particular the remedies available to him, and promoting his access to them;
- c. Hearing any complaints or petitions or transmitting them to any other competent authority within the limits prescribed by the law;
- d. Making recommendations to the competent authorities, especially by proposing amendments or reforms of the laws, regulations and administrative practices, especially if they have created the difficulties encountered by the persons filing the petitions in order to assert their rights.



PACIFIC ISLANDS FORUM SECRETARIAT

Pacific Islands Forum Secretariat
Private Mail Bag, Suva, Fiji www.forumsec.org



Human Rights
Commission

Te Kāhui Tika Tangata

New Zealand Human Rights Commission,
PO 6751, Wellesley St, Auckland, New Zealand 1141
www.hrc.co.nz



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