

# PROTECTING HUMAN RIGHTS IN THE PACIFIC (APIA 28 AND 29 APRIL 2008)

It is a great pleasure to sit in my office in Wellington on a wet, cold, typical Wellington day and write a foreword for this special issue of the Victoria University Law Review. While I write I happily think back to last year's conference – and not only because of the weather but because of the participants' enthusiasm for the issues discussed and their collegiality, which created an amazing atmosphere as warm and friendly as Samoa and its people itself.

The idea for a conference emerged in 2005 when, at the inaugural conference celebrating the establishment of the Australian Centre for Peace and Conflict Studies, one of the break-out groups discussed whether the 1989 LAWASIA Pacific Human Rights Charter could and should be revived. The 1989 Charter had been drafted by Pacific experts and discussed in several meetings around the Pacific, but in the end had failed to have any impact. The main reason for its lack of influence was attributed to the lack of follow-up, an absence of opportunities for participation at the highest levels, and non-involvement of key stakeholders. At the time, the Charter was also seen as only containing and promoting western values, and perceived to have been drawn up by outsiders despite there being acknowledged experts from the Pacific, Australia and New Zealand working towards its creation. Furthermore, the lack of financial and personnel resourcing was a major factor contributing towards the failure of the LAWASIA Charter to be developed by the Pacific island states.

The organisation of the 2008 conference developed with this background mind. Concerted effort was made to invite representatives from all Pacific island states. The aim of the conference was to identify key human rights challenges in the Pacific and strategies for strengthening national, regional and international mechanisms for enhanced protection of human rights in the region.

Representatives were asked to prepare country reports on their respective states having regard to the following human rights issues: health, environment, culture and language, education and rule of law. These reports provided useful background to the discussions at the conference. The country reports from the Federated States of Micronesia, Papua New Guinea, Fiji, Australia and New Zealand were available at the conference. The conference participants also heard about regional mechanisms outside the Pacific, namely the experiences of the Inter-American, European and African mechanisms, as well as the efforts to develop a regional mechanism in Asia. This added perspective to some core issues of the conference, such as the question whether the Pacific should have its own human rights charter or whether the practice of customs and traditions was incompatible with the adherence to human rights.

On 28 and 29 April 2008, 55 representatives of civil society organisations, national human rights institutions and international human rights organisations, Members of Parliament, representatives of the Pacific Islands Forum Secretariat, RRRT, the UN Office of the High Commissioner for Human Rights Regional Office for the Pacific, the Asia Pacific Forum, the Commonwealth Secretariat, and the Pacific Island Police Commissioners, jurists and academics based in Australia, Chile, Federated States of Micronesia, Fiji, Kiribati, Papua New Guinea, New Zealand, Samoa, Tonga, the United Kingdom, and Vanuatu met in Apia, Samoa to consider "Strategies for the Future: Protecting Human Rights in the Pacific". They were joined by officials of the Government of Samoa including inter alia, officials from the Samoa Attorney-General's Office, Ministry of Foreign Affairs, Office of Parliamentary Counsel and the Office of the Ombudsman.

On the eve of the conference, the speakers accepted an invitation from Ms Caroline Bilkey, the New Zealand High Commissioner to Samoa, to a reception at the High Commissioner's residence. The very successful evening was used to discuss some of the more pertinent regional human rights issues of the conference.

The following morning started in good spirit. The conference was opened by Reverend Dr Iutisone Saluvao, Secretary of the Congregational Christian Church of Samoa, with a prayer followed by a welcome of the participants by the three organisers represented by Ms Rebecca Wendt, Assistant Attorney-General of Samoa, Mr Ian Byrne of INTERIGHTS, and me, Dr Petra Butler, Associate Director of the New Zealand Centre for Public Law. Ms Purna Sen, Director of the Human Rights Unit, Commonwealth Secretariat, the main sponsor of the conference, gave the welcoming address before the conference dived into the real issues.

The first day of the conference was devoted to an analysis of human rights issues in the Pacific. The keynote address was given by Ms Imrana Jalal, Fiji's first Human Rights Commissioner, exploring whether a Pacific human rights charter was desirable. After explaining the history of a regional Pacific human rights charter and its failure to evolve, she pointed out that in 2007, Judicial Officers and NGOs in the Pacific called for a regional human rights mechanism. She emphasised that 19 years after the LAWASIA Charter the call for a regional human rights mechanism has been made by Pacific people themselves. She believes the climate has changed from the one in which the 1989 Charter was discussed because:

- Knowledge of human rights has improved
- Large numbers of NGOs are committed to and use human rights
- There is greater ratification of Conventions
- There is greater use of human rights standards being used in the courts
- There is greater use of language of human rights by Governments
- There is a steady reduction of the suspicion of human rights.

She argued that a regional mechanism could take account of local peculiarities and could also complement the UN human rights convention system. She gave examples of the right to fish and the

right to a safe environment as being critical to Pacific islanders, not just in relation to Pacific culture but because geographically, climate change effects are felt disproportionately in the Pacific.

A regional human rights commission would provide greater relevance, visibility and accessibility, while the locations of the offices of the UN system may be considered inaccessible. A regional commission would be staffed by the sons and daughters of the Pacific. The perception that human rights are Western constructs could be adequately addressed. A regional commission, Imrana Jalal argued, would better implement the Paris Principles and be less vulnerable to political interference. However, she also stressed that a regional commission is not necessarily an alternative to national human rights commissions, but may work in partnership with them.

Her speech was complemented on Day 2 by Kathryn Hay, Massey University, New Zealand, whose paper drew on interviews with six participants in the Pacific in regard to the question whether a regional human rights mechanism was desirable. Hay concluded that a coordinated approach was needed for a regional mechanism to be successfully implemented.

In the following sessions, human rights issues contained in culture and language, education, health, environment and rule of law were discussed on the basis of the country reports. Professor Lau Asofou Soo, National University of Samoa, examined culture and language and the interface with human rights. He concluded that reconciling traditional values with human rights principles will be a possible but gradual process which would take time and patience.

Father Tevita, Friendly Islands Human Rights and Democracy Movement in Tonga, focussed in the next session on health, recounting his experiences in Tonga. Before going into more detail about issues relating to health, Father Tevita stated that there was a need for good governance and transparency in Tonga. In his review Father Tevita pointed out that due to economic restraints health care for the general public in Tonga was sub-standard. He gave an example where a drug was used which had not been on the market in either Germany or New Zealand in the past 30 years.

Freda Talao, human rights lawyer and Chair, Individual and Community Rights Advocacy Forum, Papua New Guinea, set the scene for her presentation which focussed on the right to education by pointing out that Papua New Guinea has six million people with 850 tribal groups and 860 languages. This creates enormous challenges, and that it is "quite amazing that we have held together without bloodshed." Transport is extremely difficult and, therefore, education is a difficult task. PNG has 19 provinces, with only one female Member of Parliament. PNG became independent in 1975 and human rights are protected in the Constitution, with 16 basic rights. However, all the economic, social and cultural rights are set out as national goals and directive principles, not justiciable rights. The influence of civil society groups to act as a check in regard to the adherence of human rights in PNG is not very strong, but they bring human rights to the forefront. Freda Talao gave a case study of an MP who had been sexually abusing his daughter. The police were refusing to investigate the case. The Ombudsman and the media were used to pressure the police to investigate and a 12 year jail term was secured. The MP was then able to run a successful election

campaign from inside jail. However, his election was nullified by the court. This example shows that educating people on their rights can be a major challenge.

Hon Susan Glazebrook, Judge of the New Zealand Court of Appeal, addressed the question of the right to a quality environment. The LAWASIA draft charter had already listed the environment as a separate right. Justice Glazebrook discussed the following issues:

- the Pacific will be first to show effects of climate change
- the right to a quality environment is essential to any regional mechanism
- How to secure efforts to reduce climate change from industrialised countries that are responsible for the situation
- How the right to the environment fits with Pacific values, culture and institutions.

The last presentation, which canvassed the country reports and focussed on the rule of law was by Tupou Vere, Pacific Concerns Resource Centre, Fiji. Drawing from the country reports she pointed out that sometimes the line between executive and legislature seemed blurred. Naturally, Tupou Vere's presentation focussed on the situation in Fiji examining the state of the rule of law during and since the last coup.

The formal part of Day 1 ended with a presentation by Mark Thompson, Secretary General of the Association for the Prevention of Torture, on "Working with Pacific Police." He drew attention to the incidents of police misconduct the participants had heard during the day and advocated the adoption of the UN Code of Conduct for Law Enforcement as minimum standard. Generally, Pacific island states should review and revise policies on custody of detainees and survey the judiciary to ensure that arrests and prosecutions are consistent. Further, a shift from being purely reactive to being more proactive is needed.

The day ended with a dinner at the conference hotel which provided the participants with a feast of local food. Professor Tony Smith, Dean of Law, Victoria University of Wellington, in his after dinner speech amused the participants with some sporting anecdotes.

While Day 1 explored the human rights issues in the Pacific, Day 2 was devoted to examining some general themes and other regional human rights instruments around the world.

Professor Sarah Joseph, Monash University, discussed the impact of the World Trade Organization on human rights. She suggested that economic globalisation would be a challenge for the Pacific and discussed the role of the WTO as one of the chief agents. Outlining the pros and cons of free trade agreements and their impact on human rights, she identified specific challenges for the Pacific states and the danger that they could be used as precedents, for instance for Vanuatu, for other countries which have not yet joined the WTO.

Professor Joseph was followed by Professor Unasa Vaa, from the National University of Samoa, who spoke on "Human Rights and Custom". He used his native Samoa as an example to demonstrate that in his view, custom and human rights are compatible concepts and that the

implementation of human rights standards would not lead to a demise of customary practices – rather, peaceful coexistence was possible.

The next presentations gave an overview of the European Convention on Human Rights and its implementation (Professor Kevin Boyle, Essex), the Inter-American Human Rights Commission (Mr Felipe González, Human Rights Commissioner), the African Charter on Human and Peoples Rights (a paper prepared by Professor Jacques Frémont, University of Montreal for whom the inefficiency of air travel prevented attendance but whose paper was summarised by Dr Petra Butler) and the emerging ASEAN Charter (Ms Sou Chiam, Barrister, Auckland). Those presentations enabled the participants to compare what had crystallised as human rights challenges in the Pacific with experiences in other parts of the world.

Ms Kendra Dessereux, PACLII, showed the participants the possibilities an online database like PACLII could offer to disseminate information throughout the Pacific and to empower courts, NGOs, and human rights lawyers in their use of and adherence to human rights.

The discussion at the end of the conference with panellists Imrana Jalal, Professor Kevin Boyle, and Susan Farran, Senior Lecturer, University of Dundee was chaired by Ms Andie Fong-Toy, Director of the Political and Security Programme, Pacific Islands Forum Secretariat. Ms Fong-Toy drew together the discussion of the past days, stating that the conference had shown that the discussion on a regional mechanism had markedly evolved over the years and that it was time to establish a working group to draft a proposal for a regional mechanism. The final conference statement was discussed and is reproduced in this volume.

The conference ended with an invitation by the Prime Minister of Samoa to a cocktail function. In his speech the Prime Minister stated Samoa's continuous commitment to ratification of international human rights conventions and that Samoa's recent ratification of the ICCPR would not be the last convention that Samoa would sign.

Since the conference, the situation has started to move. For example, Samoa is close to having its own Human Rights Commission and other Pacific island states came together to discuss the establishment of national human rights institutions. The 2009 ANZIL Conference will devote a session to the discussion of human rights in the Pacific.

A special thankyou goes out to Ms Yana Khatchian whose fantastic administrative support contributed immensely to the success of the conference, and also to my friend, Iain Byrne, at INTERIGHTS and co-organiser. My former student, Ms Catherine Harwood, kindly agreed to be the special student editor-in-chief for this conference issue and her enthusiasm and meticulous editing made this issue possible.

Finally a great thankyou must be extended to the sponsors of the Conference: the Commonwealth Secretariat, the Embassy of the Federal Republic of Germany, NZAid, and the

Samoa Attorney-General's Office. Without their generous help, in both financial and practical terms, the Conference would not have been possible.

May the spirit of the Conference continue.

Petra Butler, Wellington, May 2009