

REGIONAL INITIATIVE TEMPLATE

Please complete each section below.

1. Contact Details

Please provide the following contact details:

Name of individual or group submitting initiative	Joint submission by the UN and SPC/RRRT
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2. Name of Initiative

Establishing a regional human rights mechanism in the Pacific

3. Background and Rationale

You may consider: What is the issue being addressed by this initiative? What are the causes of this issue? Are there relevant studies that have been carried out to support the issue? Are there links to national, regional or international goals/policies?

Please limit your response to no more than 750 words.

The issue is the lack of access to a regional human rights mechanism in the Pacific. Such a mechanism is increasingly needed as PICs require support to implement recently accepted international human rights commitments. All PICs participated in the 1st cycle of the Universal Periodic Review (UPR) at the United Nations Human Rights Council in Geneva. The UPR is a mechanism which involves the review of the human rights situation of every UN Member States and takes place every 4 to 5 years. We are currently in the middle of the 2nd cycle of the UPR. During the UPR, PICs which were under review have accepted a number of recommendations and thereby committed themselves to implementing them. This has created a momentum for human rights in the Pacific region. As a result of UPR, several PICs have looked more seriously into what measures they could adopt to further the promotion of human rights at the country level. While human rights expertise is growing in the region, many PICs still lack capacity in this area.

Over the years, there have been a number of studies all pointing to the need for a regional human rights mechanism in the Pacific. See for instance Discussion paper by V. Muntarhorn, "In search of the rights track: evolving a regional framework for the promotion of human rights in the Asia-Pacific region", OHCHR, June 2005, available at <http://bangkok.ohchr.org/news/events/asia-pacific-regional-framework-workshop->

[2010/files/Discussion_Paper_Vitit_Muntarbhorn_June_2005.pdf](#); P. Imrana Jalal, "Why do we need a Pacific Regional Human Rights Commission?" (2009) 40 *Victoria University of Wellington Law Review* 177, available at http://www.victoria.ac.nz/law/nzacl/pdfs/vol_14_2008/jalal.pdf; SPC/RRRT, Pathways for the Pacific: regional human rights mechanisms, 2012, available at <http://www.spc.int/rrrt/projects/regional-hr-mechanism>

The UN General Assembly has called on many occasions for the establishment of regional human rights mechanisms. The Pacific is the one of the few regions in the world where there is no regional human rights mechanism and where it is probably most needed as Pacific States are all small island countries with limited resources and capacity. Europe has the most elaborate regional human rights machinery which was developed in the aftermath of the Second World War and includes the European Court of Human Rights. The Americas have the Inter-American Commission and Court of Human Rights. Africa has also established an African Court of Human and People's Rights and the Arab region an Arab Human Rights Committee. Similarly, the ASEAN first established an Intergovernmental Commission on Human Rights and then a Commission for the Promotion and Protection of the Rights of Women and Children. In 2012, the ASEAN adopted a Human Rights Declaration.

4. Description

Please provide a brief overview of this initiative. Try to address the following: Does this initiative contribute to a positive change to the region? What makes this initiative of importance to the Pacific region as a whole? Who would implement this initiative? Who are the main beneficiaries? Are regulatory or legislative changes required at the national level to implement this initiative? How would the initiative be funded? Has this initiative been carried out previously? What are the key risks in implementing this initiative? Are there any complementary projects and programmes currently active? What is the proposed timeframe for this initiative? How would the initiative be sustained over the proposed timeframe?

Please limit your response to no more than 750 words.

The present proposal would be to establish a regional human mechanism in the Pacific. As mentioned above, In some regions of the world, States have drafted a regional Charter on human rights and established regional human rights institutions in the form of a Commission or even a Court to monitor the application of the Charter. The development of a regional Charter for human rights (which should comply with international human rights standards) can be a difficult process and takes time. For the Pacific, as a first step, the proposal focuses on setting a small intergovernmental structure to facilitate technical support to States to meet their human rights obligations and exchanges of good practices.

The initiative would contribute to improving the protection and promotion of human rights in the region, through the provision of expert advice and support to Governments and civil society organisations, research capacity to analyse human rights issues, assistance to national human rights institutions, promoting and facilitating the exchange of information, good practices and experts in the region, and launching regional initiatives to increase awareness of human rights. A regional human rights mechanism is particularly needed in the Pacific region where individual countries often lack the capacity and the resources to engage in such activities at the national level. Many PICs face similar human rights challenges, e.g. violence against women, violence against children, climate change and human rights, etc. They would benefit from pooling their resources at the regional level. All PICs would also benefit from a more formal mechanism through which they could exchange good practice and technical experts, whether it is on treaty reporting, UPR, or substantive areas such as disability and would also enhance the translation of universal human rights principles into the Pacific context. The establishment of a regional human rights mechanism for the Pacific would also allow the region to engage with the UN system and other regional mechanisms more easily. See for instance Report by OHCHR on workshop on regional arrangements for the promotion and protection of human rights, A/HRC/28/31, 19 December 2014, available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G14/247/17/PDF/G1424717.pdf?OpenElement>

PIFS is best placed to implement this initiative, with support from the UN and SPC/RRRT – and there have been some attempts to do so as mentioned below. The main beneficiaries would be Governments and the people of the Pacific, especially in countries which currently do not have a national human rights institution and thus have no ready access to technical advice on human rights. They would be able to discuss human rights issues in a regional forum, through a Pacific lens, in addition to international fora in Geneva. Civil society organisations would also benefit for a regional

human rights framework. No regulatory or legislative changes are required at the national level to establish a regional human rights framework. Nonetheless, enhanced cooperation on some substantive human rights areas might lead to regulatory or legislative changes in the concerned countries. PICs may consider developing and adopting a regional declaration on human rights, but it would not be a prerequisite to establishing a regional human rights mechanism. The initiative would be funded through a combination of contributions from States and from donors.

Back in the 1980s, there were attempts, initiated by LAWASIA, an association of lawyers in Asia and the Pacific, to develop a Pacific Charter of Human Rights which envisaged the establishment of a Commission to monitor the implementation of the Charter. Such discussions took place before the worldwide trend to establish regional human rights mechanisms. At the time, human rights was not seen as a priority for PICs. There have been other attempts since then. For instance, in 2008, there was a renewed initiative to establish a regional human rights mechanism in the Pacific, but which did not lead to much progress on this front, see <http://www.asiapacificforum.net/news/call-for-pacific-human-rights-mechanism.html>

In 2010, the 11th Triennial meeting of Pacific Women supported the continued research and scoping by SPC and the Pacific Islands Forum Secretariat (PIFS), including seeking appropriate funding, to explore the potential for a regional human rights mechanism, through further consultation and dialogue with national governments, including national women's machineries, and with civil society organisations, and the establishment of a dedicated working group to achieve this goal; http://www.spc.int/hdp/index.php?option=com_docman&task=search_result&Itemid=44.

In 2013 The Secretariat of the Pacific Community through its Human Rights Programme – The Regional Rights Resource Team (RRRT) – published the research paper entitled Pathways for the Pacific. The paper sought to advance the discussion by exploring the arguments for and against the establishment of a human rights system for the Pacific region.

Available for download at:

<http://www.spc.int/rrrt/publications-media/publications/item/379-pathways-for-the-pacific-regional-human-rights-mechanisms>

The regional situation has changed quite substantially in recent years, especially with PICs' engagement in the UPR process. Few years ago, PIFS has established a technical working group on a regional human rights mechanism. That working group has not been very active in the last couple of years, but discussions are ongoing on how to revive it. It would benefit from a clear commitment from PICs to establish such a mechanism and technical advice on other regional human rights mechanisms to guide its discussions. One risk is the lack of political will. Seeing recent developments in the ASEAN, PICs might now be more interested in following suit. For instance, at their last UPR, Kiribati expressed support for the development of a regional human rights mechanism. This initiative will benefit of the growing level of integration already existing on human rights work amongst PIFS, SPC/RRRT, UN agencies and civil society.

The proposed timeframe for this initiative is 3 years. This would allow enough time to review existing regional human rights mechanisms in other regions and assess how such mechanisms could be adapted to the Pacific context. PIFS, with support from the UN and SPC/RRRT, could present to PICs what options are available and re-launch discussions on which regional human rights framework might be the most appropriate for the region. The UN and SPC/RRRT could facilitate the participation in these discussions from experts from other regional human rights mechanisms to share their experience. The UN and SPC/RRRT would also like to involve the growing number of human rights experts from the Pacific, including from national human rights institutions, and who have recently been elected onto UN treaty bodies. The UN and SPC/RRRT could also facilitate the engagement of civil society organisations in the design process. Finally, the UN and SPC/RRRT could help fundraise to support the initiative.

5. Alignment to Regional Vision, Values and Objectives

Briefly describe how your initiative supports the vision, values and objectives set out in the Framework for Pacific Regionalism. These can be found in the Framework for Pacific Regionalism document or in the submissions guideline document.

Please limit your response to no more than 500 words

The initiative supports the Pacific Framework Vision since respect for human rights promotes peace, harmony, security, social inclusion. Combatting all forms of discrimination and upholding fundamental freedoms leads to free lives.

The initiative is also consistent with the values of the Framework for Pacific Regionalism since it will be pursued in defence and promotion of these values, including human rights, gender equality, a commitment to just societies, full inclusivity, equity and equality for all people in the Pacific. It is not inconsistent with the principle of sovereignty and a regional human rights mechanism could only be established with the consent of all participating countries. The initiative seeks to reinforce the capacity of PICs to protect, promote and fulfil human rights in the region. It will promote more productive partnerships between PICs, with the UN and with other regional human rights mechanisms.

The initiative will help pursue the objectives set out in the Framework for Pacific Regionalism as greater respect for human rights will intrinsically linked to sustainable, inclusive and equitable development.

6. Additional Information

Please provide or attach additional information in support of this initiative.

Please limit your response to no more than 5 pages.

Historical background

The proposal to set up a human rights framework for the Pacific has been around for three decades. The first attempt was made in 1982 when the UN sponsored a seminar in Colombo on National, Local and Regional Arrangements for the Promotion and Protection of Human Rights in the Asia Pacific Region. The seminar was followed by a series of annual workshops. In 1985, LAWASIA, a nongovernmental organisation comprising lawyers in Asia and the Pacific, started exploring the possibility of a regional system for the Pacific at a meeting in Fiji. The meeting was attended by 63 government and NGO delegates but was overwhelmingly dominated by Asian, Australian and New Zealand delegates. After various working party meetings, a Draft Pacific Charter of Human Rights was adopted at a meeting held in Fiji in 1989 under the auspices of LAWASIA. The draft was modelled closely on the African Charter on Human and Peoples' Rights and provided for civil and political rights, and some economic, social and cultural rights. It foresaw the establishment of a commission to supervise implementation. At the time, the LAWASIA initiative was unable to attract support from Pacific governments.

A region based on PIF membership

Although the United Nations treats the Asia-Pacific as one region, a consideration of the potential advantages of RHRMs suggests that it would be preferable to confine the mechanisms to the Pacific sub-region. Asia itself is probably too vast and culturally divergent an area to embrace a single regional framework and it is more likely that subregional arrangements will emerge in parts of Asia, as the ASEAN precedent suggests. The absence of a political body bringing together all States in the Asia-Pacific region both reflects the diversity of those States and militates against the development of human rights structures across the entire region. Even if a single Asia-Pacific structure were established, it would be difficult to provide adequately for the Pacific, both in terms of geographic proximity and an appreciation of Pacific issues, cultures and traditions. Further, Pacific concerns could easily be overlooked in a body required to service the vast populations in many Asian countries. It is therefore more appropriate to consider a human rights system based on the existing political structure of the Pacific Islands Forum. The precise relationship between membership of the Forum and acceptance of a regional framework would need to be determined. It would be open to the member States to make acceptance of the entire regional system obligatory for all Forum members (as occurs in the

Council of Europe). Given the commitment to human rights in the Pacific Plan, it might at least be expected that all member States would endorse a charter setting out the rights in question. However, it would also be possible to make some features optional. For example, in the Organisation of American States, all members endorsed the American Declaration on the Rights and Duties of Man, and all are subject to review by the Inter-American Commission, applying the standards of the Declaration. However, only some members are party to the American Charter and subject to the processes established by the Charter, including those in the Inter-American Court of Human Rights. While a commitment to the entire regional system by all Forum members may be optimal, a more flexible approach may have some advantages. It would mean that progress need not be delayed should one or more members be unwilling to accept a Commission, while others wished to proceed. The resolution of this issue may depend partly on the model adopted for introducing the mechanism⁵⁹ and, perhaps more importantly, on member assessments of what is realistically attainable.

The role of civil society in establishing and operating regional human rights mechanisms

Experience in other regions suggests that civil society organisations (CSOs), such as human rights NGOs, law societies, women's organisations, disabled persons' organisations, churches and trade unions, must play a significant role in the development and operation of any regional mechanism. In many regions, they have been influential advocates, urging governments to commit to regional human rights standards and to establish regional institutions to oversee compliance with those standards. CSOs have also been important in ensuring that the regional standards at least maintain existing international norms. They have provided vital support to individuals or groups wishing to raise their concerns before regional commissions or courts. They have also been valuable in scrutinising the work of existing regional institutions to ensure that they remain effective and independent of national governments. For this reason, it is important that CSOs are given a voice in the processes for establishing a regional mechanism, and have standing before the institutions once they are established. It is also important that Pacific CSOs continue to develop their own awareness and capacity to perform these crucial roles.