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PACIFIC HANDBOOK ON HUMAN RIGHTS TREATY IMPLEMENTATION

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Table of Contents

Acronyms	1
Introduction	2
Chapter 1 – What are Human Rights?	4
Defining Human Rights	5
State Obligations	5
Individual Responsibilities	6
The Origins of Human Rights and the Development of Human Rights Treaties and Mechanisms	6
Human Rights Treaties and Optional Protocols	7
The International Covenant on Civil and Political Rights (ICCPR)	9
The International Covenant on Economic, Social and Cultural Rights (ICESCR)	9
The International Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)	10
The International Convention on the Rights of the Child (CRC)	11
The International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)	12
The International Convention on the Rights of Persons with Disabilities (CRPD)	13
The International Convention against All Forms of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)	14
The International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families (ICRMW)	15
The International Convention for the Protection of All Persons from Enforced Disappearance (CPED)	16
Pacific Ratification of Human Rights Treaties	18
The Treaty Bodies	19
Human Rights Mechanisms under the UN Charter	20
The Human Rights Council (HRC)	20
The Universal Periodic Review (UPR)	20
Special Procedures	23
List of Special Procedures	25
Human Rights Council Complaint Procedure	27
Chapter 2 – Why Implement Human Rights Treaties?	28
The Added Value of Human Rights Treaty Ratification and Implementation	30
The Cost of Non-Implementation	31
The Link between Human Rights and Development	32
The Link between Human Rights and Culture	34
Changing Cultures in a Changing World	36
Cultural Practices Contrary to Human Rights Principles	37
Human Rights Protect Culture	40
The Link between Human Rights and Good Governance	40
The Link between Human Rights, Peace, and Security	42
Chapter 3 – How to Implement Human Rights Treaties?	44
Signing a Human Rights Treaty	45
Accession or Ratification	45
Reservations and Declarations	45
Implementing Human Rights Treaties	46
Legislative Implementation	46
Judicial Implementation	47
Administrative Implementation Measures	49
Reporting to Human Rights Treaty Bodies	53

Why Report?	53
How to Prepare a State Report	53
Reporting Process and Review by the Treaty Body	54
Treaty Body Recommendations	55
States that Fail to Submit Reports	56
Chapter 4 – Who can contribute to Human Rights Treaty Implementation?	58
What Role for Members of Legislature?	59
Legislative Reform and Implementation	59
Budgeting for the Implementation of Human Rights	60
Using Parliamentary Committees for Oversight	60
Monitoring Government Reporting and Follow-up to Treaty Body recommendations	60
What Role for Civil Society?	61
Civil Society Interaction with Human Rights Treaty Bodies	62
Submitting Complaints to Treaty Bodies	63
Submitting Complaints to the Human Rights Council	64
Civil Society Engagement with Special Procedures	64
Civil Society Engagement with the UPR Process	65
What Role for National Human Rights Institutions?	66
Annex 1 – Universal Declaration of Human Rights	68
Annex 2 – Human Rights Glossary	72
Annex 3 – Contact of Key Human Rights Partners	78
Annex 4 – Endnotes	79

Acronyms

Human rights treaties and optional protocols

CAT	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
OPCAT	Optional Protocol to the Convention against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CEDAW-OP	Optional Protocol to the Convention on the Elimination of all Forms of Discrimination against Women
CPED	International Convention for the Protection of All Persons from Enforced Disappearances
CRC	Convention on the Rights of the Child
CRC-OPAC	Optional Protocol to the CRC on children in armed conflict
CRC-OPSC	Optional Protocol to the CRC on the sale of children, child prostitution and child pornography
CRPD	International Convention on the Rights of Persons with Disabilities
CRPD-OP	Optional Protocol to the Convention on the Rights of Persons with Disabilities
ICCPR	International Covenant on Civil and Political Rights
ICCPR-OP1	Optional Protocol to the ICCPR (on individual complaints)
ICCPR-OP2	Second Optional Protocol to the ICCPR, aiming at the abolition of the death penalty
ICERD	Convention on the Elimination of All Forms of Racial Discrimination
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICESCR-OP	Optional Protocol of the Covenant on Economic, Social and Cultural Rights
ICRMW	International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families
UDHR	Universal Declaration of Human Rights

Other acronyms

CSOs	Civil Society Organisations
MDGs	Millennium Development Goals
NHRIs	National Human Rights Institutions
NGOs	Non-Governmental Organisations



Introduction

The Universal Declaration of Human Rights (UDHR), which was adopted on 10 December 1948 by the United Nations, marks the global recognition of international human rights standards. All human rights conventions (or treaties) which emerged subsequently have their origins in the UDHR. And as members of the United Nations, all States have committed to uphold the provisions of the Universal Declaration.

Human rights standards represent principles and values that relate to the everyday lives of Pacific Islanders and are central for the region's development, peace, and security. They empower and enable all people, and in particular the less advantaged and marginalised, to enjoy meaningful and dignified lives as equals with everyone else.

Pacific Island Countries have repeatedly committed themselves to the implementation of human rights. In the 2004 Auckland Declaration, which laid the foundation for the Pacific Plan, Pacific Islands Forum Leaders adopted the following vision:

Leaders believe the Pacific region can, should and will be a region of peace, harmony, security and economic prosperity, so that all of its people can lead free and worthwhile lives. We treasure the diversity of the Pacific and seek a future in which its cultures, traditions and religious beliefs are valued, honoured and developed. We seek a Pacific region that is respected for the quality of its governance, the sustainable management of its resources, the full observance of democratic values and for its defence and promotion of human rights.¹

Almost all Pacific Island Countries have now ratified at least one of the nine core international human rights treaties, which contain legally binding norms. The region's overall level of human rights treaty ratification, however, remains low. There is no question that Pacific Island States, like all countries, face a series of challenges in implementing human rights treaties. Gaps in technical knowledge, geographic size and isolation, a wide range of budgetary and planning demands, and limited financial and human resources are among common challenges the region faces.

This handbook aims at addressing both the practical as well as the political challenges that continue to exist. It aims to be a tool for overcoming these challenges for Government officials, policy-makers, civil society actors, traditional leaders, communities, members of Parliament, judges, as well as individuals and groups who promote human rights. It provides practical examples of how Governments, civil society, Parliamentarians and others have helped to realize human rights and how all stakeholders can contribute to the furthering of human rights in the Pacific.

The handbook also discusses the challenges of realizing human rights in the context of cultural values and resource constraints. The region shows compelling and encouraging examples of successful initiatives that have advanced human rights standards and principles. This handbook lists several of these success stories with a view to enhancing knowledge-sharing within and among Pacific Island Countries. These examples also highlight how the implementation of human rights treaties contributes to achieving sustainable development and a dignified existence for all Pacific Islanders: women and men, girls and boys.

The handbook is structured into four main chapters. The first chapter discusses the meaning and origins of human rights, the main sources of human rights law and the main international mechanisms to advance human rights. The second chapter then goes into a discussion of the importance of human rights in the Pacific and addresses the links between human rights and culture, development, good governance, and peace and security. The third chapter includes a detailed discussion of human

rights treaty ratification, reporting, and implementation. The fourth and last chapter provides suggestions for civil society organizations, members of Parliament, and National Human Rights Institutions to advance the human rights norms enshrined in treaties.

Moving human rights forward and making them a reality for the people in the Pacific requires a commitment across Government, Parliament, and civil society. This handbook aims to contribute towards the advancement of human rights in the Pacific by outlining concrete steps each of the stakeholders can take, and by discussing some of the most pressing human rights challenges for the region.

The handbook was developed by UNDP Pacific Centre, with the cooperation of OHCHR Pacific and with support from UNDP's Global Human Rights Strengthening Programme. It is intended to be a dynamic tool and the UNDP Pacific Centre welcomes feedback on it.

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CHAPTER 1 – WHAT ARE HUMAN RIGHTS?

Defining Human Rights

All human beings are born free and equal in dignity and rights.

Article 1, Universal Declaration of Human Rights

Human rights can be defined as the basic standards without which people cannot live in dignity as human beings. Human rights are the foundation of freedom, justice, and peace.

Human rights are often expressed and guaranteed by law, for example in the form of treaties. These legal guarantees protect individuals and groups against unlawful interference with their freedoms and dignity. Human rights law lays down obligations on States to promote and protect the human rights and fundamental freedoms of all individuals within a country's borders. In other words, human rights regulate the conduct of States towards its citizens and towards other persons living in a State's territory or under a State's jurisdiction. Many international human rights standards, in particular civil and political rights and freedoms, have been incorporated into countries' constitutions and laws, including in the Pacific.²

Human rights have a number of distinct characteristics, which differentiate them from other rights provided for by national legislation. In particular:

- Human rights are **universal** whatever our nationality, place of residence, sex, national or ethnic origin, colour, religion, language, or other status, and regardless of our country's political, legal, economic, or cultural systems. We are all equally entitled to human rights without discrimination.³
- Human rights are **inherent** and **inalienable**. Every person is born with and has human rights and those rights cannot be taken away, except in very specific situations and following due process. For example, the right to liberty may be restricted if a person is found guilty of a crime by a court of law.
- All human rights are **indivisible** and **interdependent**, whether they are civil and political rights, such as the right to life, equality before the law and freedom of expression; economic, social and cultural rights, such as the right to work, and to social security and education, or collective rights, such as the rights to development and self-determination. There is no hierarchy among human rights. All human rights are equally important; the improvement of one right facilitates advancement of the others and the deprivation of one right adversely affects the others. For example, it is meaningless to talk about the right to take part in one's country's public affairs for a person who goes hungry; a child is equally unable to realize the right to education if he or she is not at the same time protected from violence.
- **Non-discrimination** is a cross-cutting principle in international human rights law and is present in all the major human rights documents. Non-discrimination applies to everyone in relation to all human rights and freedoms and it prohibits discrimination on the basis of sex, race, descent, religion, language, political or other opinion, colour, nationality, social origin, property, disability, age, marital status, birth or other status.⁴

State Obligations

Human rights law entails **obligations** on States. Specifically, States have the obligation under international law **to respect, to protect and to fulfil** human rights.

The obligation to respect means that States must not interfere with the enjoyment of human rights. For example, in order to respect the right to education (article 28, Convention on the Rights of the Child) States should not adopt legislation that bars certain children from education; the obligation to respect the right to and adequate standard of living (article 11, International Covenant on Economic, Social, and Cultural Rights) obliges States not to forcibly evict people; States are also obliged not to arbitrarily limit freedom of expression (article 19, International Covenant on Civil and Political Rights) or the right of peaceful assembly (article 21, International Covenant on Civil and Political Rights).

The obligation to protect means States are to protect individuals and groups against interference from third parties with the enjoyment of their rights. The obligation to protect the right to education, for example, obliges States to ban corporal punishment in schools as a form of discipline, as it interferes with the child's dignity and enjoyment of education;

or it obliges States to work with parents to make sure children are able to attend school. The obligation to protect also means States are obliged to hold to account individuals or private entities that violate another person's rights (article 8, International Covenant on Civil and Political Rights), for example, by bringing to justice an employer who exploits another person through forced labour.

The obligation to fulfil means that States must take positive action to facilitate and provide for the enjoyment of that right through the adoption of laws, policies, action plans etc. The obligation to fulfil the right to education (article 28, Convention on the Rights of the Child), for example, obliges States to take appropriate legislative, administrative, social or other measures to prevent school drop-outs and ensure that children in remote communities have access to education. With regard to protection from torture and ill-treatment (article 7, International Covenant on Civil and Political Rights; article 2, Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment), the obligation to fulfil obliges States to set up mechanisms to prevent torture and ill-treatment and hold perpetrators accountable, such as through the adoption of codes of conduct for prison guards, or by setting up independent bodies mandated to prevent and investigate incidents of alleged ill-treatment by State officials.

Not all rights are absolute, and **States may lawfully curtail rights**, for example, by imprisoning a person convicted of a crime. States may also limit the enjoyment of rights on the basis of national security, public order, public morals, or public health. But such limitations must be justified, legitimate and proportionate to the stated reasons.

During times of public emergencies, States may lawfully derogate from (or suspend) granting rights, such as the right to peaceful assembly, freedom of movement, or freedom of expression. But such derogations must follow lawful procedures and be strictly necessary and proportionate to the severity of the crisis. Some rights are non-derogable and must never be suspended, including the prohibition on torture, prohibition of slavery, and rights essential for basic human survival.⁵

Individual Responsibilities

At the individual level, while we are all entitled to our human rights, **we as individuals or groups have responsibilities** with regard to the rights granted to us. As individuals or civil society actors, we play an important role in safeguarding and promoting human rights and fundamental freedoms and in contributing to the promotion of these values. We also have duties towards the community, in which the development of our personality is possible. And we have the duty to respect the human rights of others and may not harm others in the pursuit of our own human rights. We also have a duty to exercise our rights responsibly and not contrary to their purposes. For example, we may not use our freedom of speech to incite hatred against persons belonging to a different group.⁶

The Origins of Human Rights and the Development of Human Rights Treaties and Mechanisms

On 10 December 1948, the United Nations General Assembly unanimously adopted the Universal Declaration of Human Rights (UDHR), a milestone agreement in the history of human rights. The UDHR was drafted in the United Nations by representatives with different legal and cultural backgrounds from all regions of the world. It represents 'a common standard of achievement for all peoples and nations'.⁷ The UDHR is the first formal acknowledgement and agreement by the international community in all its diversity that all human beings are to enjoy civil, political, economic, social and cultural rights.

The foundation for the UDHR was laid with the adoption of the UN Charter in 1945. The Charter defines the purpose of the United Nations to maintain international peace and security; to develop friendly relations among nations based on respect of equal rights and self-determination of peoples; and to achieve international cooperation "in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion".⁸

All States who are members of the United Nations are to live up to the principles and standards laid out in the UDHR. Over time, the UDHR has become widely accepted as containing the human rights framework that all States should realize.

While the UDHR represented the first formal agreement on human rights and was catalysed by the horrors inflicted upon humankind during World War II, the origins of human rights go back much further. In fact, the modern concept of human rights has been evolving throughout human history. In particular, the idea that individuals or groups are to enjoy rights and freedoms goes back thousands of years. Steps towards today's human rights standards were first codified by the ancient cultures of today's Middle East, in ancient Greece, and during the so-called Age of Enlightenment in medieval Europe. The world's main religions provided another important source of values that contributed to shaping today's human rights norms.

Customs and cultures across the world, including in the Pacific, mirror the values enshrined in today's human rights norms. For example, the culture of 'Kerekere' in Fiji is a form of a community-based social security system that aims to ensure that everyone has the basic resources for a dignified life, such as food, shelter, and clothing. A person's request for such assistance may not be refused by the community, which makes it distinct from begging and gives it the status of an entitlement, in line with a human rights based approach

Similarly, 'Bubuti' in Kiribati is a social security system that obliges better-off members of the community to share with those in need. It is founded on the concept that everyone is equal and socially obliged to provide assistance to those in need. 'Bubuti' is initiated by the receiver, which is in line with the notion of an entitlement (or right) of those in need. The 'Bubuti' system is subject to stringent protocol, only done in cases of extreme need, and premised on the notion of self-sufficiency and reciprocity.⁹

And, finally, the Palaun culture includes the tradition of hosting sea drifters who come ashore in Palau, which can be seen as a forerunner of provisions in today's Refugees Convention.

Also, with regard to accountability, a human rights principle, historic examples of accountability can be found in traditional governance structures in the Pacific. Scholars have found, for example, that the chiefly structure of pre-colonial Fiji was based on several principles that are today recognized as "good governance" principles. These include, in particular, accountability of the chief to the community, a chief's readiness to help and serve others, and a role to protect those around him from ill-treatment.¹⁰

The UDHR has provided the foundation for the adoption of legally binding international human rights treaties. The first two of these treaties, the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social, and Cultural Rights were both adopted by the General Assembly in 1966. Together with the UDHR, they form what is known as the **International Bill of Rights**.

A total of nine core human rights treaties adopted since 1966 have now given legal form to human rights values and have developed the body of international human rights norms. Many of these core human rights treaties have been complemented by optional protocols (see the next section). By ratifying or acceding to human rights treaties States assume the legal obligation to respect, protect and fulfil the norms enshrined in these treaties.

Human Rights Treaties and Optional Protocols

The following tables provide an overview of the content of the nine core international human rights treaties and optional protocols, including their year of adoption by the UN General Assembly (which marks the year the international community agreed on and adopted the content of a treaty) as well as their year of entering into force (which marks the year the necessary number of States ratified a treaty and the treaty as a result came into force).

Optional protocols to treaties may either provide for procedures (such as a complaints or communication procedure for individuals who allege that a right under the treaty had been violated) or they address a substantive area related to the treaty (death penalty; children in armed conflict etc.). Optional protocols to human rights treaties are treaties in their own right, and are open to signature, accession or ratification by countries who are party to the main treaty.

The tables are followed by a brief summary of the content of each of the core treaties and a description of a human rights issue in the Pacific that is relevant to the treaty.

HUMAN RIGHTS TREATY	YEAR OF ADOPTION	YEAR OF ENTRY INTO FORCE	ACRONYM
International Convention on the Elimination of All Forms of Racial Discrimination	1965	1969	ICERD
International Covenant on Civil and Political Rights	1966	1976	ICCPR
International Covenant on Economic, Social and Cultural Rights	1966	1976	ICESCR
International Convention on the Elimination of All Forms of Discrimination against Women	1979	1981	CEDAW
International Convention against All Forms of Torture and Other Cruel, Inhuman or Degrading Treatment	1984	1987	CAT
International Convention on the Rights of the Child	1989	1990	CRC
International Convention on the Protection of the Rights of all Migrant Workers and Members of Their Families	1990	2003	ICRMW
International Convention on the Rights of Persons with Disabilities	2006	2008	CRPD
International Convention on the Protection of all Persons from Enforced Disappearances	2006	2010	CPED
OPTIONAL PROTOCOLS	YEAR OF ADOPTION	YEAR OF ENTRY INTO FORCE	ACRONYM
Optional Protocol to the International Covenant on Civil and Political Rights	1966	1976	ICCPR-OP1
Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty	1989	1991	ICCPR-OP2
Optional Protocol to the Convention on the Elimination of all Forms of Discrimination against Women	1999	2000	OP-CEDAW
Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict	2000	2002	OP-CRC-AC
Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution, and child pornography	2000	2002	OP-CRC-SC
Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment	2002	2006	OP-CAT
Optional Protocol to the Convention on the Rights of Persons with Disabilities	2006	2008	OP-CRPD
Optional Protocol to the International Covenant on Economic, Social and Cultural Rights	2008	Not yet in force	OP-ICESCR
Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure	2011	Not yet in force	-

The International Covenant on Civil and Political Rights (ICCPR)

The International Covenant on Civil and Political Rights sets out the UDHR provisions on civil and political rights and freedoms and includes additional provisions, such as the rights of detainees and the protection of minorities. Many of the key civil and political rights contained in the ICCPR, including freedom of conscience, of religion, of speech, of assembly, the right to participate in free and fair elections, as well as due process standards have been incorporated into almost all of the Constitutions of Pacific Island Countries.¹¹ The full respect and fulfilment of these rights continue to lie at the heart of many governance challenges Pacific Island Countries face. Two optional protocols to the ICCPR allow States to accept additional obligations. The first protocol establishes a communications procedure and the second requires States to abolish the death penalty

The Right to Life

Sorcery and witchcraft allegations, predominantly against women, remain common in the Highlands of **Papua New Guinea** and have led to displacement and brutal killings of persons accused of sorcery. Even though comprehensive data on the extent of killings and displacement does not exist, it has been reported that those who face witchcraft allegations are frequently vulnerable individuals who lack protection. The number of women victims is higher and reportedly increasing. There is a perception that accusations of sorcery are used as a disguise for premeditated murder or to take over land or possessions of those accused. Responses by police to protect individuals at threat of being seriously harmed or killed have been found inadequate, partly because of lack of resources and limited presence, but also because of widespread perception that attacks or killings are justified and a community matter. Sorcery related killings may amount to a violation of the right to life and may constitute a form of gender based violence. The Government of Papua New Guinea, as part of its review under the Universal Periodic Review, committed itself to review the law on sorcery and sorcery-related killings, to strengthen the enforcement of relevant legislation, and to investigate, prosecute, and punish perpetrators of such crimes.¹²

ICCPR, Article 6, section 1

1. Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.

The International Covenant on Economic, Social and Cultural Rights (ICESCR)

The Covenant on Economic, Social, and Cultural Rights, like the ICCPR, develops the corresponding rights in the UDHR and specifies steps for their full realization. Two notable differences with the ICCPR are the principle of progressive realization in the ICESCR as well as the obligation on States to seek international assistance for the realization of the Covenant. The ICESCR acknowledges the constraints States face in fulfilling their obligations under the Covenant because of their limited resources and varying stages of development. The Covenant therefore allows States flexibility to implement the Covenant's provisions in line with their available resources. At the same time, it requires States to take immediate steps towards their realization, to make sure that provisions are implemented in a non-discriminatory manner, and to guarantee minimum essential levels of each right, such as food, primary health care, and basic shelter.

The rights contained in the ICESCR include the right to health, to education, to work and the right to an adequate standard of living. Examples of cultural rights contained in the ICESCR include the right to take part in cultural life and the right to enjoy the benefits of scientific programs. An optional protocol that provides for individual complaints supplements the Covenant and has been opened for signature in 2008. Realization of these rights within the context of rapid urbanization, pressures on the traditional economy, and increased exposure to international trade is at the core of development challenges in the Pacific region.

The Right to Adequate Housing

45% of the population of Port Moresby lives in informal settlements. A 2010 assessment mission by the Office of the High Commissioner for Human Rights to Papua New Guinea (PNG) found that residents of informal urban settlements lack legal protection against arbitrary rent increases and forced evictions. In addition, the assessment mission found that residents lack basic services such as water, electricity, and garbage collection, which leads to poor hygiene and health, in particular among children. Many residents of informal settlements have moved from the countryside to urban areas in search of employment, education, and health care. Others are compelled to live in informal settlements because their wage is insufficient to pay for the city's high rents. Despite the continued growth of settlements, **Papua New Guinea** does not have a national housing policy, laws to protect tenants against forced evictions, or rent-control laws.¹³

ICESCR, article 2

1. *Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.*
2. *The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.*
3. *Developing countries, with due regard to human rights and their national economy, may determine to what extent they would guarantee the economic rights recognized in the present Covenant to non-nationals.*

ICESCR, article 11, section 1

1. *The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent.*

Protection from Gender-Based Violence

A 2010 country-wide study on the prevalence of violence against women and girls in **Kiribati** found that 68% of women who ever had a partner had experienced at least one act of physical or sexual violence, or both, by an intimate partner. Around half of the women who have experienced physical or sexual partner violence reported being injured at least once. They reported suffering from abrasions and bruises; sprains and dislocations; cuts, punctures, and bites; fractures and broken bones; and eardrum and eye injuries. Furthermore, 23% of women who had ever been pregnant reported being physically abused during pregnancy, and that group was significantly more likely to experience miscarriage or have a baby die.¹⁴ Only 14% of women who had experienced partner violence reported it to the police. This finding, which is supported by qualitative research, indicated that women possibly felt that the police can offer them little protection.¹⁵ The study and its findings resulted in the Government of Kiribati preparing an action plan to address violence against women and children, commissioning legislative reform to introduce a domestic violence law, and in the personal commitment and involvement of the country's President in ending violence against women.¹⁶

CEDAW, article 1

For the purposes of the present Convention, the term "discrimination against women" shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.¹⁷

The International Convention on the Rights of the Child (CRC)

The International Convention on the Rights of the Child recognises the child as a distinct individual with corresponding rights. At the same time, the Convention upholds the rights and responsibilities of families and communities in the protection and upbringing of children. The International Convention on the Rights of the Child is the only human rights convention that has been ratified by all Pacific Island Countries. The convention is supplemented by two optional protocols, addressing the prohibition of children's involvement in armed conflict, and prohibiting the sale of children, child prostitution, and child pornography. A third optional protocol that allows for a complaints procedure was adopted by the General Assembly at the end of 2011 and is currently open for signature.

The International Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)

CEDAW was developed in recognition of on-going and persistent discrimination against women and girls. By ratifying the convention, States accept the obligation to pursue the elimination of discrimination against women by all appropriate means. CEDAW lays out a framework to comprehensively address women's rights in the civil, political, economic, social, and cultural spheres. It spells out specific measures to address persistent discrimination against women in areas such as political decision-making, marriage and the family, and employment. CEDAW is one of the most widely-ratified human rights treaties in the Pacific. At the same time, discrimination against women remains pervasive across the region – manifesting itself, for example, in extremely low political participation and a very high prevalence of violence against women.

Birth Registration

In **Vanuatu**, only about 40 % of the population had their births registered and registration forms are often not filled out, or are lost on their way to the capital. To respond to this problem, Vanuatu's civil status office introduced a system to register births and deaths by using mobile phone text messages. Health workers in Epi and Santo are being given mobile phones to send birth and death data in text messages to the civil status office. Safeguards have been introduced to eliminate the possibility of double registrations.

This approach is also being initiated in the **Solomon Islands** where registration of births is the lowest in the Pacific. The Government anticipates reaching 80% of the population living away from Honiara in remote provincial communities with the eventual use of the mobile phone registration.

Both the International Covenant on Civil and Political Rights and the Convention on the Rights of the Child require the immediate registration of the birth of a new-born child. Registration is crucial for an individual's life, because it determines identity and citizenship and may also regulate access to other human rights such as education or health care.

CRC, article 7

1. *The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by his or her parents.*
2. *States Parties shall ensure the implementation of these rights in accordance with their national law and their obligations under the relevant international instruments in this field, in particular where the child would otherwise be stateless.*

ICCPR, article 24

1. *Every child shall have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the rights to such measures of protection as are required by his status as a minor, on the part of his family, society and the State.*
2. *Every child shall be registered immediately after birth and shall have a name.*
3. *Every child has the right to acquire a nationality.*

Protection from Racial Discrimination

Rioters in the **Solomon Islands** in early 2006, protesting against the new Prime Minister, destroyed and looted about 90% of the Chinese-owned business district of Honiara, leading to the displacement of more than 1,000 people, mainly ethnic Chinese. The Solomon Islands Governor General officially apologised to the displaced community. The 2006 riots in the Solomon Islands was not the first time that violence had been directed at ethnic Chinese in the Pacific.

Later the same year, during violent protests in the capital of **Tonga**, rioters targeted and looted shops owned by Chinese business people leading to hundreds of Chinese being homeless. Violence targeting Chinese in Tonga has been reported to be part of a wider resentment at their role in the retail sector.¹⁸

ICERD, article 1, section 1

1. *In this Convention, the term "racial discrimination" shall mean any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.*

ICERD, article 2, section 1

1. *States Parties condemn racial discrimination and undertake to pursue by all appropriate means and without delay a policy of eliminating racial discrimination in all its forms and promoting understanding among all races, and, to this end:*
 - (a) Each State Party undertakes to engage in no act or practice of racial discrimination against persons, groups of persons or institutions and to ensure that all public authorities and public institutions, national and local, shall act in conformity with this obligation;*
 - (b) Each State Party undertakes not to sponsor, defend or support racial discrimination by any persons or organizations;*
 - (c) Each State Party shall take effective measures to review governmental, national and local policies, and to amend, rescind or nullify any laws and regulations which have the effect of creating or perpetuating racial discrimination wherever it exists;*
 - (d) Each State Party shall prohibit and bring to an end, by all appropriate means, including legislation as required by circumstances, racial discrimination by any persons, group or organization;*
 - (e) Each State Party undertakes to encourage, where appropriate, integrationist multiracial organizations and movements and other means of eliminating barriers between races, and to discourage anything which tends to strengthen racial division.*

The International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)

The International Convention on the Elimination of all Forms of Racial Discrimination (ICERD) defines racial discrimination as acts that negate rights by virtue of a person's race, color, descent, or national or ethnic origin. It sets out specific obligations on States to combat racial discrimination, for example through legislative reform; adoption of policies; by refraining from acts of racial discrimination; and by refraining from encouraging a person or organization that practices racial discrimination. Racial discrimination can take various forms such as racial prejudice, which is the assumption that someone is inferior because of their race. In the Pacific, ethnicity has been a contributing factor in conflicts and riots. For example, businesses owned by minorities or migrant workers have been deliberately destroyed and violence has targeted members of ethnic minority groups. ICERD provides a basis for Governments in the Pacific to amend and improve laws, policies, and practices that fuel racial discrimination.

The International Convention on the Rights of Persons with Disabilities (CRPD)

The International Convention on the Rights of Persons with Disabilities, which came into force in May 2008, marks a shift in attitudes and approaches towards persons with disabilities as it underscores their independence and autonomy. It provides for recognition of people with disabilities as human beings who enjoy the same human rights as everyone else, and stresses their role as full and active members of society, rather than as "objects" of charity or medical treatment. The convention addresses political and civil rights as well as economic, social and cultural rights of persons with disabilities, with a focus on non-discrimination, participation in public life, and access to services, facilities, and information, all of which help ensure their full enjoyment of rights and participation in society. The convention is supplemented by an optional protocol that allows for individuals to submit complaints to the Treaty Body overseeing the convention's implementation.

Disabled Women's Rights to Equality

A census on women with disabilities in **Samoa** identified that the majority of these women (83%) lived in rural areas and that their disability was primarily caused by non-communicable diseases, ageing, and birth defects. 80% of women with disabilities never married. With regards to education, the census identified that 52% of women who were disabled from birth or became disabled during their first five years have not attended school or only attended for a maximum of three years. Male children of the same category fared better with 42% either not attending school or attending only for up to three years. The survey also revealed discrimination at the level of local decision-making. Only 9% of women with disabilities reported they were involved in village systems. The majority therefore was not involved in decision-making on village development programs that could potentially provide them with improved access to services.¹⁹

Samoa has taken action to realize the rights of persons with disabilities. In 2011, the Government pledged to ratify the Convention on the Rights of Persons with Disabilities; it prepared and started implementation of a National Policy for Persons with Disabilities; it set up a disability taskforce, and a focal point unit for persons with disabilities within the Ministry of Women, Community, and Social Development. Staff from that unit underwent training on mainstreaming disability and gender into the national development plan and on preparing Samoa's implementation of the CRPD following the country's accession.²⁰

CRPD, article 5 - Equality and non-discrimination

1. States Parties recognize that all persons are equal before and under the law and are entitled without any discrimination to the equal protection and equal benefit of the law.
2. States parties shall prohibit all discrimination on the basis of disability and guarantee to persons with disabilities equal and effective legal protection against discrimination on all grounds.
3. In order to promote equality and eliminate discrimination, States parties shall take all appropriate steps to ensure that reasonable accommodation is provided.
4. Specific measures which are necessary to accelerate or achieve de facto equality of persons with disabilities shall not be considered discrimination under the terms of the present Convention.

CRPD, article 6 – Women with disabilities

1. States Parties recognize that women and girls with disabilities are subject to multiple discriminations, and in this regard shall take measures to ensure the full and equal enjoyment by them of all human rights and fundamental freedoms.
2. States Parties shall take all appropriate measures to ensure the full development, advancement and empowerment of women, for the purpose of guaranteeing them the exercise and enjoyment of the human rights and fundamental freedoms set out in the present Convention.

Protection from Torture and Ill-Treatment

Vanuatu has faced repeated crises in its criminal justice system over the past 15 years, which included mass arrests, reports of widespread ill-treatment of detainees by police, mass prison breaks, lack of civilian control over security forces, and deaths in custody from alleged acts of torture. Government, civil servants and representatives of the justice sector have acknowledged that the practice of torture and ill-treatment has been widespread and needs to be addressed as part of a reform process of the justice sector, on which the country has since embarked. As part of that reform process, Vanuatu became the first country in the Pacific to ratify the UN Convention against Torture in June 2011.²¹

CAT, article 1, section 1

1. For the purposes of this Convention, the term "torture" means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.

The International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families (ICRMW)

The Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families seeks to protect the rights of all migrant workers and their families during the migration cycle, from preparation for departure up to a person's return. The convention reinforces the notion that migrants are not only workers, but human beings with rights. It does not create new rights for migrants but aims to guarantee equality of treatment, such as equal working conditions for migrants and nationals in a country, as well as protection from exploitation. International migration has become an intrinsic feature of global mobility, including in the Pacific. Pacific Island Countries are both sending and receiving countries for labour migrants and there has been a long tradition of migration from and to the Pacific. Pacific Islanders have migrated regionally and beyond for better living standards, including under specific labour migration schemes, and migrants have travelled to Pacific Island Countries for gainful employment. To date, Palau has signed the convention, but none of the Pacific Island Countries have ratified the convention despite its relevance for the region.²²

The International Convention against All Forms of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)

The International Convention against All Forms of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) includes the right to be protected against torture and other forms of ill-treatment. The convention sets out a framework for the prevention and punishment of such acts and makes clear that there is an absolute ban on such practices. Despite this absolute ban and incorporation of international standards into national legislation in the Pacific, torture continues to occur, including in the Pacific. The convention is supplemented by an optional protocol that sets up a prevention mechanism by allowing international and national bodies regular visits to places of detention.

Protection from Exploitation and Forced Labour

Several instances have been reported in which migrant workers in the Pacific have faced exploitation. With regard to Australia, for example, it has been noted that migrant workers from Pacific Islands were among those who have been subjected to forced labour, confiscation of travel documents, threats, or debt bondage. **Palau**, which has a migrant worker population of one-third of the country's population, has been reported as a destination country for forced labour where some migrant workers have been coerced into exploitative working conditions.²³ The Government of Palau's national report to the UPR acknowledges that migrant workers have been exposed to working excessive hours without pay, threats of physical or financial harm, confiscation of travel documents and the withholding of salary payments, as tools of coercion. The Government reported that it was formulating a plan to address these violations, including through cooperation with foreign embassies.²⁴

ICRMW, art. 11

1. *No migrant worker or member of his or her family shall be held in slavery or servitude.*
2. *No migrant worker or member of his or her family shall be required to perform forced or compulsory labour.*
3. *Paragraph 2 of the present article shall not be held to preclude, in States where imprisonment with hard labour may be imposed as a punishment for a crime, the performance of hard labour in pursuance of a sentence to such punishment by a competent court.*
4. *For the purpose of the present article the term "forced or compulsory labour" shall not include:*
 - (a) *Any work or service not referred to in paragraph 3 of the present article normally required of a person who is under detention in consequence of a lawful order of a court or of a person during conditional release from such detention;*
 - (b) *Any service exacted in cases of emergency or calamity threatening the life or well-being of the community;*
 - (c) *Any work or service that forms part of normal civil obligations so far as it is imposed also on citizens of the State concerned.*

CPED, articles 1-5

article 1

1. *No one shall be subjected to enforced disappearance.*
2. *No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification for enforced disappearance.*

article 2

For the purposes of this Convention, "enforced disappearance" is considered to be the arrest, detention, abduction or any other form of deprivation of liberty by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law.

article 3

Each State Party shall take appropriate measures to investigate acts defined in article 2 committed by persons or groups of persons acting without the authorization, support or acquiescence of the State and to bring those responsible to justice.

article 4

Each State Party shall take the necessary measures to ensure that enforced disappearance constitutes an offence under its criminal law.

article 5

The widespread or systematic practice of enforced disappearance constitutes a crime against humanity as defined in applicable international law and shall attract the consequences provided for under such applicable international law.

The International Convention for the Protection of All Persons from Enforced Disappearance (CPED)

The International Convention for the Protection of All Persons from Enforced Disappearance was adopted in 2006 to combat the grave human rights violation of State-enforced disappearances. It was drafted in response to the recognition that international law did not provide for the prevention of such crimes, or for effective remedies and reparation for victims. Disappearances differ from abduction in that an enforced disappearance has political motives, no demands are issued and the offenders act on behalf of the State or with its backing. CPED obliges States parties to prevent such crimes and to hold any person involved in an enforced disappearance criminally responsible. It recognises the families' rights to know the truth about the fate of a disappeared person and to obtain reparations. It also requires States to institute stringent safeguards for people deprived of their liberty; to search for the disappeared person and, if they have died, to locate and return the remains. CPED is the most recent human rights convention to have come into force and so far has not been ratified by any of the Pacific Island Countries. Palau has signed the convention.

Pacific Ratification of Human Rights Treaties

Every Pacific Island Country has now ratified at least one of the nine core international human rights treaties. Compared to all other regions in the world, ratification of international human rights treaties remains low in Pacific Island Countries. The following table shows the status of ratification as of October 2012.

	Cook Islands	Fiji	Kiribati	Marshall Islands	Micro-nesia	Nauru	Niue	Palau	PNG	Samoa	Solomon Islands	Tonga	Tuvalu	Vanuatu
ICCPR	S 1978					S 2001	S 1978	S 2011	A 2008	A 2008				R 2008
ICESCR	S 1978						S 1978	S 2011	A 2008		R 1982	A 1972		
ICERD		R 1973				S 2001		S 2011	A 1982		R 1982	A 1972		
CEDAW	A 2006	A 1995	A 2004	A 2006	A 2004	A 2011	A 1985	S 2011	A 1995	A 1992	A 2002		A 1999	A 1995
CRC	A 1997	R 1993	A 1995	R 1993	A 1993	A 1994	A 1995	A 1995	R 1993	R 1994	A 1995	A 1995	A 1995	R 1993
CAT	S 1989					A 2012	S 1989	S 2011						A 2011
ICRMW								S 2011						
CRPD	A 2009	S 2010				A 2012		S 2011	S 2011		S 2008	S 2007		R 2008
CPED								S 2011		S 2007				S 2007
ICCPR-OP1						S 2001								
ICCPR-OP2														
OP-CEDAW	A 2007										A 2002			A 2007
OP-CRC-AC		S 2005			S 2002	S 2000					S 2009			R 2007
OP-CRC-SC		S 2005			A 2012	A 2000					S 2009			R 2007
OP-CAT														
OP-CRPD	A 2009										S 2009			
OP-ICESCR														

S= signature; A = accession; R = ratification

Signing a treaty is the first step and signals the intention by a Government to become bound by the treaty in question. By signing a treaty, while not yet legally bound by the treaty’s provisions, a State commits itself not to undermine the spirit of the treaty. Upon ratification, accession or succession (depending on the legal set-up of each country) the country then becomes legally bound by the treaty’s provisions.²⁵

The Treaty Bodies

A Government that ratifies or accedes to a human rights treaty agrees to the legally binding nature of the treaty’s provisions and to its implementation at the national level.²⁶ The implementation of treaties as well as of optional protocols by States who are parties is monitored by a Committee of Experts set up under the treaty. These Committees of Experts, which are elected by States, are called Treaty Bodies or Committees.

Treaty Bodies are mandated to seek information and monitor implementation of the conventions at the national level. They also provide guidance, assistance and encouragement to Governments in following through with the implementation of a convention’s provisions. Currently, nine Treaty Bodies, one under each treaty, oversee the implementation of the core human rights treaties.

Through ratification or accession a State commits itself to periodically report on its implementation of the rights contained in a human rights treaty. Each treaty specifies when and how regularly a State party has to submit such a report. Typically, a first report is expected within 1 or 2 years after ratification, and thereafter every 4 to 5 years or upon request by the Treaty Body.

The following table provides an overview of the Treaty Bodies set up under each of the human rights conventions and the reporting cycles under each treaty:

TREATY BODY	FOLLOWING RATIFICATION, FIRST REPORT DUE WITIN	PERIODIC REPORTS DUE EVERY
Human Rights Committee (oversees ICCPR)	1 year	4 years
Committee on Economic, Social and Cultural Rights (oversees ICESCR)	2 years	5 years
Committee on the Elimination of Racial Discrimination (oversees ICERD)	1 year	2 years
Committee on the Elimination of Discrimination against Women (oversees CEDAW)	1 year	4 years
Committee against Torture (oversees CAT)	1 year	4 years
Committee on the Rights of the Child (oversees CRC)	2 years	5 years
Committee on Migrant Workers (oversees ICRMW)	1 year	5 years
Committee on the Rights of Persons with Disabilities (oversees CRPD)	2 years	4 years
Committee on Enforced Disappearances (oversees CPED)	2 years	— ²⁷

In addition to the above nine Treaty Bodies, the Subcommittee on Prevention of Torture has been set up under the optional protocol to the Convention against Torture. The Subcommittee is an operational body that aims to prevent torture and ill-treatment by visiting places of detention and by providing advisory services to Governments.

Treaty Bodies are mandated to receive and consider reports submitted by State parties and civil society, and they also issue guidelines to assist States with the elaboration of their reports. Treaty Bodies furthermore issue general comments that provide authoritative interpretation of a given provision of a human rights treaty, and they organize discussions on themes related to the treaties. Some Treaty Bodies may consider complaints or communications from individuals, provided the State has ratified the relevant optional protocol. Some Treaty Bodies may also conduct inquiries.

The nine Treaty Bodies coordinate closely among each other and are very similar in their set-up and operation, but they remain independent Committees of Experts whose procedures and practices may slightly differ. Additional information about the work of Treaty Bodies is explained in a factsheet and a short movie published by the Office of the High Commissioner for Human Rights.²⁸

The preparation and consideration of State reports under human rights treaties is discussed in more detail in chapter three of this handbook.

Human Rights Mechanisms under the UN Charter

All UN Member States have committed themselves under the UN Charter to promote and encourage respect for human rights and fundamental freedoms, in particular non-discrimination and equality between men and women. The UN charter provides for additional mechanisms to realize human rights, which exist side-by-side with those set up under human rights treaties, as discussed in the previous sections. The mechanisms under the UN Charter apply to all UN member States irrespective of whether they have ratified human rights treaties.

The Human Rights Council (HRC)

The Human Rights Council is an inter-governmental body made up of 47 States with meetings held in Geneva. It was set up in 2006 and replaced the Commission on Human Rights. The Office of the United Nations High Commissioner for Human Rights (OHCHR) serves as the HRC’s secretariat.

The Human Rights Council’s main mandate is to address situations of human rights violations all over the world; to promote universal respect for the protection of human rights; and to promote coordination and mainstreaming of human rights within the United Nations system. It is further mandated to contribute to the prevention of human rights violations through dialogue and cooperation, and to respond promptly to human rights emergencies.

Last but not least, the Human Rights Council is in charge of the Universal Periodic Review, of a system of Special Procedures and of a complaints procedure (discussed in more detail in the following sections).

The Universal Periodic Review (UPR)

The Universal Periodic Review is a new mechanism established with the creation of the Human Rights Council. As its name says, it is a universal mechanism, meaning that the human rights record of every UN Member State, without exception, will be reviewed by Council members every four to five years, and irrespective of whether a State has ratified or reported on human rights treaties. The review is based on the Universal Declaration of Human Rights and its aim is to improve the human rights situation in all countries and to address human rights violations wherever they occur.

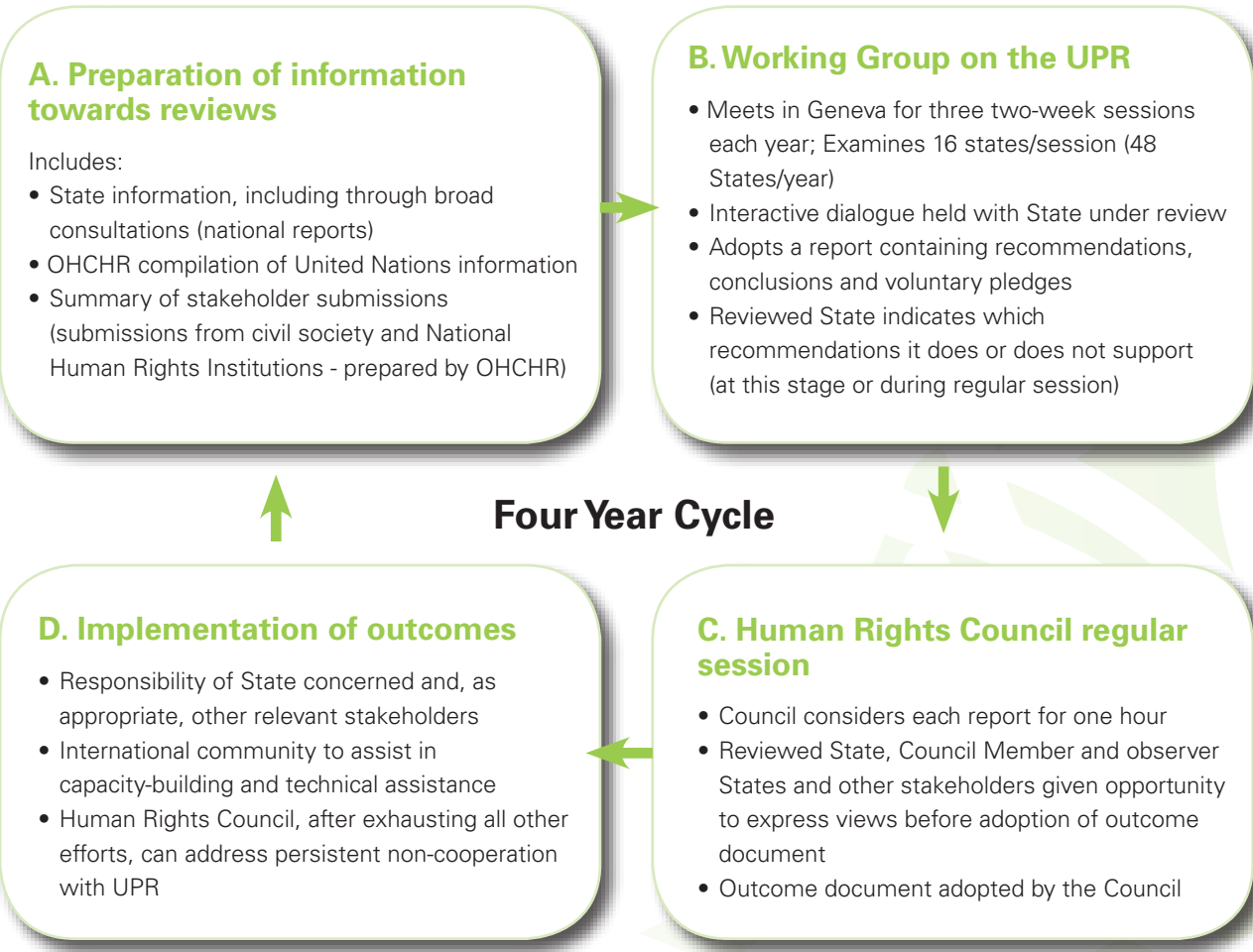
The UPR is an inter-governmental process and provides all UN member States with an opportunity to review their human rights record, and to make commitments on how to improve people’s enjoyment of human rights in their country, based on the recommendations made by other UN Member States.

SCHEDULE FOR UPCOMING UPR REVIEW OF PACIFIC ISLAND COUNTRIES			
2013	2014	2015	2016
Tuvalu	Fiji	Kiribati	Palau
Tonga	Vanuatu	Marshall Islands	Papua New Guinea
		Federated States of Micronesia	Samoa
		Nauru	Solomon Islands

The following table provides the tentative schedule for the upcoming reviews of Pacific Island Countries under the UPR over the next four years.²⁹ To review the human rights record of a particular State, the Human Rights Council relies on three sources of information: the national State report; a report containing information from the United Nations (compiled by the Office of the High Commissioner for Human Rights); and a report summarizing information submitted by other stakeholders, such as civil society organizations and National Human Rights Institutions.

The review further consists of a three-hour dialogue between the State under review and the member and observer States of the Human Rights Council. That dialogue is broadcast live on the internet, and the webcasts are archived for later viewing.³⁰ This allows any person of a given country to watch and hear their Government’s account of the human rights situation, the questions asked by other States, and the Government’s commitments towards improving the situation. At the end of each review, an outcome document is adopted with recommendations for the State under review to better implement its human rights obligations.³¹

The Universal Periodic Review (UPR) Process



The obligation to report under the UPR bears similarity with the reporting procedure under the human rights treaties, but there are also important differences. The UPR review is led by member States as opposed to independent human rights experts that review a State under the treaty reporting process.

The UPR complements the reviews under the Treaty Body process and it provides for an important opportunity to evaluate the human rights record of States that have not ratified certain treaties or have failed to submit reports. The recommendations emanating from treaty bodies and the UPR process can be mutually reinforcing and States may refer to the same information and data when submitting reports to treaty bodies or the UPR. States who face difficulties to fund delegates for the UPR session can apply for financial support as well as training to prepare for the review process.³²

To date, all Pacific Island Countries have been reviewed once under the UPR. The following list provides a glimpse of some of the pledges Pacific Island Countries have made under the UPR:

- **Fiji:** The Fiji delegation expressed a commitment to hold democratic elections by September 2014 and stated that the Public Emergency Regulation would be lifted following the promulgation of the Fiji Media Decree. The Fiji Government lifted the Public Emergency Regulations in January 2012 and started preparations for the holding of elections scheduled for 2014.³³
- **Vanuatu:** The Vanuatu delegation committed to setting up a National Human Rights Institution and to issuing a standing invitation to Special Procedures to visit the country (see the following section for a discussion about Special Procedures). Following the review, the Vanuatu Government has undertaken concrete steps to set up a National Human Rights Institution.³⁴
- **Palau:** the Palau Government delegation reaffirmed during its UPR review its commitment to establish a National Human Rights Institution and to issue a standing invitation to all Special Procedures. It also committed itself to decriminalize same sex relationships between consenting adults and to remove discriminatory provisions against lesbian, gay, bisexual, and transgender persons. It further committed to signing all core international human rights treaties and to consider ratification of these treaties. Palau signed on to eight human rights treaties in September 2011.³⁵
- **Nauru:** The Government of Nauru committed itself to ratifying CEDAW and ICCPR and its two optional protocols and said it was actively considering the signing of the Refugees Convention during its UPR review. It also committed itself to decriminalize same sex relationships between consenting adults. The country did ratify CEDAW and the Refugees Convention in mid-2011.³⁶
- **Federated States of Micronesia (FSM):** As an outcome of the UPR review, FSM committed itself to ratify the optional protocols to the CRC. It also accepted the recommendation to include sexual orientation and gender identity as prohibited grounds for discrimination in law. Resolved to act on recommendations to pass comprehensive anti-trafficking legislation, FSM created a Task Force and began the accession process to the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children.³⁷ It also ratified the Optional Protocol to the CRC on the sale of children, child prostitution, and child pornography in April 2012.³⁸
- **Republic of the Marshall Islands (RMI):** Following the UPR review, the RMI Government committed itself to implement all recommendations relating to violence against women and to adopt domestic laws and policies. It delivered on its commitment with the adoption of the country's domestic violence prevention and protection act in October 2011.³⁹

All countries will have to report on the implementation of their commitments after some four and half years.⁴⁰ The recurring reporting cycle allows for a gradual improvement of the human rights situation and for delivery on commitments made in international fora.

Special Procedures

Special Procedures is the name given to mechanisms established under the Human Rights Council that address either specific country situations or thematic issues globally. Special Procedures are either individuals or working groups of usually five members (one from each region). Persons who hold a Special Procedures mandate (they are called "Special Rapporteur," "Special Representative," "Independent Expert," or "Working Group") examine, monitor, advise and publicly report on the human rights situations in a specific country (country mandate), or on a specific issue (thematic mandate) in any country. Special Procedures mandate holders may respond to individual complaints, conduct studies, provide advice at the country level, and engage in the promotion of a given human rights issue.

The mandates of the Special Procedures are established and defined through resolutions passed by the Human Rights Council. Mandate-holders are independent and serve in their expert capacity. They do not receive salaries or any other financial compensation for their work. Their independence is crucial for the impartial exercise of their mandate. As of October 2012, there are **36 thematic and 12 country mandates**. The Office of the High Commissioner for Human Rights services these mechanisms with personnel, policy, research, and logistical support.

The mandates of Special Procedures keep evolving and some of the recent Special Procedures established under the Human Rights Council include the appointment of a Special Rapporteur on contemporary forms of slavery (2007), an Independent Expert on the issue of human rights obligations related to access to safe drinking water and sanitation (2008), an Independent Expert in the field of cultural rights (2009), A Special Rapporteur on the rights to freedom of peaceful assembly and of association (2010) and a Working Group on the issue of discrimination against women in law and in practice (2010). The creation of new mandates contributes to the setting of new human rights standards since Special Procedures often take the lead in bringing attention to emerging human rights issues and identifying relevant standards.

Most Special Procedures receive information on allegations of human rights violations from a variety of sources. When they receive complaints they may send urgent appeals or letters to the responsible Government requesting explanations or redress for a human rights violation. Any person can contact Special Procedures in relation to an alleged human rights violation in his or her country, irrespective of whether a country has ratified a human rights convention. It is also not necessary to exhaust domestic mechanisms (such as using the national court system) before contacting Special Procedures. Chapter four of this handbook discusses the submission of complaints to Special Procedures in more detail. In 2010, Special Procedures mandate-holders sent a total of 604 communications to Governments in 110 countries.

Mandate holders, that is, individuals appointed to a Special Procedures mandate, also carry out fact-finding visits to countries to investigate the human rights situation at the national level. They typically send a letter to the Government requesting to visit the country, and if the Government agrees, an invitation to visit is issued. Some countries have issued "standing invitations" to Special Procedures, which means that they are prepared to receive a visit from any Special Procedures mandate holder. In the Pacific, Vanuatu, Nauru, Marshall Islands, Palau and Papua New Guinea have all issued standing invitations to Special Procedures.

Visits by Special Procedures to Pacific Island Countries

UN Special Rapporteur on Toxic Waste 41

The Special Rapporteur’s visit to the **Marshall Islands** in March 2012 focused on the impact of the United States nuclear testing between 1946 and 1958 on people’s enjoyment of their human rights. In a press statement that concluded the visit, the Special Rapporteur found that the population remained negatively affected by the nuclear testing legacy through long-term health effects and continued displacement resulting in a loss of their indigenous way of life. The Special Rapporteur urged both the United States and the Marshall Islands Government to find effective redress for the affected population. The Special Rapporteur concluded his statement by saying: “Human rights are not meant to be a set of legal principles and rules on paper alone. They are a necessary requirement in an evolving reality. We must all continuously strive to meet this requirement to live with dignity and respect for ourselves and our future generations.”42

UN Independent Expert on Foreign Debt 43

The Independent Expert visited the **Solomon Islands and Australia** in 2011 to investigate the impacts of the Solomon Islands’ foreign debt burden and terms of trade in light of the global financial crisis. The Expert determined there was a critical need for a medium-term strategy to reduce aid dependency in order to realise human rights and ensure ‘self-sustaining economic growth.’ The Expert further recommended that a human-rights based approach be part of the foundation of Solomon Islands Government policies and aid programs. Further, Solomon Islands Government and aid agencies were urged to align objectives whereby the Government can take ownership of and account for the provision of public services and aid delivery. The Independent Expert also emphasised that aid should not be made contingent on policy reform or market protection.44

UN Special Rapporteur on Torture 45

The UN Special Rapporteur reported after his visit to **Papua New Guinea** in 2010 that he found a general atmosphere of violence and neglect in places of detention. He further documented isolated cases of torture as well as cases of police beatings upon arrest that may amount to torture. The Special Rapporteur noted that impunity for torture and ill-treatment was fuelled by the absence of a complaint mechanism, and a lack of independent investigations, monitoring, and other safeguards. He further noted the high prevalence of gender-based violence and women’s vulnerability to sexual abuse in detention. The Special Rapporteur made a number of recommendations to the Government, which included issuing an unambiguous declaration at the highest level that torture and ill-treatment would not be tolerated; the ratification of the Convention against Torture and its Optional Protocol; the revision of domestic legislation to include a crime of torture with adequate penalties; ensuring prompt investigations of all allegations of torture; and the establishment of an accessible and effective complaints mechanism.46

LIST OF SPECIAL PROCEDURES47		
COUNTRY MANDATE, YEAR OF ESTABLISHMENT, AND CONTACT		
Special Rapporteur on the situation of human rights in Belarus	2012	sr-belarus@ohchr.org
Special Rapporteur on the situation of human rights in Cambodia	1993	srcambodia@ohchr.org
Independent Expert on the situation of human rights in Côte d’Ivoire	2011	EICotedivoire@ohchr.org
Special Rapporteur on the situation of human rights in the Democratic People’s Republic of Korea	2004	hr-dprk@ohchr.org
Special Rapporteur on the situation of human rights in Eritrea	2012	sr-eritrea@ohchr.org
Special Rapporteur on the situation of human rights in the Islamic Republic of Iran	2011	sr-iran@ohchr.org
Independent Expert on the situation of human rights in Haiti	1995	ie-haiti@ohchr.org
Special Rapporteur on the situation of human rights in Myanmar	1992	sr-myanmar@ohchr.org
Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967	1993	sropt@ohchr.org
Independent Expert on the situation of human rights in Somalia	1993	ie-somalia@ohchr.org
Independent Expert on the situation on human rights in the Sudan	2005	iesudan@ohchr.org
Special Rapporteur on the situation of human rights in the Syrian Arab Republic	2011	srsyria@ohchr.org
THEMATIC MANDATE, YEAR OF ESTABLISHMENT, AND CONTACT		
Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context	2000	srhousing@ohchr.org
Working Group of experts on people of African descent	2002	africandescent@ohchr.org
Working Group on arbitrary detention	1991	wgad@ohchr.org
Special Rapporteur on the sale of children, child prostitution and child pornography	1990	srsaleofchildren@ohchr.org
Special Rapporteur in the field of cultural rights	2009	ieulturalrights@ohchr.org

Independent Expert on the promotion of a democratic and equitable international order	2011	le-internationalorder@ohchr.org
Independent Expert on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment	2012	To be appointed at the 20th Human Rights Council session
Special Rapporteur on the right to education	1998	sreducation@ohchr.org
Working Group on enforced or involuntary disappearances	1980	wgeid@ohchr.org
Special Rapporteur on extrajudicial, summary or arbitrary executions	1982	eje@ohchr.org
Independent Expert on extreme poverty and human rights	1998	ieextremepoverty@ohchr.org
Special Rapporteur on the right to food	2000	srfood@ohchr.org
Independent Expert on foreign debt and other related international financial obligations of States on the full enjoyment of human rights, particularly economic, social and cultural rights	2000	ieforeigndebt@ohchr.org
Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression	1993	freedex@ohchr.org
Special Rapporteur on freedom of religion or belief	1986	freedomofreligion@ohchr.org
Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health	2002	srhealth@ohchr.org
Special Rapporteur on the situation of human rights defenders	2000	defenders@ohchr.org; urgent-action@ohchr.org
Special Rapporteur on the independence of judges and lawyers	1994	srindependencejl@ohchr.org
Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous peoples	2001	indigenous@ohchr.org
Special Rapporteur / Representative of the Secretary-General on the human rights of internally displaced persons	2004	ldp@ohchr.org
Independent Expert on human rights and international solidarity	2005	iesolidarity@ohchr.org
Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination	2005	mercenaries@ohchr.org
Special Rapporteur on the human rights of migrants	1999	migrant@ohchr.org
Independent Expert on minority issues	2005	minorityissues@ohchr.org

Special Rapporteur on the promotion of truth, justice, reparation & guarantees of non-recurrence	2011	srtruth@ohchr.org
Special Rapporteur on contemporary forms of racism , racial discrimination, xenophobia and related intolerance	1993	racism@ohchr.org
Special Rapporteur on contemporary forms of slavery , including its causes and consequences	2007	srslavery@ohchr.org
Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism	2005	srct@ohchr.org
Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment	1985	sr-torture@ohchr.org
Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes .	1995	srtoxicwaste@ohchr.org
Special Rapporteur on trafficking in persons , especially women and children	2004	srtrafficking@ohchr.org
Working Group on the issue of human rights and transnational corporations and other business enterprises	2011	wg-business@ohchr.org
Special Rapporteur on violence against women , its causes and consequences	1994	vaw@ohchr.org
Independent Expert on the issue of human rights obligations related to access to safe drinking water and sanitation	2008	srwatsan@ohchr.org
Working Group on the issue of discrimination against women in law and in practice	2010	wgdiscriminationwomen@ohchr.org
Special Rapporteur on the rights to freedom of peaceful assembly and of association	2010	freeassembly@ohchr.org

Human Rights Council Complaint Procedure

The Complaint Procedure under the Human Rights Council is to address patterns of gross violations of all human rights and fundamental freedoms in any part of the world.

It is a confidential mechanism that is victims-oriented and designed to function in a timely manner. Its aim is to enhance cooperation with the State concerned. Two working groups screen and examine the complaints they receive. Following that screening, the working groups bring those that reliably document gross and consistent patterns of human rights violations to the attention of the Human Rights Council. It is then up to the Human Rights Council to take a decision on each situation brought to its attention.



CHAPTER 2 – WHY IMPLEMENT HUMAN RIGHTS TREATIES?

The Benefits of Implementing Human Rights Treaties

I signed on behalf of the Republic of Palau all of the international conventions on human rights. As an ardent advocate of human rights and freedoms I signed these conventions because I believe that all human rights and freedoms are indispensable elements to true happiness. [...] Ratification of these basic tenets of democratically recognized rights and freedom is, however, not enough. Governments must also adopt laws and policies implementing, enforcing and strengthening these human rights and freedoms.

H.E. Johnson Toribiong, President, Republic of Palau.⁴⁸

CEDAW enables the full and complete development of a country through maximum participation of women on equal terms with men in all fields.

Hon. Marcus Stephen, former President of Nauru.⁴⁹

Human rights are essentially about people's dignity, their daily lives, their struggles, their sense of justice and injustice, their responsibility and care for others, and their well-being and prosperity. Human rights are about education, food, work, health, social security, about equal treatment, the expression of one's thoughts, the exchange and organization with others and – more generally – about the ability to find a remedy if one's rights are violated.

Human rights are also about creating equitable societies and whether the poorest, the most discriminated against, and the most marginalized are able to lift themselves out of poverty and contribute to and shape the communities and societies to which they belong. In short, human rights are about development and about enabling every individual to use his or her potential to the fullest. Without a legal framework to protect these principles and guide development, there is a heightened risk of deprivation, social exclusion and marginalisation which, ultimately, could lead to an increase in discrimination and possibly even conflict.

Human rights treaties provide a framework for Pacific societies to develop justly, equitably and prosperously. A just and efficient legal system, for example, which guarantees the rights without discrimination of any kind, such as by race, sex, language, religion, political or other status, is a prerequisite for economic growth. While development programs often focus on growth and macro-indicators, a human rights lens brings the advantage of focusing on the poorest, most marginalized and vulnerable members of societies to ensure the full participation of all people on an equal footing in the enjoyment of development.

Pacific Islands Forum Leaders have adopted the vision of a peaceful, prosperous Pacific region where cultures and beliefs are upheld, resources managed in a sustainable manner, diversity is valued, and where democratic values and human rights are respected, for the benefit of all Pacific Islanders. They have further committed themselves to ratify and implement international human rights conventions, including under the UPR.⁵⁰

As a result of these commitments, Vanuatu acceded to CAT in mid-2011, Nauru ratified the CEDAW convention in 2011 and CRPD in 2012, Palau signed up to eight core human rights treaties in September 2011, and the Federated States of Micronesia acceded to the Optional Protocol to the CRC on the sale of children, child prostitution, and child pornography in 2012. Last but not least, Pacific Island Forum countries have committed themselves to achieving the eight Millennium Goals, which are closely linked with human rights obligations (this is discussed further below).

Despite these commitments and although several Pacific Island Countries have signed on or acceded to several treaties in 2011 and 2012 alone, the Pacific remains the region with the lowest number of ratified human rights treaties worldwide. There are several reasons for this. Governments have voiced the mistaken concern that full compliance with the treaty's provisions is required prior to ratification. In other instances, they have expressed reluctance to ratify due to constraints including the lack of human and financial resources as well as technical capacity to fulfil the reporting obligations. Last but not least, resistance has also been built on the perception that human rights clash with Pacific cultures (this will be explored further in this chapter).

Most of these challenges can be overcome with the assistance of the international community, regional bodies, and civil society organizations. This chapter will discuss the benefits of human rights treaty ratification and implementation for Pacific Island Countries and will illustrate how human rights treaties can play a central role as a guiding framework for achieving sustainable development, stability, and peace in the region.

The Added Value of Human Rights Treaty Ratification and Implementation

By ratifying human rights treaties, a country demonstrates its commitment to respect the human rights of its population and to be part of and support the values of the international community. The non-ratification of human rights treaties does not mean that there are wide-spread human rights violations in a country. Equally, in countries that have ratified all human rights conventions, challenges for people's enjoyment of their rights still remain.

Nevertheless, human rights treaty ratification and implementation is widely seen as a key indicator of a country's willingness and commitment to uphold human rights and fundamental freedoms. Treaty ratification and subsequent implementation therefore assist the State in facilitating foreign policy achievements, enhances its credibility, and creates more opportunities for partnerships, including technical and financial support for human rights implementation.

Limited availability of resources to implement human rights standards is often raised. There is no doubt that the implementation of human rights instruments requires resources. Resources are needed to train law enforcement officials, to initiate legislative amendments, to fulfil treaty reporting requirements, to gather statistics and data, and more broadly, for services in sectors such as health and education. But these costs are rarely additional costs that arise solely from human rights treaty implementation. Rather, they already arise due to existing legal requirements and because of national development plans and policies.

Most Pacific Island Countries have a number of human rights enshrined in their own constitutions, including as separate bills of rights, which primarily reflect civil and political rights standards.⁵¹ The ratification of the International Covenant on Civil and Political Rights or the Convention against Torture, therefore, would not necessarily lead to numerous new laws or policies that require new resources for implementation. The prohibition of torture, for example, already exists in ten countries that are members of the Pacific Island Forum Secretariat and judicial decisions from the region have upheld this prohibition.⁵² In addition, several countries have operationalized such legal provisions with the adoption of codes of conduct for law enforcement and prison officers.⁵³ The ratification and implementation of these treaties would underscore a country's commitment and credibility towards the realization of these rights, including vis-à-vis the international community, and it would provide States with an opportunity to have their implementation reviewed and guided by independent experts.

Sectoral reform processes, including in the justice and security sectors sector are underway in many Pacific Island Countries. These reform processes are opportunities to give effect to human rights standards at the country level. Incorporating human rights into these efforts bring the added benefit of aligning the on-going reform process with the human rights framework. Human rights in that context serve as a useful tool that guides and assists States in undertaking reforms and in giving effect to commitments and legal obligations.

Similarly, with regard to economic, social, and cultural rights, Pacific Island Countries are engaged in numerous reform efforts to accelerate equitable development across the region. In most instances, these efforts are aimed at meeting targets set by the Millennium Development Goals (MDGs), which are aligned with human rights.

Wealth is not a precondition for the implementation of basic human rights. Rather, human rights are the foundation on which Pacific societies will develop justly, equally and prosperously. Adopting economic, social, and cultural rights in law through treaty ratification, therefore, may not necessarily create new financial burdens, take away resources in short supply, or lead to a complete revision of existing plans or policies. Rather, adopting these rights as legal standards will provide a framework for guiding these efforts and bring the additional value of ensuring that development efforts address underlying root causes of poverty and deprivation, focus on the most vulnerable and marginalized, and provide for a remedy in cases of violation.

Taking a human rights lens to development efforts makes sure that those are reached who tend to be left out by progress. A human rights framework brings in the principles of accountability, participation, transparency, and non-discrimination, which results in more checks and balances, increased cooperation and dialogue between Governments, civil society, and communities, all of which ultimately contribute to more sustainable development outcomes that are owned by the people themselves.

The Cost of Non-Implementation

The resource burden of implementing human rights treaties should be seen in relation to the costs generated by human rights violations and lack of human rights protection. Studies have shown that there are direct social and economic costs associated with the non-implementation of human rights. These often go beyond the individual victim of a human rights violation and negatively impact on society and the country as a whole.

The costs resulting from violence against women, for example, are both of direct and indirect nature and borne by society as a whole. The public sector bears the costs to provide survivors of violence with health-care services, such as surgery, x-rays, dental costs and doctors' fees. It also pays the salaries of community and welfare workers. And in addition, employers will be affected by losses resulting from a survivor's absence from work and decreased productivity resulting from violence.⁵⁴ Costs are also generated by police who spend time investigating crimes of violence against women and costs from legal proceedings also are borne by the public. According to the University of the South Pacific, domestic violence in Fiji cost the country FJD\$498 million in 2011.⁵⁵

Studies from many countries provide sufficient evidence that the direct and indirect costs of violence against women and children are so significant that they negatively impact on a country's development. It has also been demonstrated that these costs far outweigh the costs of implementing rights-based initiatives such as prevention and protection programs and providing support services for victims.⁵⁶

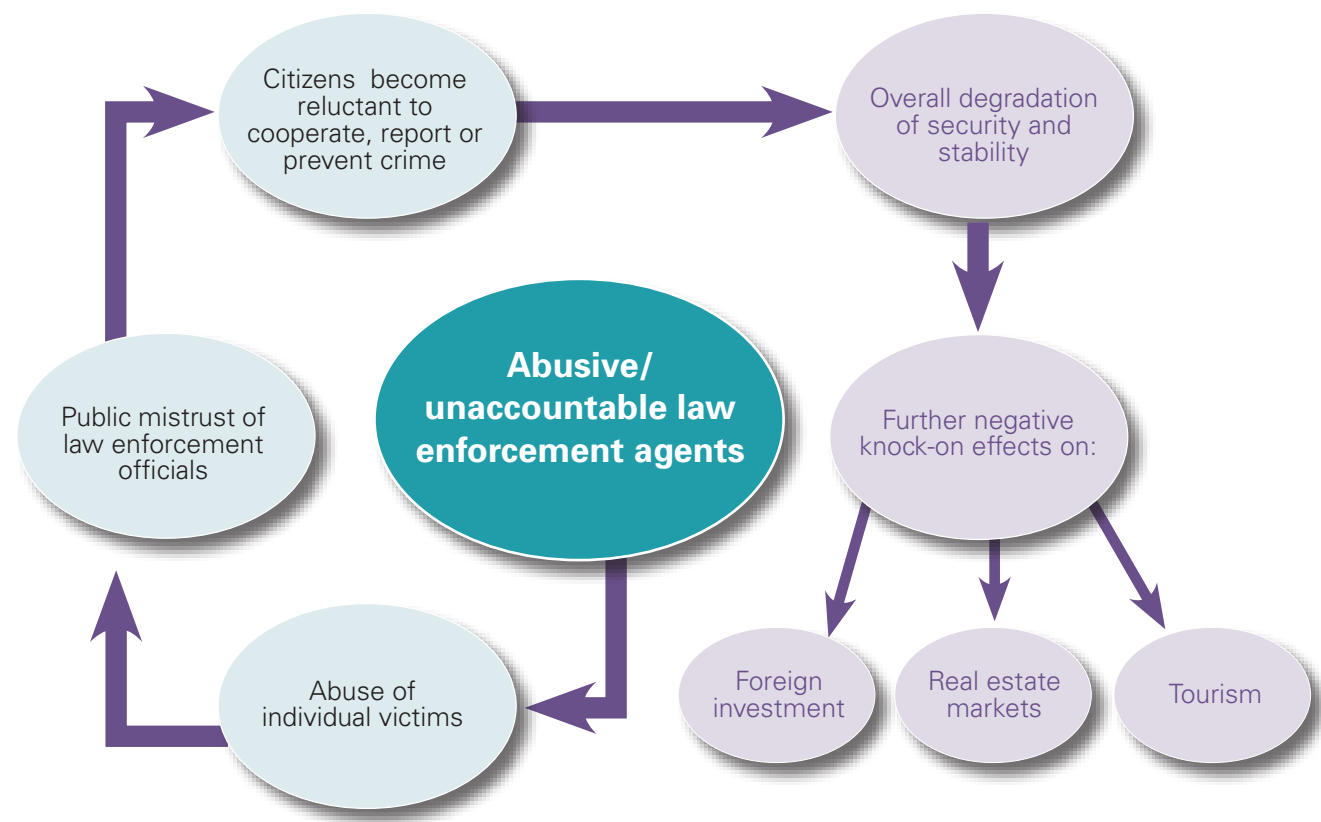
The Cost of Child Abuse and the Cost of Establishing a Child Protection System

UNICEF commissioned a study to assess the economic impact of child abuse on Vanuatu's economy. The study calculated the costs of child abuse on the basis of an average estimated prevalence of 18-36%. In other words, the study is based on the estimate that 18-36% of all children in Vanuatu have been subject to abuse. In numbers, these are between 22,453 and 45,331 children who have experienced physical abuse (17%-48%), sexual abuse (15%-21%), and emotional abuse (21%-38%).⁵⁷

The study took into account both direct (such as medical treatment) and indirect costs such as lifelong chronic health costs as well as productivity loss resulting from abuse. Overall, the study concluded that the annual cost of child abuse in Vanuatu amounted to 0.5% to 0.75% of the country's GDP, the equivalent of 293.8 million to 425.4 million Vatu every year (approximately US\$ 3.1 million to US\$ 4.5 million). The study contrasted the costs generated by child abuse with the costs of establishing a comprehensive child protection system. It concluded that the total cost to establish a child protection system would amount to about US\$1.7 million.⁵⁸

Another example of costs generated by the non-respect of human rights are abusive and unaccountable law enforcement agents. In addition to violations that individual victims experience as a result of abusive police conduct, if such conduct is common and not held accountable, it leads to public mistrust of law enforcement officials. With the loss of trust in police, for example, citizens are reluctant to cooperate, to report, or to prevent crime, which leads to an overall degradation of security and stability, and has potential knock-on effects on tourism, foreign investments, and on certain sectors of the economy, such as real estate markets. Such negative effects therefore go beyond the individual victim and can have an impact on the country and its economy as a whole.

The Cost of Non-Respect of Human Rights



Last but not least, if large sections of society are unable to exercise their right to take part in public affairs and shape a country’s development, the country risks losing their potential to contribute to development. The marginalization of youth, manifesting itself in high youth unemployment, and suicide rates in the Pacific has been mentioned in that context for example.⁵⁹

These are only few examples of the costs generated by the non-implementation of human rights. When considering whether to ratify and implement a human rights treaty, therefore, States should not only consider whether any costs are generated by implementing the provisions of a convention, but also the benefit human rights advancement in a country will bring about.

The Link between Human Rights and Development

In September 2000, 189 world leaders, including those from Pacific Island Countries, committed themselves to reducing extreme poverty, achieving sustainable human development, and fully respecting the Universal Declaration of Human Rights. In an effort to translate these commitments into action, the international community signed up to the Millennium Development Goals (MDGs) - a set of eight time-bound, quantifiable goals to be realized by 2015.

While many countries in the Asia and Pacific region have made substantial progress towards achieving the MDGs over the past 3 years, others are still lagging behind and are struggling to achieve these goals. These include several countries in the Pacific where progress towards achievement of the MDGs has been uneven. To date, approximately nine Pacific Island Countries are off-track or slightly off-track when it comes to achieving at least half of the MDGs. In other words, unless a renewed effort is made, these countries are unlikely to reach the targets.⁶⁰

Human Rights and MDGs have much in common. They share guiding principles such as participation, national ownership, empowerment, and they include reporting processes through which Governments can be held accountable. More fundamentally, they share the ultimate objective of promoting the human dignity of all people. The Pacific Plan’s objectives are consistent with achieving the MDGs. The table below highlights the close link between human rights, MDGs, and the Pacific Plan’s strategic objectives.⁶¹

MDGS, HUMAN RIGHTS, AND THE PACIFIC PLAN		
MILLENNIUM DEVELOPMENT GOALS	KEY RELATED HUMAN RIGHTS STANDARDS	PACIFIC PLAN STRATEGIC OBJECTIVES
Goal 1 Eradicate extreme poverty and hunger	Universal Declaration of Human Rights, article 25(1); ICESCR article 11, CRPD article 28.	Objective 4: Reduced poverty; Objective 12: Improved transparency, accountability, equity and efficiency in the management and use of resources.
Goal 2 Achieve universal primary education	Universal Declaration of Human Rights article 25(1); ICESCR articles 13 and 14; CRC article 28(1)(a); CEDAW article 10; ICERD article 5(e)(v); CRPD article 24(2); ICRMW articles 30, 45(1)(a).	Objective 7: Improved education and training; Objective 12: Improved transparency, accountability, equity and efficiency in the management and use of resources.
Goal 3 Promote gender equality and empower women	Universal Declaration of Human Rights article 2; CEDAW; ICESCR article 3; CRC article 2; ICRMW, article 7; CRPD article 6.	Objective 8: Improved gender equality; Objective 12: Improved transparency, accountability, equity and efficiency in the management and use of resources.
Goal 4 Reduce child mortality	Universal Declaration of Human Rights article 25; CRC articles 6, 24(2)(a); ICESCR article 12(2)(a); ICRMW article 28; CRPD, article 10.	Objective 6: Improved health; Objective 12: Improved transparency, accountability, equity and efficiency in the management and use of resources.
Goal 5 Improve maternal health	Universal Declaration of Human Rights article 25; CEDAW articles 10(h), 11(f), 12, 14(b); ICESCR article 12; CRC article 24(2)(d); ICERD article 5(e)(iv); CRPD article 25(a).	Objective 6: Improved health; Objective 12: Improved transparency, accountability, equity and efficiency in the management and use of resources.
Goal 6 Combat HIV/AIDS, malaria and other diseases	Universal Declaration of Human Rights article 25; ICESCR article 12, CRC article 24; CEDAW article 12; ICERD article 5(e)(iv); CRPD article 25.	Objective 6: Improved health; Objective 12: Improved transparency, accountability, equity and efficiency in the management and use of resources.
Goal 7 Ensure environmental sustainability	Universal Declaration of Human Rights article 25(1); ICESCR articles 11(1) and 12; CEDAW article 14(2)(h); CRC article 24; ICERD article 5(e)(iii); CRPD article 28.	Objective 12: Improved transparency, accountability, equity and efficiency in the management and use of resources

Goal 8 Develop a global partnership for development	Charter articles 1(3), 55 and 56; Universal Declaration of Human Rights articles 22 and 28; ICESCR articles 2(1), 11(1), 15(4), 22 and 23; CRC articles 4, 24(4) and 28(3); CRPD article 32(1).	Objective 14: Increased national ownership and commitment to regional approaches, plans, policies, and programs; Objective 12: Improved transparency, accountability, equity and efficiency in the management and use of resources.
ICESCR (International Covenant on Economic, Social and Cultural Rights) ICCPR (International Covenant on Civil and Political Rights) ICERD (International Convention on the Elimination of All Forms of Racial Discrimination) CEDAW (International Convention on the Elimination of All Forms of Discrimination Against Women) CRC (Convention on the Rights of the Child) CRPD (Convention on the Rights of Persons with Disabilities) ICRMW (International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families) CPED (International Convention for the Protection of All Persons from Enforced Disappearance)		

MDGs and human rights are mutually reinforcing. MDGs help achieve key human rights – in particular in the spheres of social and economic rights – and human rights in turn can work in support of achieving the MDGs by providing a framework of accountability, a focus on the most marginalized and vulnerable, and by ensuring that MDGs are pursued in a just and equitable manner and without discrimination.

The Right to Education & MDG 2

Universal and free primary education is a Millennium Development Goal (MDG 2) and a human right (ICESCR, art. 13; CRC, art. 28).

Since 2010 the **Vanuatu** Government provides a grant of Vt6,800 [around US\$70] for every child in all primary schools from Year 1 to Year 6. This is expected to cover 100% of the total fees charged by schools. Parents will be expected to meet other costs for transport, boarding, uniforms, books, writing materials etc. The Government plans to extend the programme to eliminate all primary school fees, and after review and evaluation, eventually extend subsidies further to years 7 and 8, and to secondary schools. This initiative is supported by international donors and UNICEF

Poverty is often a manifestation of exclusion, marginalization and discrimination and should not just be seen as a lack of resources. Bringing about equitable development therefore requires addressing these underlying causes of poverty and considering the poor as people with rights (rights-holders) and not just as individuals in need. Human rights bring the important added value of allowing for a focus on those who are subject to exclusion, on the obligations States have towards these groups, and thus allow for systematic responses in addressing poverty.

Human rights represent legally binding obligations for Governments and therefore add an important element of accountability, as opposed to the MDGs, which are political commitments. Implementing human rights provides victims of human rights violations with a remedy for violations and an enforceable mechanism to hold States accountable. As such, they provide legal protections for people, including for the most vulnerable, and they empower and allow them to take action against marginalization and poverty. Ratifying and implementing human rights treaties therefore is essential for Pacific countries to achieve MDGs and sustainable and equitable development.

The Link between Human Rights and Culture ⁶²

Custom and human rights both concern rights. Human rights are understood to be the rights that are innate and inherent to each of us as individuals. Customary, traditional and cultural rights relate to our social mores as a distinct people of community. They include the ownership of the land and natural resources, folklore, traditional knowledge and social systems. Both these species of rights belong to us by virtue of who and what we are. It follows that we will need to balance them with each other, if we wish to derive benefit from both.

Ratu Joni Madraiwiwi, former Vice-President of Fiji

In discussions about treaty ratification in the Pacific, human rights are sometimes viewed as a foreign concept with little relation to the realities in Pacific Island Countries, or worse, as a new concept that disregards or poses a threat to local tradition and culture. Discussions have also brought to the forefront resistance against the universal nature of human rights and arguments have been voiced that there are irreconcilable differences between Pacific cultural practices and human rights. Among others, these differences include freedom of expression for young people, which is seen as threatening traditional authority; the principle of equality between men and women; the notion of children as rights-holders; and more generally, the emphasis on the rights of individuals, which is seen as contrary to communal values and the important role of communities in the Pacific.⁶³

Despite arguments pointing out differences between Pacific Island societies and some human rights principles and standards, there are important shared values and commonalities. In every society, irrespective of its culture and customary practices, people have a notion of respect for the dignity of other persons, and of justice and injustice within their community. Most also realize when State authorities are acting unjustly and have shown resolve in resisting abuse of power and injustice. And most, if not all, deeply care about their children’s education, the wellbeing of their families and communities, their access to healthcare, and their ability to live in security, all of which are at the core of human rights.

The Convention for the Rights of the Child is much debated and [generates] very heated discussions in our country. I feel that at the start we should first of all look at the content of this convention, look at exactly what this convention says. Rather than looking at the convention and the content of the convention the debate is immediately thrust upon these words: 'Rights of the Child'. And then we say 'a Samoan child does not have the right to do this or to do that'. Whereas the convention itself speaks of rights that our children do have: the right to shelter, the right to education, the right to participate in a religion of choice. ⁶⁴

Afioga Maiava Visekota Peteru, Solicitor, Samoa

Customary values common among Pacific Island cultures include individual dignity and respect for others; values relating to sharing; love and caring for others; hospitality; reciprocity; and community decision-making. Distribution of wealth remains an important value in Pacific societies as are the contributions of everyone to the community and the entitlement of every community member to benefit, even if in reality some may benefit more than others. ⁶⁵

The human rights that correspond to these customary values may be worded differently, but essentially they share the same aspirations. In human rights terms, these values correspond to the "inherent dignity... of all members of the human family," and to equal rights and equal outcomes. Human rights therefore can lead to a social order in which customary values are more likely to be realized. ⁶⁶

Human rights are sometimes portrayed as giving undue importance to individual rights, which is seen as being irreconcilable with cultural practices in the Pacific where the individual's duty to contribute to the community is often seen as central. Human rights law stresses not only rights but also the duties of individuals, very similar to custom. One person's right entails responsibilities towards other persons and the relationship between the individual and society therefore encompasses both rights and duties. And as outlined in chapter one of this handbook, rights entail duties and responsibilities and the rights of individuals may be lawfully curtailed to protect others. ⁶⁷

Even though a human right may be framed as the right of an individual, the pursuit of justice by a single person in many cases benefits an entire community. For example, an individual's fight for the revocation of a law that discriminates against members of his or her group is not an individual matter only but will benefit his or her group as a whole. An individual seeking to exercise a right therefore can act in the interest of an entire group or community.

Changing Cultures in a Changing World

For the people of Pacific Island Countries, the value of community structures in shaping identities and values remains strong and vibrant. At the same time, for a large percentage of the population, the challenges of living in a world in transition are increasing. Their identity is being shaped by the competing forces of culture, hierarchy, and tradition, and the growing influences of modernization, globalisation, and consumer culture.

The Pacific region rightly boasts a rich cultural diversity and distinct practices that shape people's identities. At the same time, Pacific Island Countries are going through and bear the brunt of rapid economic transformation accelerated by globalization. These changes manifest themselves in the Pacific in rapid urbanization, internal and international migration, as well as environmental degradation and climate change. All of these factors will continue to change the ways in which communities and societies function. These factors will influence people's value systems, their way of organizing themselves, their customary practices, and the social safety nets for the most vulnerable.

With a modern economy taking root in many places in the Pacific, and individual wealth being acquired on the basis of skills and accomplishments that are removed from the village and communal lands, customary practices, including the practice of individuals contributing to and sharing with the community are likely to undergo change. The risk for individuals to miss out on the social safety nets that traditionally could be relied upon might increase as a result. Human rights conventions can provide a valuable framework and act as a vehicle to steer development to provide safety nets for the most vulnerable, to enable dialogue, and to reconcile customary practices with human rights principles for the benefit of all members of society.

Human rights treaties are living instruments that keep evolving in different contexts. They can thus serve as tools to reconcile cultural norms with fundamental human rights values. While human rights are universal in nature, their implementation can be done in different ways and there is no one-size-fits-all solution for their realization in a given society or context. Human rights norms therefore still provide space for customary values and traditions to continue to shape Pacific societies and identities in a distinct way.

Cultures and traditional practices themselves are not static. Cultures evolve and have always evolved with new generations, adapting to changing times and circumstances, new influences and perspectives. Pacific societies, for example, have embraced Christianity in recent times, which have greatly shaped customary practices. The interpretation of culture and traditions in a community, furthermore, is not exclusive to one particular group, and different members of the same cultural community may interpret cultural values differently from one another, as the following examples show.

Culture and Women's Rights

In 2005, the traditional Malvatumauri (House of Chiefs) in **Vanuatu**, supported by church leaders, tried to pass a new custom law, a dress code restricting the right of ni-Vanuatu women to wear trousers, shorts, pants, or jeans, foreseeing fines and the killing of a pig as punishment for those who fail to abide by the law. The Vanuatu Women's Centre successfully challenged the code with a media campaign on the grounds that it was unconstitutional and against women's right to equality. ⁶⁸

Twenty male advocates from **Tonga** completed training on women's rights by the Tonga Women and Children's Crisis Centre (WCCC) and the Fiji Women's Crisis Centre in 2010. The workshop sensitized participants about gender equality, the contributions by women to their families and communities, and the unacceptability of violence against women. It provided participants with skills to effectively advocate for gender equality and the elimination of violence against women.

One of the participants was quoted as follows in a newspaper article about the workshop: "Most of the duties that women do are not natural, they are a product of our culture. Men can clean the house, cook the food. The reality is we are using our culture to oppress women. Our job as male advocates is to make it clear that women can do everything men can do."

It is widely acknowledged that Pacific communities continue to place high value on indigenous customs and traditions for guiding their daily lives. Traditional leaders derive their legitimacy, and therefore their authority, from their culture's customs. They command respect from their communities and can use this respect to mobilise communities around human rights issues such as HIV/AIDS, education, gender equality, matters affecting social welfare and other development issues. They can positively use their position of authority to bring about shifts in attitudes around the challenges their communities face, such as domestic violence (as the following example shows) or youth aspirations, by striking a healthy balance between tradition and modernity.

Community Leaders Fight Against Child Abuse

UNICEF Pacific has applied local advocacy strategies as a means to enhance child protection in Pacific Island Countries. It appointed child protection advocates and through meetings and workshops enhanced the understanding of child protection among community leaders and faith-based organizations. In addition, social welfare officers assisted leaders in identifying risks for children and in formulating appropriate responses.

As a result of the community work and leaders' engagements, several villages in Fiji have banned corporal punishment of children in homes and communities. The chosen approach respected community protocols and decision-making processes and used tradition as an asset to realize human rights and improve children's safety and well-being.

In addition to traditional leaders, many faith-based organizations participate in the promotion of human rights and endorse the notion of equality of dignity for all members of the community. They recognize the relevance of human rights messages in their daily work with families and communities. The right to education, the right to health, the right to marriage and family life, protection from violence, non-discrimination, and solidarity are values that are central to the communities and families faith-based organizations closely interact with. These human rights values resonate within the faith system itself.

The experience of several UN agencies shows that the majority of faith-based representatives are receptive to human rights principles and interested in applying human rights based approaches in their community work. Church groups in the Pacific have taken vocal positions and have used the language of human rights to advocate on behalf of their communities.⁶⁹ And as mentioned in the introduction section of this handbook, the early foundations of today's human rights are found in the world's major religions, including Christianity.

Cultural Practices Contrary to Human Rights Principles

Customary values should be seen as distinct from customary practices. In the Pacific as elsewhere, customary practices have changed over time and may in certain instances now be at odds with the underlying values. One case in point is the diminished status accorded to women in today's societies in the Pacific and the widespread prevalence of violence against women, which stands in contrast to the customary value of respect for every individual and the status historically accorded to women in the Pacific.⁷⁰

Customary values are part of a community's underlying beliefs about what is good and right. Customary practices in contrast are habits performed to give effect to these values. Customary practices change over time (as evidenced by the arrival of Christianity and colonization), whereas customary values are more constant and express ideals or aspirations, but they are not necessarily lived up to in everyday life. That can mean that customary practices may differ significantly from one community to the next while the underlying customary value may be very similar. It also means that it is possible to initiate community dialogue to identify practices that are harmful and unhealthy so that they can be altered or abandoned without challenging the underlying customary values and weakening custom.

Even though many cultural values in the Pacific embody human rights principles, as outlined in the introduction of this handbook, some practices in the Pacific are harmful or may reflect stereotypes that run counter to human rights and discriminate against or harm members of society, such as women, children or youth. In these instances, clarification on the acceptable limits of cultural practices and the harm they cause to individuals is necessary for the protection of a person's fundamental rights and dignity.

Some of the Samoan practices need to be adapted to satisfy the requirements of the [Universal] Declaration of Human Rights. But I think most importantly that throughout the process of trying to adapt there's negotiation - negotiating the two sets of values wherever and whenever they contradict each other. Samoan custom and practices of course emerged and evolved in the context of our situation, and our immediate surroundings, and our resources at the time. And the Declaration of Human Rights is a document that grew out of certain circumstances in the history of the world. [...] And if there is any negative practice of Samoan custom that does not cater for the best interests of human beings then we can look positively at the articles of the [Universal] Declaration of Human Rights and benefit from it because these people already had the experiences [...]; although outside Samoa, Samoa can benefit from those examples in a positive way. [...] A lot of things in our Samoan custom and culture are aimed at the wellbeing of the human being, of the Samoans, there's a lot of fairness in there. But no system is perfect, no-one is perfect - when we come to those things then we negotiate and adapt and move on.⁷¹

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Many Pacific Island constitutions recognize customary law, which in some instances may give rise to tensions with human rights principles. Recognizing these potential tensions, Pacific Island Governments have affirmed the universal nature of human rights and committed themselves to protect and promote all human rights and fundamental freedoms regardless of their countries' cultural systems.⁷²

In addition to the position taken by Pacific Island Governments, courts in the Pacific have also made decisions which bear upon the relationship between custom and human rights in a number of instances where the two appeared to be irreconcilable. Below are several examples of court decisions from the Pacific that demonstrate how judges in national courts have confirmed the existence or importance of customary practices while at the same time clarifying and reconciling the relationship between customary practices and human rights.⁷³

In *Loumia v. Director of Public Prosecution* in the **Solomon Islands**, the defendant justified the killing of three persons on the grounds that according to Kwaio custom, the defendant had a legal duty to kill the victims as a revenge for the killing of a relative. Even though the Solomon Islands constitution recognizes customary law, the Court of Appeal held that the custom that called for the killing of a person was inconsistent with the right to life provision in the Constitution and therefore not part of Solomon Islands law.⁷⁴

In *Lafaialii & Others v Attorney General & Others*, the **Samoa** Supreme Court examined the constitutional right of freedom of religion in light of customary exclusion practices at the village level. The Supreme Court held that the actions by the Village Council prohibiting a bible class, dismantling the building where classes were held, and banishing four of the families attending bible classes from the village, were unconstitutional and in violation of religious freedom. The Court noted the contributions of the Village Council towards peace and harmony within the village but determined it did not have the authority to banish the families because of their religious belief, and called on the Council to show tolerance and respect for other religious beliefs. The Court reasoned that societies were not at a standstill and for them to survive required adaptation to changing circumstances, as well as tolerance towards legitimate situations and ideas that arise from time to time. The Court also noted that religious persecution has resulted in misery and suffering.⁷⁵

This case informed *Teonea v Pule o Kaupule of Nanumaga* in the **Tuvalu** Court of Appeal in which the court considered the right to freedom of religion and the right of customary authority to preserve Tuvaluan Culture. The case went to court following the decision of Nanumaga Island assembly of elders (Falekaupule) to ban the Brethren church from seeking converts. The banning followed an earlier resolution in which the elders decided not to allow any new faith to establish itself on the island in order to strengthen “social structure, traditions, peace and order.” The court decision held that restrictions on rights for the purpose of preserving tradition needed to be reasonably justifiable and proportionate to the purpose. Curtailing religious freedom in this case was not a reasonably justifiable way to preserve culture since there are less restrictive means for achieving the purpose of cultural preservation. When arguing legitimate purpose for curtailing rights, the less extreme measures for preserving culture should be pursued.⁷⁶

In the decision *Yanga Mondo*, a **Papua New Guinea** woman had been held in a corrective institution and served an 84 week sentence by the village court for failing to pay compensatory bride price after leaving her husband. The National Court held that even though the village court had the authority to order imprisonment, the woman’s detention was unlawful and inconsistent with the Papua New Guinea Constitution which provides that no one shall be deprived of liberty except under certain conditions. Failure to pay bride price is not one of the exceptions.⁷⁷

In *The State v. Kule* the defendant pleaded that the handing over of his daughter to the relatives of the person he killed unlawfully should be considered as a mitigating factor. The **Papua New Guinea** National Court, however, considered the practice of handing over a child as similar to slavery, contrary to the welfare of the child, and prohibited by the country’s constitution, despite the fact that such practice was common.⁷⁸

Resistance towards the concept of equality among men and women, freedom of religion, and the consideration of children as individual rights-holders can sometimes be attributed to misunderstandings, including the notion that human rights have nothing in common with traditional values. In other instances, resistance can be attributed to those who invoke cultural traditions to defend positions of power and who benefit from prevailing power structures and limited accountability.

Governments, civil society actors, and community members have important roles in promoting better understanding of human rights and the law among the population. Doing so will encourage greater awareness about human rights as well as increased participation in political, social, and development processes that affect them. With a better understanding of the meaning and values of human rights, as well as their commonalities with cultural values, a culture of human rights that is not perceived as a threat to tradition is able take root. This will allow societies and culture to adapt to changing times and to thrive for the benefit of all members of society.

Human Rights Protect Culture

Last but not least, several human rights instruments uphold and protect cultural practices and their survival. By providing a framework for oversight of State action and use of State power and influence, human rights can be a forceful tool to protect individuals and communities with regards to their cultural rights.

Both the Universal Declaration of Human Rights and the International Covenant on Economic, Social, and Cultural Rights protect the right of everyone to participate in the cultural lives of their communities. The Convention on the Rights of the Child (CRC) affirms that education shall further the respect for a child’s cultural identity, language, and values, and the child’s right to participate in cultural life.

In addition, the 2007 United Nations Declaration on the Rights of Indigenous Peoples affirms indigenous peoples’ contribution to the diversity of civilization and recognizes the urgent need to respect and promote indigenous knowledge, cultures and traditional practices, and it reaffirms the right of indigenous people to maintain and strengthen their distinct cultural institutions.

The Link between Human Rights and Good Governance

Good governance ensures that political, social and economic priorities are based on broad consensus in society, that the voices of all, including of marginalized and vulnerable groups, are heard in decision-making about the allocation of resources, and that those mandated to make decisions on behalf of others remain accountable. Good governance can be described as the exercise of authority through political and institutional processes that are transparent, accountable, and encourage public participation. Good governance has become a central part of the international development agenda and is seen as key for reform of the public sector. As defined by the UN, it contains the following characteristics.⁷⁹

GOOD GOVERNANCE PRINCIPLES
Participation: All men and women should have a voice in decision-making, either directly or through legitimate intermediate institutions that represent their interests. Such broad participation is built on freedom of speech, as well as capacities to participate constructively.
Rule of Law: Legal frameworks should be fair and enforced impartially, particularly laws protecting human rights.
Transparency is built on the free flow of information. Processes, institutions and information are directly accessible to those concerned, and enough information is provided to understand and monitor these institutions and processes.
Responsiveness: Good governance requires that institutions and processes aim to serve the needs of the people within a reasonable timeframe.
Consensus oriented: Good governance mediates differing interests to reach a broad consensus on what is in the best interests of the group and, where possible, on policies and procedures.
Equity and inclusiveness: A society’s well-being depends on ensuring that all its members feel that they have a stake in it and do not feel excluded from the mainstream of society. This requires that all groups, but particularly the most vulnerable, have opportunities to improve or maintain their well-being.
Effectiveness and efficiency: Processes and institutions produce results that meet the needs of society while making the best use of resources at their disposal. The concept of efficiency in the context of good governance also covers the sustainable use of natural resources and the protection of the environment.
Accountability: Decision-makers in Government, the private sector and civil society organizations are accountable to the public, as well as to institutional stakeholders. Who is accountable to whom varies depending on whether decisions or actions taken are internal or external to an organization or institution. In general an organization or an institution is accountable to those who will be affected by its decisions or actions. Accountability cannot be enforced without transparency and the rule of law.
Strategic vision: Leaders and the public have a broad and long-term perspective on good governance and human development, along with a sense of what is needed for such development. There is also an understanding of the historical, cultural and social complexities in which that perspective is grounded.

Implementing human rights treaties introduces mechanisms of accountability, transparency, participation and responsiveness, which all contribute to the realization of good governance. Hence, good governance and human rights are mutually reinforcing.

For example, reporting to human rights Treaty Bodies requires States to publicly explain their efforts and achievements in implementing a treaty. And that includes, as explained in the first chapter, an account of how rights are respected, protected, and fulfilled. These reports are public and subject to scrutiny not only by the international expert body (Treaty Body) but also by civil society organizations and the larger population. In preparation of reports, civil society and members of the community can engage with Governments, submit additional information to the Government, or they may choose to submit alternative information to the Treaty Body (a procedure discussed in more detail in chapter four of this handbook). After a State's review by the Treaty Body, civil society and other stakeholders can contribute to Government accountability by disseminating the outcome of the State's review, and by advocating and cooperating with the Government in the full implementation of all human rights provisions.

States parties' actions thus become open to scrutiny both by their population and by the international community with the ultimate aim of encouraging and assisting the State to implement fully its obligations under human rights conventions. Human rights treaty reporting and implementation therefore positively contribute to a State's transparency and accountability record, as well as the State's compliance with human rights more broadly.

In the Pacific, awareness about human rights and what these rights mean for individuals has resulted in more questioning of authority and more participation in decision-making both within communities and at the national level. A culture of human rights encourages people to question authorities, and to take steps to eliminate patterns of inappropriate conduct whether it is the abuse of public office, the misuse of traditional authority, the lack of consultation and information, or the introduction of barriers that inappropriately limit access to public services. With people more readily seeking answers from their leaders and elected officials, a culture of human rights can gradually take root.

Solomon Islands High Court Quashes Increase of MP and Spousal Allowances

A storm of protest ensued in the Solomon Islands when the Parliamentary Entitlement Commission decided in mid-2009 to significantly increase allowances for MPs and their spouses. The Commission decided to raise MPs terminal allowances after their four-year term to a total of US\$53,000 each, and in addition afforded new allowances of US\$6,000 to the spouse of each MP. Transparency Solomon Islands condemned the decision as "inappropriate, unjustified, and unaffordable." The Solomon Islands Chamber of Commerce and the Council of Trade Unions described entitlements as corrupt and irresponsible and called for them to be scrapped. The Attorney General initiated proceedings in the High Court against the Members of Parliaments, and the matter had been referred to the Parliamentary House Committee. In October 2009, the High Court found that Members of the Parliamentary Entitlement Commission had acted beyond their powers and quashed the allowances. In its judgement the court noted: "In view of the blatant errors committed in the decision making process, which would have been sufficient alone, but noting also the public furore over these Regulations, the only proper thing to do in the circumstances is to order that they be quashed with immediate effect."⁸⁰

A vibrant human rights culture makes Governments more responsive for the public good. This also means that Governments are more likely to ensure that a country's resources (which are to benefit its people), are utilised properly, in a sustainable manner, and for the benefit of the community. This requires an empowered and alert citizenry that is ready and willing to hold those in authority to account and it also requires the protection and respect for key human rights such as freedom of speech, freedom of association, and freedom of assembly.

Civil Society Demands Participation and Consultation on Vanuatu's WTO Accession

In the lead up to Vanuatu's accession to the World Trade Organization (WTO), civil society organizations, the Churches, local communities, and business representatives formed a coalition and launched a vocal campaign demanding full information, consultation, and a meaningful dialogue with the Government over the country's WTO accession. As in their view their demands were not being answered by the Government the coalition decided to put additional pressure with a planned peaceful rally against the Government's decision to join the WTO. The Government banned the rally on the grounds of security, and arguing that it was unacceptable to demonstrate against an elected Government that decided for the country to join the WTO. Civil society organizations in response maintained that free speech was more important than free trade.⁸¹

The Link between Human Rights, Peace, and Security

Without respect for human rights and fundamental freedoms, the attainment of sustainable peace remains illusory. National security and stability cannot be achieved without respect for individual security in the form of respect for human rights and fundamental freedoms. There are many instances in which oppression has led to gross violations of human rights, resulting in conflicts, displacement, refugee movements, and human suffering.

Achieving political stability and peace remains a challenge in several Pacific Island Countries that experience repeated power struggles within Governments, which are often linked to economic benefits. Implementing human rights treaties can contribute both directly and indirectly to conflict prevention and transformation in the Pacific. For example, in cases where underlying patterns of discrimination or violence against minority groups are not dealt with, the risk of renewed conflict remains. Conflicts cannot be prevented or stability maintained in a place with serious human rights violations.

Power struggles and conflicts in the Pacific have had impacts on the realisation of human rights including economic and social rights. Discrimination and lack of opportunities for minority ethnic groups in several Pacific Island Countries have manifested themselves in direct expressions of violence resulting in the closing down of small businesses or industries in the Pacific, which further exacerbated the denial of rights. The absence of accessible and effective complaints and redress mechanisms for human rights violations further have contributed to people resorting to violence.

A human rights lens allows also for a stronger emphasis on the rights of groups that are marginalized and discriminated against, and it provides a framework for addressing the underlying or root causes of inequalities and tensions. The principle of non-discrimination and equality in human rights law in particular enables one to strive for more equitable societies. The advancement of human rights, including through treaty implementation, therefore, provides an important framework to eliminate patterns of discrimination and to achieve equality and stability in the Pacific.

The protection of human rights and the securing of peace is sometimes seen to be at odds with each other. In contexts where powerful figures who have committed human rights abuses are in a position to significantly alter or end a conflict, the prospect of reaching a peace agreement expediently can be diametrically opposed to the principles of accountability. In the interest of securing peace and ending violence, dealing with human rights abuses committed during the conflict is sometimes undermined through amnesty provisions for those responsible, in the interest of putting the past behind. Even though the context and timing of dealing with past abuses is critical and there is no general rule on when the context and timing is right, the ignoring of abuses for the expediency of reaching a peace agreement risks generally undermining respect for human rights and the sustainability of peace.⁸²



CHAPTER 3 – HOW TO IMPLEMENT HUMAN RIGHTS TREATIES?

How Can Pacific Island Countries Implement Human Rights Treaties?

Signing a Human Rights Treaty

When a Pacific Island Country decides to ratify a treaty, the first formal step is to sign it. Signing a treaty indicates an intention and commitment to ratify. Conventions are typically signed first by a member of the Executive, for example the President, Prime Minister or a Foreign Minister. The time lapse between signature and ratification gives the State an opportunity to consider how in practical and concrete terms it will implement the rights in the treaty for its people.

That time lapse could include a preliminary analysis of the national legislation and current practice in relation to a treaty, which would enhance understanding of the areas that will require action. This time lapse also allows for national decision making and consultation processes to take place, including, where required, subsequent ratification by Parliament or passing of enabling legislation.

A State that signs a human rights convention is not legally bound by its provisions. However, a signature creates an obligation on a country to refrain in good faith from acts that would defeat the purpose of the convention. Once the treaty is ratified it becomes legally binding on the State.

Accession or Ratification

The difference between ratification and accession is procedural, not substantive, and both have the same effect: States become legally bound by the treaty's provisions. Ratification follows signature as the second step of a two-step procedure – accession combines the two steps in one.

The initial decision to ratify a human rights treaty is typically made by Cabinet which can then task a particular Ministry or department with the ratification process. In some Pacific Island Countries, the Parliament needs to endorse treaty ratification.⁸³ In others, the Executive – the Government in power – can ratify international agreements. Generally, it is advisable that ratification is preceded by consultations across Government departments, with Parliament, civil society, and the public. Full consultation prior to ratification encourages public support and better understandings of the obligations generated through ratification.

Pacific Island Countries that intend to ratify a human rights treaty can ask for assistance from regional and international organizations. UN agencies in the Pacific (including the UN Office of the High Commissioner for Human Rights (OHCHR); UNDP, UNICEF, and UN Women) can provide technical assistance to Pacific Island Countries. In addition, the Regional Rights Resource Team with SPC (SPC RRRT) provides trainings for Government and civil society on human rights treaties. It is also possible to invite Treaty Body expert members for technical assistance missions to a country that is taking steps towards ratification of a particular treaty.

Reservations and Declarations

States that ratify a human rights treaty may put reservations on one or several provisions of a given treaty. By doing so, States signal that they are generally willing to implement a treaty, but reserve the right not to be legally bound by one or several provisions on which reservations have been made. A reservation therefore is a formal declaration that the State considers itself not bound by one or several articles of the treaty.

States are always encouraged to ratify treaties without reservations. In some cases, however, a reservation may enable a State to participate in an international treaty in which it would otherwise be unable or unwilling to do so. It is perhaps of higher interest to have States ratify with a reservation (and work towards removing it) than not at all. Sometimes a State will lodge a reservation because it feels that the implementation of that particular article requires additional time or consultation.

States are bound by limitations when it comes to making reservations. Reservations that are “incompatible with the object and purpose of that treaty” are not allowed.⁸⁴ Other States can also object to a reservation and the Treaty Body itself will also consider any reservations made by States.

States may withdraw reservations any time. Withdrawals must be formulated in writing, and signed by the Head of State, Head of Government, Minister of Foreign Affairs, or the person having powers for such purposes. Treaty Bodies consistently urge States to review existing reservations and to take steps to remove them.

States may also submit declarations when ratifying or acceding to a treaty. These declarations reflect a State’s interpretation of a particular provision in a treaty. Declarations do not modify the legal effects of a treaty but seek to clarify the State’s understanding of certain provisions.

Cook Islands Reservation (and subsequent withdrawal) on CEDAW

On 30 July 2007, following its first review by the CEDAW Committee, the Government of Cook Islands notified the Secretary-General of its decision to withdraw the reservations made upon accession to the convention. The reservation read as follows:

“The Government of the Cook Islands reserves the right not to apply the provisions of Article 11 (2) (b). The Government of the Cook Islands reserves the right not to apply the provisions of the convention in so far as they are inconsistent with policies relating to recruitment into or service in: (a) The armed forces which reflect either directly or indirectly the fact that members of such forces are required to serve on armed forces aircraft or vessels and in situations involving armed combat; or (b) The law enforcement forces which reflect either directly or indirectly the fact that members of such forces are required to serve in situations involving violence or threat of violence. The Government of the Cook Islands reserves the right not to apply Article 2 (f) and Article 5 (a) to the extent that the customs governing the inheritance of certain Cook Islands chiefly titles may be inconsistent with those provisions.”

Implementing Human Rights Treaties

As detailed in chapter one of this handbook in the section that defines human rights, States parties to human rights treaties are bound by a three-fold obligation **to respect, protect and fulfil** human rights provisions contained in a treaty.

After ratification, a State is legally bound by the treaty’s provisions and must take measures to implement the treaty. Implementation means taking actions to realize treaty provisions such as through the adoption of policies, laws, regulations, or the allocation of resources. This therefore includes legislative and administrative measures, as well as judicial implementation. A typical process to implement a treaty is to review and analyse existing laws, policies, and practices that impact on the enjoyment of relevant rights, and to then develop necessary actions that will give full effect to treaty provisions.

Legislative Implementation

One of the first implementation steps that States parties should consider taking is a review of their Constitution and national laws to assess if, and to what degree, a country’s laws comply with a human rights treaty. Legal reforms deemed necessary after such a review may include the repeal or amendment of existing laws, and the enactment of new laws. Legislative compliance with human rights treaties is best achieved when the State adopts an on-going and systemic approach to the implementation of required reforms.

Legal reform will not automatically ensure that all rights contained in a treaty are fully enjoyed by all persons. Nevertheless, ensuring that the national legislative framework complies with human rights standards is central in achieving this goal. Without the necessary laws in place, the chances to fully realize human rights are slim because people lack legal protection for their rights and are therefore unable to seek redress for violations of their rights.

Legislative reform is necessary to achieve de jure compliance with a treaty. De jure compliance means that the laws of a country comply with the provisions of a particular treaty. De jure compliance is different from de facto compliance. De facto compliance is achieved when the rights of a treaty are being enjoyed in reality, in addition to a compliant legal framework. Laws and regulations are in themselves not sufficient to guarantee the exercise of human rights and States therefore are advised to consistently monitor the implementation of laws and the extent to which rights are being enjoyed by the people and to take corrective action, if necessary.

Monitoring and documentation of people’s enjoyment of rights by civil society and National Human Rights Institutions are crucial to identify gaps in treaty implementation. Such activity can help guide the State in addressing critical gaps including through additional legislative amendments, where warranted.

A Guide to Translate CEDAW into Law in the Pacific

UNDP Pacific Centre and UNIFEM published in 2007: “Translating CEDAW into Law: CEDAW Legislative Compliance in Nine Pacific Island Countries”. The publication contains an analysis of domestic legislative compliance with the CEDAW Convention in nine Pacific Island Countries. To assess compliance, 113 legislative indicators were developed, which provide an overview of required legal reform at the country level. The review sets out a road map for legislative reform in each of the Pacific Island Countries to facilitate the implementation of CEDAW and has been widely used by Governments and non-governmental organizations to advance legislative reform in the area of women’s rights.

Judicial Implementation

The judiciary, which is distinct and independent from the executive organs of Government, has an equally important role in implementing and safeguarding treaty rights.

The relationship between international and national law in a given country is governed by its Constitution. The Constitutions of Fiji, Tuvalu, and Papua New Guinea allow courts to refer to human rights conventions as guidance in their decision-making, even if the country has not ratified the convention.⁸⁵ The Samoa Supreme Court ruled in *Wagner v. Radke* that human rights conventions can guide judicial decision-making even if Samoa is not a party to a particular treaty.⁸⁶

Where countries have ratified human rights treaties, the courts are bound to make rulings that are consistent with the treaty provisions.⁸⁷ The Supreme Court of Vanuatu, for example, referred directly to the Convention on the Rights of the Child in *Molu v. Molu*,⁸⁸ stating that "...Vanuatu is bound by virtue of its ratification in 1992." The following table provides additional case law (or jurisprudence) from Pacific courts in which judges referred to human rights law in their decision-making.⁸⁹

Examples of Pacific Court Rulings with Explicit Reference to Human Rights Treaty Provisions Civil and Political Rights

In *Fangupo v Rex*, the **Tonga Court of Appeal** in 2010 pronounced its views on whether the sentence of whipping was lawful in Tonga. Although the Court was not tasked to make a ruling on the legality of whipping, it made the observation that whipping and flogging constituted cruel, inhuman, and degrading treatment or punishment. It referred to the UN Convention against Torture as well as case-law from the European Court of Human Rights, the UN Human Rights Committee and the Inter-American Court of Human Rights. The Court of Appeal further observed that the prohibition against torture was part of customary international law from which States cannot derogate, and whether Tonga had ratified the Convention against Torture therefore made no difference.⁹⁰

In *State v Boila*, the **Fiji High Court** in a 2004 issued a ruling that had to consider the danger two criminal suspects posed to the public and their right not to be held in inhuman and degrading conditions while awaiting their trial. In its judgement the court referred to the Universal Declaration of Human Rights, the International Covenant on Civil and political Rights, the Convention against Torture and case law by the European Court of Human Rights. It concluded that the right of every person in Fiji to be treated with dignity is an inalienable right and that inhuman and degrading conditions could not be justified by the lack of resources.⁹¹

The overwhelming number of Constitutions in the Pacific guarantee only civil and political rights.⁹² One exception is the 1997 Constitution of Fiji, which contains a very limited number of provisions on economic, social, and cultural rights.⁹³ The absence of economic, social, and cultural rights provisions in Pacific Island Countries' constitutions reflect the historic context in which these Constitutions have been drafted and specifically the colonial domination prior to the drafting process. The sections on rights and freedoms in Pacific Island Countries' constitutions were primarily modelled on former colonial powers' laws which lacked provisions on economic, social, and cultural rights.⁹⁴

Although the question of whether economic, social, and cultural rights are or should be justiciable (enforceable in court) remains a subject of debate, many Constitutions globally incorporate economic, social, and cultural rights provisions and courts around the world have upheld and enforced the binding nature of these rights.⁹⁵ Among them are courts in the Pacific as these examples show:

Examples of Pacific Court Rulings with Explicit Reference to Human Rights Treaty Provisions Economic, Social, and Cultural Rights

In *PAFCO Employees Union v Pacific Fishing Company Ltd.*, the **Fiji High Court** enforced in 2002 an Arbitration Tribunal decision that the dismissal of 57 employees was unlawful and that the workers had to be re-employed. In its decision, the High Court referred to the Constitutional right of workers to organize and bargain collectively, and the guarantee for redress if any rights are violated. The court further referred to article 8 (on trade unions) of the International Covenant on Economic, Social, and Cultural Rights in its ruling.⁹⁶

In *Kambu v Lus*, the **National Court of Papua New Guinea** considered the case of 946 West Papuan refugees who faced eviction from their settlement by a private land owner. Referring to both the Refugee Convention and the International Covenant on Economic, Social and Cultural Rights' provisions on housing, the court held that the request for eviction would not be granted as long as the Government failed to provide an alternative place for them to settle.⁹⁷

In *Noel v Toto* the **Vanuatu Supreme Court** in 1995 referred to the non-discrimination provision in the Constitution as well as Vanuatu's ratification of CEDAW to enforce women's economic rights. The court held that custom used as the basis of ownership of land is subject to the constitutional provision on non-discrimination. The court accordingly ruled that female family members had equal custom rights with regards to land ownership and are entitled to an equal share of income deriving from the land.⁹⁸

Administrative Implementation Measures

Establishing an Intra-Governmental Body

Implementing human rights treaties at the national level requires a concerted and coordinated effort. In some countries, the Ministry of Foreign Affairs takes the lead in treaty implementation with the support of human rights focal points in all relevant line Ministries. In others, it might be more appropriate for a particular line Ministry to take the lead, especially if the content of that treaty matches with the work of that Ministry.

While recognizing that most Pacific Island Countries face the challenge of limited resources and staff, one way of ensuring coordination and effectiveness is by setting up an inter-ministerial body to coordinate human rights treaty implementation efforts, including the submission of reports. Such a body would ensure that treaty implementation remains an on-going process and is not only on the agenda the year a country has to submit a report. To speed up work and decision-making on a particular issue, task forces or sub-committees with smaller memberships and delegated authority can be set up under the body.

Intra-Governmental Treaty Implementation Mechanisms in the Pacific

Papua New Guinea established a Human Rights Forum in 2011 as a permanent mechanism that monitors and takes action on human rights implementation at the national level, including through treaty reporting. The Forum's objectives are to take stock of human rights developments, challenges, and propose a way forward; to determine strategic priorities to advance human rights; to mainstream human rights in all programmes and projects; and to strengthen Government accountability for human rights implementation.

The Forum's membership is broad and includes representatives from the Executive (line Ministries including Justice, Foreign Affairs and Trade, Community Development, Police), the Correctional Service, Defence Forces, the Public Prosecutor's Office and the Prime-Minister's Office; representatives from National Institutions (Ombudsman and Law Reform Commission); as well as civil society organizations, human rights defenders, and UN agencies and donors. The Forum may set up task forces or working groups on specific human rights issues.

The Forum meets on a quarterly basis and is chaired by the Secretary of the Justice Department and the Attorney General, with the UN Office of the High Commissioner for Human Rights acting as a co-chair.

The **Republic of the Marshall Islands'** Resource Development Committee is mandated to implement the CRC and CEDAW Conventions (the two human rights conventions ratified by the Marshall Islands) through legislative reform, by establishing relevant mechanisms, through advice to Cabinet, and by mainstreaming the rights of women and children into sectoral strategies.

The Committee is further tasked to ensure the timely submission of State reports on human rights treaties and to advocate for sufficient human and financial resources for the implementation of international human rights conventions.

It is chaired by the country's Chief Secretary and comprises members at the Director or Secretary level from across Government including all relevant line Ministries, the Attorney General, the Police Commissioner, and the Public Defender. The Committee further includes several representatives from civil society organizations and church groups. The Resource Development Committee has been instrumental in organizing consultations ahead of the Marshall Islands' review under the Universal Periodic Review.⁹⁹

Another option for Pacific Island Countries would be to strengthen existing and functioning intra-governmental bodies by expanding their mandate and adding treaty reporting and implementation, including reporting, to their list of on-going duties. Much of the information required for human rights treaty reporting is similar to that required for MDGs progress reports, the Universal Period Review, and reporting under ILO Conventions. An inter-ministerial body could reasonably be tasked to take on all of these reporting obligations. Having the same body in charge of all human rights-related reporting and implementation processes streamlines the tasks, ensures coordination, and avoids duplication.

Ministries and departments that should be involved in an inter-ministerial mechanism on human rights treaty implementation are: foreign affairs, justice, and other relevant line Ministries; planning, finance, the Attorney General's and the Statistics Offices. In addition, membership should go beyond the executive branch of Government and also include Members of Parliament and civil society. The exact nature of membership and cooperation with non-governmental stakeholders is to be decided at the national level. A permanent body facilitates a continuous exchange of relevant information within the Government, and between Government and civil society.

Irrespective of the model Pacific Island Countries may choose, there should be support, political clout and endorsement for such a mechanism from senior Government officials in order to ensure commitment, and the allocation of staff from all relevant ministries. One way of ensuring this political clout could be that the inter-ministerial body is chaired by a senior official.

Gathering Data and Information

The lack of reliable information and statistics on human rights is a real challenge in many Pacific Island Countries. Relevant data may be limited, outdated, or sometimes non-existent. Civil society has limited capacity in undertaking documentation and monitoring work in most Pacific Island Countries, and National Statistical Offices and line Ministries tend to be under-resourced. In addition, large percentages of the population live in remote areas where little data collection takes place.

Data required for human rights reporting needs to be sufficiently disaggregated to reflect the situation of various groups within a country. Without such information, it is hard to determine and monitor progress with regard to national developments and human rights treaty implementation. Formulating human rights policies and reporting to human rights Treaty Bodies becomes more difficult in such circumstances.

No single department or Ministry tends to be able to gather all relevant information and data to reflect the extent to which a human rights treaty has been implemented. This constraint underscores the importance of establishing an inter-ministerial mechanism to ensure that available information and data from all relevant Government departments as well as civil society can be brought together.

While up-to-date information is needed for reports to human rights treaty bodies, the absence of data should not delay the reporting itself and a country's challenges with regards to data availability should instead be mentioned specifically in the report. Human rights Treaty Bodies may recommend improving data collection, but they understand the constraints faced by small States with limited resources.

Data and Statistics for Human Rights Reporting and Implementation

Since 2006, the SPC's Human Development Programme has implemented a comprehensive framework of indicators for gender-responsive policy-making and reporting in the Pacific. A core set of gender indicators have been identified in areas such as population, families, housing, education, health, poverty, justice, environment, governance, and legislation. Its aim is to improve collection, reporting, analysis and use of statistics on men and women in the Pacific.

The three French territories of New Caledonia, French Polynesia, and Wallis and Futuna requested SPC's assistance in using gender indicators in order to contribute to France's next periodic report to the CEDAW Committee with data and statistics disaggregated by sex for these three territories.

Adopting National Human Rights Action Plans

Human rights action plans are practical instruments to improve the implementation of human rights in a country. Action plans set achievable targets, propose activities to reach these targets, and allow for the allocation of necessary resources.

Human rights action plans are typically developed by Governments in collaboration with civil society and the general public. Their primary purpose is to translate a Government's commitments and its legal obligations under human rights treaties into concrete, realistic, and time-bound action.

In order for goals to be attainable, the action plan has to be realistic, practical and be allocated sufficient resources, both financial and human. An action plan should include a thorough analysis of the current situation, identify challenges and capacity gaps, specify priority actions to address these challenges and gaps, establish a firm timeframe and budget for the proposed actions, and provide for a monitoring and evaluation mechanism. An action plan can act as a catalyst to secure funding for human rights activities at the national level.

The development and implementation of a human rights action plan requires considerable effort and sustained political support. It may be led by an inter-ministerial mechanism with a human rights mandate, or by a line Ministry. National human rights action plans should ideally be comprehensive in scope to underline the interdependence and indivisibility of human rights. And they should be prepared following a transparent and participatory process, involving civil society and individuals who promote and advocate for human rights. In Pacific Island Countries, because of low ratification of human rights treaties, action plans have been limited in scope and focused on a more narrow set of human rights issues, such as disability or gender equality.¹⁰⁰

Samoa National Disability Policy and Action Plan

In October 2008, the Cabinet of the Government of Samoa officially established the Samoan National Disability Task Force, whose main mandate is to look into all matters pertaining to people with special needs in Samoa. Members of the task force, who are drawn from a broad range of ministries and also include representatives of persons living with disabilities, as well as church representatives, drafted a national disability policy and action plan for the period of 2009-2012. The development of the national policy and plan of action followed numerous consultations, especially in rural areas, and including people with disabilities.

OHCHR, UNDP, and PIFS in the Pacific can upon request provide support to Pacific Island Countries intending to develop and adopt a human rights action plan. Examples of national action plans from around the world can be viewed at the following link: http://www2.ohchr.org/english/issues/plan_actions/index.htm

Costing the Implementation of Laws

The allocation of adequate resources to implement laws that aim to give effect to human rights obligations is critical. The implementation of laws requires resources because of a possible need to recruit additional Government staff, to restructure Government offices, to set up governmental implementation mechanisms, to create monitoring mechanisms, and to provide specific services (legal aid, support services, specialized health services, etc.).

Depending on the content of a given law, a wide range of Government bodies may be mandated with its implementation, including, for example Police, health services, Prosecutor's Office, the Judiciary, and welfare departments. Government officials often require targeted training to prepare for and support the law's implementation.

For any law to be effectively implemented and enforced, awareness-raising with and training for communities and civil society organizations about the content and mechanisms of a law will be of equal importance and necessitate resources.

Costing the Implementation of Domestic Violence Laws in the Pacific

The Governments of the Cook Islands and the Republic of the Marshall Islands, with the assistance of UNDP Pacific Centre, carried out costing exercises to determine the resources required for of the implementation of the draft family law bill (Cook Islands) and the domestic violence prevention and protection act (Marshall Islands). In both countries, these laws address domestic violence and are vehicles to implement the countries' human rights treaty obligations.

Costing exercises are practical tools that facilitate the implementation of laws. Costing the law's implementation determines how resources are best allocated, it helps identify priorities, and it provides guidance on the roles and responsibilities of various Government offices. Costing exercises further help demystify the cost by calculating the estimated resources required.

Reporting to Human Rights Treaty Bodies

Why Report?

With the ratification of a human rights treaty, a State assumes the obligation to implement the provisions of the treaty at the national level and to periodically report on its progress. Reporting to human rights Treaty Bodies is an important part of treaty implementation.

Reporting provides a State and the public with the opportunity to reflect if, and to what extent, the rights contained in a treaty are enjoyed in a given country. Treaty reporting should be seen as an opportunity to take stock of a country's implementation record, and to receive contributions from a wide range of voices, including civil society as well as marginalised or excluded groups. A reporting process can bring to the attention of the State issues that may not have been previously known; it assists Governments in identifying challenges and successes; and it creates the opportunity for dialogue with civil society and the wider public at national and local levels.

Through the reporting process, States receive advice and recommendations from independent experts. These serve as important guidance on how to respond to human rights challenges in their country. The reporting process therefore assists States in enhancing treaty implementation at the country level, and in defining and prioritizing action to give full effect to human rights.

How to Prepare a State Report

Many countries face financial, human, administrative, and technical constraints in the preparation of treaty reports and preparing these reports is often viewed as overwhelming. In response to these real concerns, the Treaty Bodies are offering States two options for reporting:

1. The preparation of separate comprehensive reports under each human rights treaty and, in addition, the submission of a so-called core document that contains general information about the country.
2. The preparation of a "common core document," which includes general information about the country and also discusses the implementation of human rights provisions that are common to two or more human rights treaties (such as non-discrimination, equality, or access to remedies); and in addition, the preparation of a comparatively shorter treaty-specific report, which discusses the implementation of provisions unique to that treaty.

The first option foresees the preparation of a short core document that contains largely unchanging information of general nature (demographics, political system, geography, etc.), followed by a comprehensive stand-alone report that includes detailed information about the implementation of each treaty provision.¹⁰¹

The second option was developed in response to the increasing number of treaty reporting obligations. It is a reporting model that aims to minimize duplication and allows States to streamline their work. Option two may be attractive for Pacific Island Countries that face significant resource constraints in producing complete and timely reports to numerous human rights Treaty Bodies.

Option two consists of two separate documents: one report – the so-called "common core document" – contains facts and information about a country such as its political set-up; the institutional and legal frameworks for human rights protection and promotion; a discussion of non-discrimination, equality, and access to remedies provisions; a discussion of procedural guarantees; and a discussion of implementing civil, political, economic, social, and cultural rights provisions which are common to several human rights treaties. The common core document is submitted once under all treaties but should be regularly updated. In addition to this common core document, States prepare and submit shorter treaty-specific reports that address all remaining provisions of a human rights treaty that are not covered in the common cored document.¹⁰²

Regardless of which reporting option a State may choose, reports should contain sufficient information for each Treaty Body to be able to fully understand the status of treaty implementation in a given country. In practice, this means a State party needs to submit not only information about the de jure implementation, or the incorporation of a treaty into domestic law, but also information about the de facto implementation, which is information on how treaty provisions have been realized in reality within a country. This information should be substantiated through disaggregated data that demonstrates the extent of de facto implementation.

In preparation of their reports, States should consult widely with individuals and civil society organisations to seek their views and inputs on whether and how implementation has progressed. Broad-based consultation serves two purposes. First, it serves the principle of participation, transparency, and Government accountability, and second, it helps States to receive relevant information and feedback from civil society, which it may include in the report. Chapter four discusses the role of civil society in more detail.

Reporting Process and Review by the Treaty Body

State reports are submitted well in advance of the actual review date to give the Committee time for review and internal discussion, and for determining what additional information it may request from States. This internal discussion is held during a so-called **pre-session** or task force meeting, which usually takes place several months ahead of the review.¹⁰³

During the pre-session, the State report and reports from alternative sources are taken into consideration and the Committee sets up a list of issues and questions, to which States are requested to respond within a timeframe of several weeks.

The actual review by the Treaty Body is a constructive, frank, face-to-face dialogue between members of the committee and a State delegation. During the discussion, shortcomings as well as achievements are identified and discussed by both parties. The ultimate goal of this review is to assist States in fulfilling their treaty obligations by providing guidance on which areas to prioritise and what practical steps to take.

Questions that arise during the dialogue typically cover a wide range of areas, such as a State's political commitments, policies, and plans, down to very technical questions. States therefore should consider sending delegations to these sessions that are comprised of technical staff as well as high-level representatives.

Many Pacific Island Countries do not have a diplomatic presence in Geneva – where almost all reviews take place – and therefore may not have a chance to observe reviews of other countries to familiarise and prepare themselves with the process. In response to this challenge, development partners have set up mock exercises to prepare Governments and civil society organizations for the review process.

Mock CEDAW and CRC reporting sessions

UNIFEM and UNICEF Pacific, with the support of other UN agencies and regional organisations, developed "mock" sessions which provided States and civil society representatives with the opportunity to simulate the reporting session with the Treaty Body. Experienced participants assume the roles of committee members for the purposes of the mock sessions.

A mock session was first instituted in 2005 to assist the Government of Samoa to prepare for review by the CEDAW Committee. This was followed in 2007 by a mock session to assist the Government of Vanuatu for the CEDAW review. During that review representatives from Fiji and Samoa shared their experiences of their reviews. These mock exercises were viewed as practical and invaluable tools to prepare for the discussion with the Treaty Body. Besides enhancing the understanding of the reporting requirements, these mock sessions also helped raise awareness at the local level about the treaty and the reporting process more generally.

Further information on such mock sessions can be obtained from OHCHR, UN Women and UNICEF offices in the Pacific.

The examination of a report culminates with the Treaty Body's adoption of "concluding observations." These contain an overview of progress made, expression of concerns with regard to areas that require renewed Government attention, and a list of concrete recommendations for future action. These concluding observations, jointly with the dialogue that takes place during the review serve as a roadmap for Governments for the full implementation of a human rights treaty.

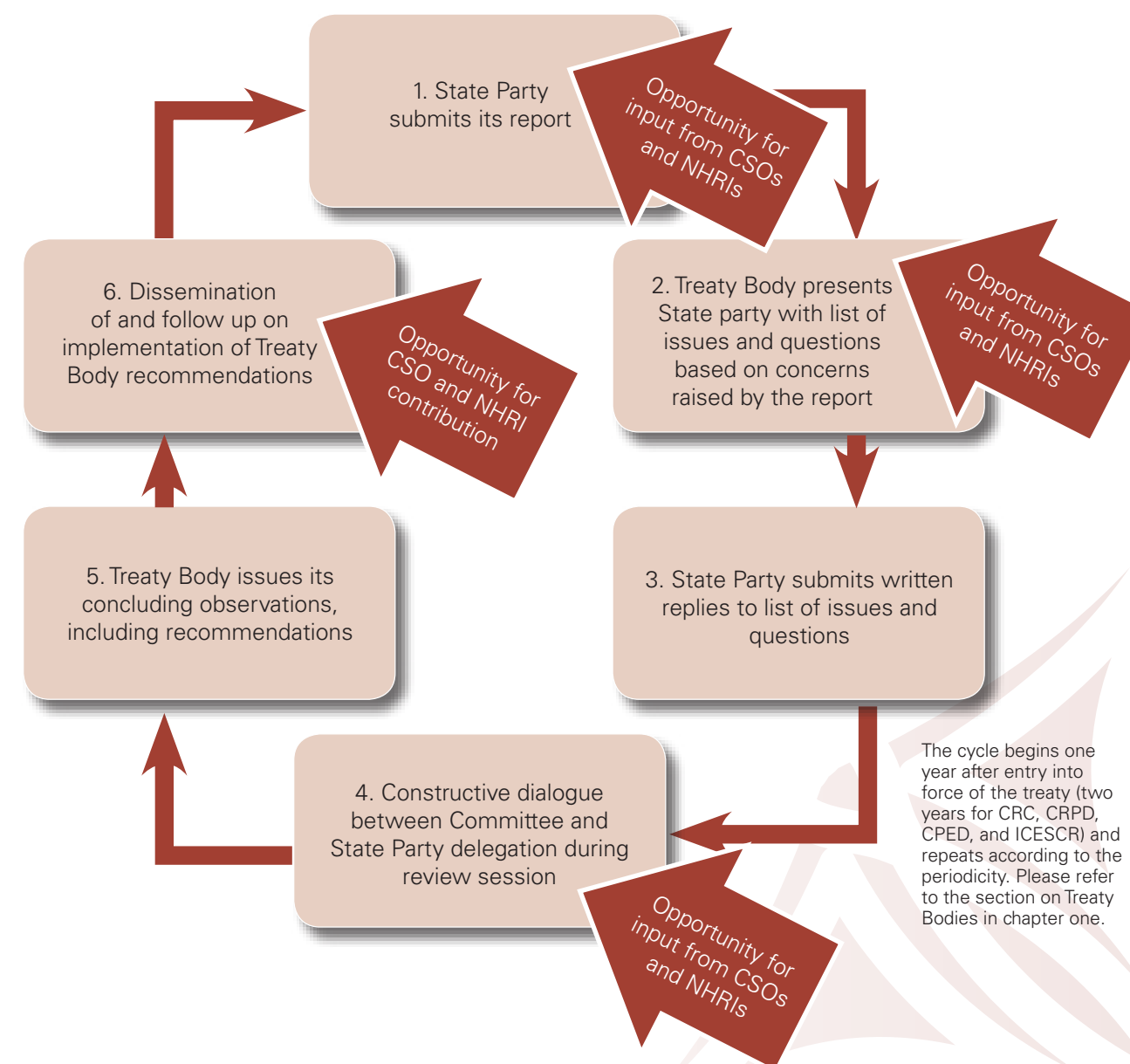
Once a State Party has been through the initial reporting process one of the primary areas of interest for the Treaty Body in all subsequent reports will be what the State has done to implement the previous concluding observations.

Treaty Body Recommendations

After the review by Treaty Bodies, States are encouraged to publish all documents related to the reporting process, and to widely disseminate the concluding observations made by the Treaty Body. These documents should also be tabled in Parliament to ensure parliamentary oversight of Government action, and to give Parliament an opportunity to take the lead on the implementation of some recommendations (in particular in the areas of legislative reform and budget allocation).

Treaty implementation is an on-going process and the efforts to comply with a treaty do not end with reporting. Rather, the review and concluding observations mark the beginning of a new cycle of treaty implementation, which calls on States to take the steps necessary to implement the concluding observations through legislative, administrative, and judicial action, as outlined earlier in this chapter. The following diagram provides an overview of the continuous cycle of treaty reporting, concluding observations, and treaty implementation.

Reporting Cycle under Human Rights Treaties



States that Fail to Submit Reports

When a State party to a human rights treaty falls significantly behind schedule in reporting, the Treaty Bodies may send official requests to submit reports. If a Government fails to respond to these requests, Treaty Bodies may review a State's compliance with a treaty in the absence of an official State report and without a delegation present for constructive dialogue. In such cases, the Committee would base its assessments and concluding observations on all information available, which includes information from civil society, UN agencies and others, but without having engaged with the State in a face-to-face dialogue.



CHAPTER 4 – WHO CAN CONTRIBUTE TO HUMAN RIGHTS TREATY IMPLEMENTATION?

Who Can Contribute to Human Rights Treaty Implementation?

The legal obligation to implement the provisions of a human rights treaty lies with the State as the party that has ratified the treaty, as elaborated in the previous chapters. This chapter talks about other actors and the important role they play in implementing a treaty, including in partnership with the Government. These bodies assist the State in sharing the tasks of implementation, which leads to increased ownership and more sustainable results, and they also have the important role of holding the State accountable for its legal obligations to realize human rights for everybody in the country.

This chapter discusses the roles of the following actors in contributing to human rights treaty implementation:

- Members of the Legislature
- Civil Society
- National Human Rights Institutions

What Role for Members of Legislature?¹⁰⁴

Members of Pacific Island Legislature are important actors in the realization of human rights nationally. Parliamentary activities – such as legislating, adopting the budget, overseeing the executive – can be utilised to promote and protect people’s enjoyment of the entire spectrum of rights, from civil and political to economic, social, and cultural rights.

Legislative Reform and Implementation

As discussed previously, a crucial step to implement human rights treaties is to undertake legislative reform aimed at bringing domestic law into compliance with the provisions of a treaty. Members of Pacific Legislatures have a key role in leading such legislative reform efforts aimed at ensuring compliance.

In many Pacific Island Countries, some members of the Legislature are also Ministers and members of the Cabinet. In these countries, Ministers have a clear and direct role in promoting legislative reform. They can request their Ministries and/or the Attorney General’s office to develop a bill aimed at implementing a human rights treaty. After consultations, the bill will need to be approved by Cabinet and tabled in the Legislature for enactment.

Where legislators believe reform of the law is needed, non-Ministers can consider asking questions during Question Time to draw the Government’s attention to areas of possible non-compliance. Question Time can be an effective mechanism for highlighting rights issues and questions can be used to suggest legislative priorities. Non-Ministerial members of the Legislature, most commonly opposition members, may also consider developing a private member’s bill on a given human rights issue. A private member’s bill can be a strategic way of prodding the Government into action. For example, in supporting implementation of the International Covenant on Economic, Social and Cultural Rights and the Convention on the Rights of the Child, a member may wish to develop a bill on the right to education, to give all children the right to free primary education.

Any legislative reform process should allow for meaningful participation by all relevant stakeholders, including officials across the whole of Government, expert advisors, individuals who promote and protect human rights, civil society organizations, interest groups, professional associations and the wider public. Reaching out to these groups to support their participation in the reform process through public hearings or consultations, for example, is in line with a human rights based approach and strengthens accountability. Broad consultation is likely to result in stronger and better laws and it promotes national ownership and human rights awareness.

In addition to leading the development of legislative reforms, members of Parliament can further use their law-making mandate to review and question bills to ensure that they are appropriately drafted. Non-Ministers can propose amendments, where they believe a bill does not sufficiently implement human rights. Legislators can draw on UN Agencies, as well as regional organizations, for assistance in legislative reviews and analysis. Tapping into the experience of experts or specialized organizations can be useful in ensuring that legislation fully complies with a State’s obligations under a human rights treaty and properly reflects the local context.

Budgeting for the Implementation of Human Rights

A State's obligations to respect, protect, and fulfil human rights requires allocation of adequate resources. The budgetary process is crucial for the effective implementation of rights contained in any treaty. During the budget development process, members of Cabinet can use the process to ask questions about budgetary allocations for the implementation of a particular human rights treaty. In approving the national budget, the Parliament should ensure that sufficient funds have been put aside for the implementation of human rights, including laws that give effect to human rights provisions. For example, for the implementation of the Convention on the Rights of Persons with Disabilities (CRPD), the Government may have developed a policy to ensure that all Government buildings are accessible for disabled persons. This would need to be reflected in the budget to ensure the policy is implemented.

After the budget is adopted, the Legislature has a key role in holding the Government accountable for its delivery with regards to human rights expenditures and implementation. This can be done through Question Time, but also in much more detail through Parliamentary Committees (see below for more information). By exercising such oversight function, the Parliament signals to the Government its commitment towards human rights and the need to allocate and properly expend necessary resources for implementation.

Using Parliamentary Committees for Oversight

All Legislatures throughout the Pacific have established Parliamentary Committees, which oversee activities and expenditures by the Executive, and also review bills and policies. These Parliamentary Committees provide a key forum for legislators to ensure that human rights implementation is being progressed.

To ensure a continuous focus on human rights implementation, many Legislatures globally have established dedicated human rights Parliamentary Committees or Committees focusing on specific human rights issues such as gender equality. Noting the limited resources of most Pacific Legislatures, existing Committees could be used to undertake such oversight.

For example, many Pacific Legislatures have Foreign Affairs Committees which have a remit to review treaty ratification and implementation, including human rights treaties. A Health, Education and Social Affairs Committee could also be used to review the rights to education and health, or the entire Covenant on Economic, Social, and Cultural Rights. Each Parliamentary Committee, within its competence, should assess the impact of bills or proposed policies on the enjoyment of human rights by the people. Such Committees, besides assessing the conformity of bills with human rights obligations, may also be mandated to receive individual petitions. Budget Committees, such as Ways and Means, Budget Estimates Committees in the North Pacific, or Public Accounts Committees in the South Pacific, may also be used to monitor the impact of Government expenditures on human rights

Monitoring Government Reporting and Follow-up to Treaty Body recommendations

Although the Executive takes the lead role in preparing periodic reports to Treaty Bodies, members of Parliament can play an important role in contributing to such periodic reports by providing relevant information from their constituents. More broadly, legislators can use their oversight powers in Parliament to call on the Government to ensure that it fulfils its reporting obligations in a timely manner. For example, a member of the legislature can use Question Time to inquire about the country's reporting timetable and whether the Government is on track with the submission of reports. Where reporting is delayed, a member may consider asking for an explanation and use parliamentary procedures to urge the Government to comply with its reporting obligations.

In the same vein, in order to ensure that the report is complete, Parliamentarians can ask the Government to table the report to the relevant Parliamentary Committee for a detailed consideration, prior to submission to the relevant Treaty Body. Parliament can organise a public hearing to bring in the views of the public on the content of the report. The relevant Parliamentary Committee may also consider whether the report complies with reporting guidelines, has included information from non-governmental sources, and takes into account previous recommendations issued by Treaty Bodies.

Following the review by the Treaty Body, all documents produced for the review should be tabled in Parliament, along with the concluding observations (which contain recommendations) by the Treaty Body. Parliamentarians can review any recommendations through Parliamentary Committee processes and keep a "watching brief" on implementation of the recommendations. Proactive members may also use these recommendations to continuously scrutinize Government action with regards to its human rights obligations, for example by using Question Time to regularly inquire into progress on implementing the concluding observations.

What Role for Civil Society? ¹⁰⁵

For the purposes of this handbook, civil society actors are individuals and groups who engage in public participation and action around shared interests, purposes, or values that are compatible with the goals of the United Nations. Civil society actors concerned with the promotion and protection of human rights include, for example:

- Individuals and groups who promote and protect human rights (also called human rights defenders)
- Human rights organisations (NGOs, associations, victim groups)
- Issue-based organisations (child welfare organizations ; education promotion organizations)
- Coalitions and networks (women's rights, children's rights, environmental rights)
- Persons with disabilities and their representative organisations
- Community-based groups (indigenous peoples, minorities)
- Faith-based groups (churches, religious groups)
- Unions (trade unions as well as professional associations such as journalist associations, bar associations, magistrate associations, student unions)
- Social movements (peace movements, student movements, pro-democracy movements)
- Professionals contributing directly to the enjoyment of human rights (humanitarian workers, lawyers, doctors and medical workers)
- Media

A strong and autonomous civil society that is able to operate freely and that is knowledgeable about human rights can play a key role in making human rights a reality in a country. Civil society actors are therefore considered partners in the United Nations system and have an essential role to play with regard to the implementation of human rights treaties.

Civil society actors have an **educational role** to play: their proximity to communities and people enables them to efficiently disseminate human rights knowledge amongst the population. Civil society actors can raise awareness and provide invaluable information through workshops, seminars, school and community talks, theatre plays, publications, radio programmes, pocket guides, booklets, etc.

Civil society organizations also play an **advocacy and accountability role** by influencing and contributing to the development and adoption of legislation, policies, and action plans. If a State has not yet ratified or acceded to a treaty or an optional protocol, civil society actors can encourage the Government to ratify an instrument and they may work with the media and other partners to raise awareness or put pressure on the Government.

Most importantly, civil society actors have an important role in **documenting and monitoring the human rights situation** in a country and in holding States accountable for violations in individual cases and failure to progress the realization of human rights more generally. Because of their close connection with communities and their constituents, civil society organizations are in an advantageous position to understand and document human rights issues faced by their constituents. By undertaking documentation and monitoring work, civil society actors can bring to the Government's attention critical shortcomings in implementing human rights treaties and can propose ways forward. Continuous monitoring and documentation work will facilitate civil society actors' participation in review mechanisms of a country's human rights record.

Civil society should encourage Governments to meet reporting deadlines on international human rights treaties, and they can hold States accountable should they fail to submit reports on time. Civil society actors should also provide States with complementary information relevant for treaty reporting, contribute towards the report, and work with States towards treaty implementation.

Civil Society Interaction with Human Rights Treaty Bodies

Civil society's **accountability and advocacy roles** should also be brought to the **international level**. Civil society organizations, through documentation and monitoring work, can gather and present relevant information about the human rights situation in their country to international human rights mechanisms in order to enhance Government accountability and inform review processes.

Treaty Bodies depend on a variety of sources of information for the review of State reports. Such alternative information – other than the information contained in the State report – is often referred to as shadow reports. Civil society organizations provide these reports in writing, and in some cases will get an additional opportunity to brief Treaty Body members during meetings. National and international civil society organisations are often a key source of alternative information for Treaty Bodies. Their information can provide a more complete picture of a Government's record in implementing a human rights treaty and they can significantly influence Treaty Body recommendations. Information submitted by civil society organizations may highlight breaches of human rights, assist Treaty Bodies in determining good practice and compliance, and it may help identify weaknesses in implementation as well as recommendations to address these gaps.

NGO Shadow Report for Samoa's CEDAW Committee Review

Ahead of Samoa's CEDAW review in July 2012, a coalition of 17 Samoan NGOs submitted a joint shadow report. The shadow report provides a detailed critique of the Government's implementation of CEDAW provisions, followed by targeted recommendations.¹⁰⁶ The CEDAW Committee's concluding observations reflect many recommendations made by the NGO coalition, including the recommendation to establish shelter and rehabilitation services for women victims of domestic violence; to ensure that women, with or without chiefly title enjoy equal participation in public and political life; to strengthen the implementation of policies that enable girls who dropped out to return to school; to promote education on sexual and reproductive health and rights and ensure access to affordable contraceptives; and the recommendation to take results-oriented measures to eliminate discrimination against women with disabilities.¹⁰⁷

Before submitting written information to a Treaty Body, organizations should check when their Government is scheduled for review. These schedules are published and can be viewed on the OHCHR website through the following link:

<http://www.ohchr.org/EN/HRBodies/Pages/HumanRightsBodies.aspx>

In preparing shadow reports, civil society organizations should familiarize themselves with the contents of previous State reports, and in particular previous concluding observations by Treaty Bodies. Civil society organizations should consider working in coalition when preparing a shadow report. A partnership approach allows them to combine expertise and information across several organizations as one organization is usually not able to address all provisions contained in a single treaty. As a coalition, they are able to take a unified position and to provide alternative information on a range of issues. Treaty Bodies encourage civil society actors to jointly submit alternative information on a given country.

Shadow reports submitted by civil society organization to Treaty Bodies should observe the following guidelines:¹⁰⁸

- Reports should be clear, precise, accurate, and objective;
- Reports should highlight what the authors see as problems in implementation, and they should make concrete recommendations to improve the human rights situation in a given country;
- Reports should be submitted as early as possible before the scheduled examination of a State's report to allow Treaty Bodies to take the shadow report into consideration when preparing a list of issues, when preparing for the review session, and for the drafting of concluding observations;

- The information that civil society actors provide must be country-specific and relevant to the mandate of the human rights Treaty Body to which it is addressed. If possible, it should make direct reference to the article of the treaty and the specific right that is allegedly violated;
- Allegations of human rights violations should always be supported by relevant evidence and documentation;
- All information should be correctly referenced;
- Civil society organizations should submit an electronic version and multiple hard copies to the Treaty Body secretariat as the secretariat does not have the capacity to reproduce materials from civil society;
- Documents that contain abusive language will not be accepted.

All information to Treaty Bodies should be sent to the following address:

[Name of Treaty Body]
c/o Office of the United Nations High Commissioner for Human Rights
Palais Wilson
1211 Geneva – Switzerland
Fax : +41 22 917 90 29

Several Geneva-based NGOs provide support for organizations that wish to submit information or observe the review session of their country on a given treaty. The Centre for Civil and Political Rights, for example, promotes the participation of civil society in the works of the UN Human Rights Committee (which oversees the implementation of the International Covenant on Civil and Political Rights). Likewise, the Geneva-based NGO Group for the Convention on the Rights of the Child can provide valuable advice for organizations that plan to submit alternative information or attend the review session in Geneva. Civil society organizations are encouraged to contact OHCHR and peer organizations early on if they plan to play an active role in their Government's Treaty Body review.¹⁰⁹

Civil society organizations continue to play an important role after States' reports have been examined. They are vital in holding States accountable under their human rights obligations by disseminating State reports and concluding observations, advocating for the implementation of Treaty Body recommendations, and by cooperating with Governments in the implementation.

Submitting Complaints to Treaty Bodies

Civil society organizations may submit **complaints to Treaty Bodies** on behalf of individuals whose rights have been violated. Before submitting any complaint on behalf of an individual who seeks redress, civil society organizations should ensure the affected person gave informed consent that he or she is aware of the implications of making a complaint.

In contrast to complaints submitted to Special Procedures, complaints to Treaty Bodies are only available if a Government has ratified the optional protocol that provides for individual communications. Chapter one of this handbook provides an overview of Pacific Island Countries that have ratified optional protocols that allow for individual communications.

Submitting an individual complaint allows civil society actors to bring violations and situations of concern to the attention of Treaty Bodies and it may prompt a Treaty Body to determine authoritatively whether there has been a human rights violation. For a complaint to be admissible by the Treaty Body, civil society organizations need to consider whether the alleged violations falls within the scope of the treaty; they need to obtain the authorization of the victim; and – most importantly – they need to demonstrate that they have **exhausted national remedies**. In other words, they need to show that all available remedies at the national level to redress the alleged violation have been used in vain, or that the remedies available were not effective (for example, because of undue delays). Thus, communications to Treaty Bodies are only admitted if redress has been sought with no success at the national level (for example, through the court system, administrative bodies, or institutions with a human rights mandate). Civil society organizations should also be aware that it takes two to three years, on average, for a decision by a Treaty Body to be issued.

A complaint should be sent to the following contact:

[Name of the Treaty Body]
Petitions Team
Office of the UN High Commissioner for Human Rights
Palais des Nations
8-14, Avenue de la Paix
CH-1211 Geneva 10
Switzerland
Fax: +41 22 917 90 22
E-mail: tb-petitions@ohchr.org

Submitting Complaints to the Human Rights Council

Civil society organizations may submit **complaints to the Human Rights Council**. The Human Rights Council complaint mechanism is a universal procedure that covers all human rights in all countries, irrespective of whether a country has ratified a treaty. This complaint procedure deals with consistent **patterns of gross violations** in a State. Thus, complaints need to refer to a consistent pattern of violations affecting a large number of people, rather than a single case. As with complaints to Treaty Bodies, it is required that all available remedies at the national level are exhausted before making the complaint. The Human Rights Council does not consider complaints if they have already been submitted to Special Procedures or Treaty Bodies.

Complaints should be sent to the following address:

Human Rights Council Branch (complaint procedure)
Office of the UN High Commissioner for Human Rights
Palais des Nations
8-14, Avenue de la Paix
CH-1211 Geneva 10
Switzerland
Fax: +41 22 917 90 11
Email: CP@ohchr.org

Civil Society Engagement with Special Procedures

Civil society actors, individually or collectively, may work with Special Procedures. Unlike the Treaty Bodies, Special Procedures interact with States even when the country in question has not ratified a particular human rights treaty. Special Procedures can therefore be used by anybody in any country and on any human rights issue that is covered by a Special Procedure mandate. A list of mandates and contact information is included in chapter two of this handbook. Civil society actors can actively contribute to the work of the Special Procedures by:

- Informing Special Procedures mandate holders about individual cases of human rights violations;
- Encouraging Special Procedures to visit a country and provide support for such visits by submitting information and analysis on the human rights situation in a country, as it relates to the mandate;
- Alerting Special Procedures about upcoming legislation that may not be compatible with human rights standards;
- After a visit by a Special Procedure mandate holder, following-up on recommendations to Government by monitoring progress and by working with the Government towards the implementation of recommendations.

Reports and recommendations from Special Procedures provide valuable information that civil society actors can integrate into their advocacy work. International standards, model laws, or best practices documented by Special Procedures can be used by civil society actors to raise awareness on a given issue or to advocate for improved national standards.

Anybody can submit credible and reliable information on human rights violations to Special Procedures. **The submission of information about individual cases of rights violations** is one way of alerting the UN Human Rights system about a particular case. Communications sent and received usually remain confidential until the Special Procedure mandate-holders report to the Human Rights Council is made public, at which point information on communications sent and replies received from Governments on specific cases is made public. The alleged victims are then named in the reports, with the exception of vulnerable victims, such as children or victims of sexual violence. A complaint to Special Procedures mandate holders should be submitted to the following contact:

Special Procedures Division
Office of the UN High Commissioner for Human Rights
Palais des Nations
8-14, Avenue de la Paix
CH-1211 Geneva 10
Switzerland
Fax: +41 22 917 90 06
Email: urgent-action@ohchr.org

Civil society organizations that consider submitting a complaint under the Human Rights Council, to Treaty Bodies, or to Special Procedures mechanisms should consult the OHCHR Handbook for Civil Society¹¹⁰ or contact the Regional Office for the Pacific of the High Commissioner for Human Rights at: pacific@ohchr.org

Civil Society Engagement with the UPR Process

Civil society organizations have so far enjoyed a meaningful and inclusive level of participation at the Human Rights Council. At the March 2008 session of the Human Rights Council, for example, civil society organizations submitted 98 written statements, made 224 oral statements, and hosted 69 parallel events.

Similar to review by Treaty Bodies, civil society organizations can make submissions to UPR reviews, attend the review, and contribute to following-up on the implementation of UPR recommendations and conclusions.

Civil Society Participation in Fiji's UPR Review

A total of 17 submissions by NGOs, including 10 by Fiji-based organizations, were made ahead of Fiji's UPR review in 2009. Several submissions drew the attention of the Working Group on the UPR to allegations of arbitrary detention, torture and ill-treatment by police and military officers. They also drew attention to the death of four persons in custody and that perpetrators in several cases served only a few months of the sentence.¹¹¹ During the review, the Fiji delegation responded to these allegations and stated that all cases had been addressed by courts.¹¹² In the outcome of the review, and taking up the submissions by civil society organizations, several countries recommended that Fiji ratify the Convention against Torture and allow the Special Rapporteur on Torture to visit the country.¹¹³ Following the review and recommendations, the Fiji Government held a national consultation that involved civil society participation and in its response to the Human Rights Council, the Fiji Government accepted the above-mentioned recommendations.¹¹⁴

It is primarily the responsibility of States to implement the outcomes of reviews, that is, the recommendations made by the Working Group on the UPR. Nevertheless, civil society actors have an important role in following up on these outcomes. Similar to concluding observations from Treaty Bodies, civil society actors may work with national entities (Government, Parliament, the Judiciary, National Human Rights Institutions) to help the State meet its obligations. They can promote national legislative reforms and help the State develop national policies to implement the recommendations and commitments coming out of the UPR review.

Civil society actors that wish to submit information for consideration and possible inclusion by OHCHR in the stakeholders' compilation should send their contribution to UPRsubmissions@ohchr.org

SPC RRRT Assistance for Universal Periodic Review

SPC RRRT has published a UPR roadmap tailored to the Pacific Island context to enable Pacific Island Governments and civil society organisations to prepare their reports under the Universal Periodic Review.

The UPR roadmap assists Governments and civil society organizations to understand the new UN reporting process and contains in one publication all relevant information for Governments and NGOs. The aim of the roadmap is to facilitate the preparation of reports and the review process for Pacific Island Countries and it illustrates the benefits that can be gained through engagement with the UPR process.

The Pacific Island UPR roadmap is available at: RRRTRegistry@spc.int

What Role for National Human Rights Institutions?

National Human Rights Institutions (NHRIs) are State institutions that are independent from the Government, set up by law and provided with a mandate to promote and protect human rights in a given country. The UN Paris Principles provide authoritative standards with regards to the status and mandate for National Human Rights Institutions.¹¹⁵ In most countries, either the constitution or a specific law will establish the status and mandate of the National Human Rights Institution.

NHRIs can take the form of Human Rights Commission or Ombudsman offices. While most Ombudsman offices are built around a single person (the Ombudsman), Human Rights Commissions are typically multi-member committees that represent different groups of society. The mandate of NHRIs sometimes is limited to specific issues such as discrimination or children's rights, while some have very broad responsibilities, including responsibilities resembling those of a court. Generally speaking, NHRIs tend to have broader mandates that include research, documentation, and training, whereas Ombudsman offices typically deal with Government maladministration as well. In post-conflict situations, NHRIs may be additionally mandated to deal with transitional justice processes to address abuses that occurred during the conflict.

One of the most important functions of many Human Rights Institutions is to **receive and investigate complaints from individuals** alleging human rights violations. There are considerable differences in the procedures followed by various Human Rights Institutions in the investigation and resolution of complaints and many NHRIs rely on conciliation or arbitration.

Another important function of a Human Rights Commission is to **review and advise on Government laws and policies** in order to avoid these negatively impacting on the human rights situation. Human Rights Institutions may also **monitor** a Government's compliance with national laws and with international human rights law and, if warranted, recommend changes.

Because the realisation of human rights cannot be achieved solely through legislation and administrative arrangements, Human Rights Institutions are often entrusted with the mandate to **raise awareness on human rights** and encourage their incorporation into daily life. They can do so by informing the public about the NHRI's functions and purposes; by facilitating public discussion about relevant human rights issues; by providing counselling and advice services; and by producing and disseminating human rights publications.

Several Pacific Island Countries have established **Accountability Institutions** (such as Leadership Code Commission, Office of the Auditor General, Anti-Corruption Commission) but their effectiveness varies. Institutional mechanisms to protect and advance human rights overall remain weak in the Pacific. Fiji is the only Pacific Island Country to have established an NHRI, yet it no longer complies with the Paris Principles and has lost its accreditation status with the International Coordinating Committee of National Human Rights Institutions. Papua New Guinea, Samoa, and more recently Vanuatu, Solomon Islands, and Palau have all taken steps towards the establishment of National Human Rights Institutions. In the Pacific Island State of Cook Islands, the Ombudsman has been given by Cabinet the role of overseeing human rights in the country.

Consideration is being given to the mix of Accountability Institutions and whether in some cases these institutions may incorporate multiple mandates to also act as a NHRI. Whatever the exact model States in the Pacific will opt for, the model of NHRI should comply with the Paris Principles, be tailored to the context and be maintained sustainably with necessary human and financial resources.

The Office of the High Commissioner for Human Rights (OHCHR) for the Pacific and its National Institutions Unit is able to support **Pacific Island Countries that wish to establish an NHRI**. Technical and financial support can also be obtained from OHCHR, UNDP, PIFS and the Asia-Pacific Forum (APF).¹¹⁶

Annex 1 - Universal Declaration of Human Rights

Preamble

Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Whereas disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people,

Whereas it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law,

Whereas it is essential to promote the development of friendly relations between nations,

Whereas the peoples of the United Nations have in the Charter reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women and have determined to promote social progress and better standards of life in larger freedom,

Whereas Member States have pledged themselves to achieve, in cooperation with the United Nations, the promotion of universal respect for and observance of human rights and fundamental freedoms,

Whereas a common understanding of these rights and freedoms is of the greatest importance for the full realization of this pledge,

Now, therefore,

The General Assembly,

Proclaims this Universal Declaration of Human Rights as a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction.

All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

Article 2

Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.

Article 3

Everyone has the right to life, liberty and security of person.

Article 4

No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.

Article 5

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

Article 6

Everyone has the right to recognition everywhere as a person before the law.

Article 7

All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.

Article 8

Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.

Article 9

No one shall be subjected to arbitrary arrest, detention or exile.

Article 10

Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.

Article 11

Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.

No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed.

Article 12

No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.

Article 13

Everyone has the right to freedom of movement and residence within the borders of each State.

Everyone has the right to leave any country, including his own, and to return to his country.

Article 14

Everyone has the right to seek and to enjoy in other countries asylum from persecution.

This right may not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations.

Article 15

Everyone has the right to a nationality.

No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.

Article 16

Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution.

Marriage shall be entered into only with the free and full consent of the intending spouses.

The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

Article 17

Everyone has the right to own property alone as well as in association with others.

No one shall be arbitrarily deprived of his property.

Article 18

Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.

Article 19

Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

Article 20

Everyone has the right to freedom of peaceful assembly and association.

No one may be compelled to belong to an association.

Article 21

Everyone has the right to take part in the Government of his country, directly or through freely chosen representatives.

Everyone has the right to equal access to public service in his country.

The will of the people shall be the basis of the authority of Government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.

Article 22

Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international co-operation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.

Article 23

Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.

Everyone, without any discrimination, has the right to equal pay for equal work.

Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.

Everyone has the right to form and to join trade unions for the protection of his interests.

Article 24

Everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay.

Article 25

Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.

Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.

Article 26

Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.

Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.

Parents have a prior right to choose the kind of education that shall be given to their children.

Article 27

Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.

Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

Article 28

Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized.

Article 29

Everyone has duties to the community in which alone the free and full development of his personality is possible.

In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.

These rights and freedoms may in no case be exercised contrary to the purposes and principles of the United Nations.

Article 30

Nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein.

Annex 2 – Human Rights Glossary

-A-

Accession: The formal step whereby a State agrees to be legally bound by a treaty or convention. It often requires the approval of the State's legislative body. A State that has acceded to a treaty is called a "State Party" to that treaty. Accession has the same legal effect as ratification but the procedure differs. In the case of ratification, the State first signs and then ratifies a treaty. The procedure for accession is a one-step procedure that does not involve an act of signature. See also "ratification" and chapter three of this handbook.

Advocacy: Efforts to change public perceptions and influence policy decisions. Advocates typically raise awareness about an issue and suggest a specific solution. Advocacy involves skilful persuasion, knowledge, campaigning, and strategic action.

Affirmative action: Action taken by a Government, public, or private institution to increase the representation or advancement of underrepresented groups, such as women or ethnic minorities in areas such as education, work, or political office to make up for past or current discrimination. See also "temporary special measures".

Alternative report: also called "shadow report"; describes a report about one or several human rights issues in a country, usually prepared by a non-governmental organization or National Human Rights Institution, and submitted as part of a State's review by a UN human rights Treaty Body. See also "stakeholder submission."

-C-

Charter-based mechanisms: Human rights mechanisms set up under the UN Charter and applicable to all UN member States. These include for example the Universal Periodic Review and Special Procedures. See also "treaty-based mechanisms".

Civil and political rights: The set of human rights referring to civil and political spheres such as the right to liberty, protection from torture and ill-treatment, equality before the law, and security of the person. See also chapter one of this handbook.

Civil society: The range of formal and informal organizations and actors outside of State institutions. This includes social movements, volunteer organizations, indigenous peoples' organizations, faith-based organizations, non-governmental organizations, and community-based organizations, as well as communities and citizens acting individually and collectively.

Committee: See Treaty Body.

Common core document: See also "core document". The document submitted as part of a State report to a Treaty Body. In addition to general information about a country, the common core document discusses a State's progress in implementing provisions that are common to two or more human rights treaties, for example non-discrimination. See also chapter three of this handbook.

Communication: A complaint or claim in the UN human rights system made to a Treaty Body, the Human Rights Council or allegations submitted to Special Procedures mandate-holders.

Concluding observations: The final document issued by a human rights Treaty Body at the conclusion of its review of a State party. Concluding observations comment on the State party's record of implementation and refer both to positive aspects of implementation and areas where further action by the State is warranted.

Constitution: The supreme source of law in a country that provides the framework for and prevails over other laws of a country. It sets out how the Government is structured and operates, the executive and legislative powers of the State, the Judiciary and the public service, and addresses issues of State finance, land, citizenship, and oversight and accountability.

Convention: A formal agreement among States that defines their duties and obligations; used synonymously with covenant and treaty. A convention that is adopted by the United Nations General Assembly creates legally binding international obligations for the States that ratify it.

Core document: A document submitted as part of the State report to a Treaty Body, containing information of a general nature about a country. See also "common core document".

Covenant: see "convention".

Customary international law: A legally binding norm that has emerged through practice by States that they have consistently followed from a sense of obligation. Some scholars argue that the Universal Declaration of Human Rights is a binding norm and represents customary international law.

-D-

Days of general discussion: Several treaty bodies hold days of discussion on a particular issue or theme. These discussions are usually open and include participants from UN agencies, State parties, civil society, academia, and individual experts. The discussions assist treaty bodies in developing their interpretation of treaty provisions, in particular with regards to emerging themes.

De facto equality: See "equality".

Declaration: Upon ratification, a State may make a declaration about its understanding of a certain provision contained in a treaty. Declarations do not modify the legal effects of a treaty but seek to clarify the State's understanding of one or several provisions. See also "Reservations" and chapter three of this handbook.

Derogation: A formal act by which a State party temporarily suspends application of one or more provisions of a treaty due to a national emergency. Derogations may only be made through law and to the extent strictly required. Certain rights and obligations may not be derogated from such as the right to life, the right against forced labour or slavery, the right to non-discrimination and the prohibition of torture. See also "Limitations".

Discrimination: The distinction, exclusion, restriction, or preference, made on the basis of a person's ethnicity, race, religion, social status, sex, language, origin, political opinion, membership of a group, birth, or other status (this may include for example disability, age, place of residence, sexual orientation), which results in the denial of a person's human rights. See also "racial discrimination".

-E-

Economic, social, and cultural rights: Economic, social, and cultural rights are essential to a dignified human existence and include for example the right to education, the right to the highest attainable standard of health, to right to just and favourable work conditions and to form trade unions, the right to food, the right to an adequate standard of living, or the right to participation in cultural life. These rights are intertwined and inseparable from civil and political rights. See also chapter one of this handbook.

Entry into force: a) with regards to a treaty: the day on which a treaty comes into effect after ratification by a defined number of States. b) with regards to a State party: the date by which the ratification instruments have been received and the treaty comes into effect for that particular State.

Equality: The notion that all human beings are entitled to the same rights without distinction. A difference is often made between the concepts of formal and substantive equality. Formal equality assumes that equality is obtained if a law or a policy treats everyone in the same way. Substantive equality (also called de facto equality) is concerned with the effects of laws and policies and with ensuring that disadvantages for discriminated groups are removed to achieve equal results.

-G-

Gender: The socially constructed roles and status ascribed to women and men, and the relationship between them, as opposed to biological and physical characteristics. Gender roles vary according to socio-economic, political and cultural contexts, and are affected by factors such as age, race, class, and ethnicity.

Gender-based violence: A harmful act perpetrated against a person on the basis of the person's socially-ascribed gender. Globally, gender-based violence has a disproportionate impact on women and girls, due to their subordinate status in society and their increased vulnerability to violence. Gender-based violence varies across cultures, countries, and regions.

General Assembly: See United Nations General Assembly.

General comment: A statement issued by a Treaty Body to elaborate on or clarify the content of one or several provisions of a treaty.

-H-

Human rights-based approach (HRBA): A conceptual framework for development that integrates the norms, standards and principles of the international human rights system into the plans, policies and processes of development. Key concepts of HRBA include non-discrimination, participation, accountability, and focus on vulnerable and marginalized groups.

Human Rights Council: Body of the United Nations responsible for the promotion and protection of human rights and fundamental freedoms. See chapter one of this handbook for a discussion of its mandate.

Human rights defender: Individual, group, and organ of society that promotes and protects universally recognized human rights and fundamental freedoms.

Human rights instrument: Term used to describe an international legally binding or non-binding document relevant to the protection of human rights, such as a convention, a declaration, a set of principles, etc.

Human rights monitoring: The active collection, verification, and use of information to address human rights problems. Human rights monitoring includes gathering information about incidents, observing events, visiting sites, discussing with Governments, and pursuing remedies and immediate follow-up.

-I-

Implementation: In the context of human rights treaty implementation: actions taken to realize treaty provisions for example through the adoption of policies, laws, regulations, or allocation of resources.

Indicator: A quantitative or qualitative variable that provides a reliable means to measure an achievement, a change connected to an intervention, or assess a performance.

Instruments: see “human rights instruments”

Independent Expert: see “Special Rapporteur”

International Bill of Rights: The Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social and Cultural Rights jointly are called the International Bill of Rights.

-L-

Limitations: States may limit the enjoyment of the rights on the basis of national security, public order, public morals, or public health. Limitations must be justified, legitimate, introduced by law, and proportionate to the stated reasons and introduced by law. See also “derogations” and chapter one of this handbook.

-M-

Monitoring: see “human rights monitoring”

-N-

National Human Rights Institution (NHRI): A body independent from Government, established under the Constitution or by law, designed to promote and protect human rights. The United Nations Paris Principles provide authoritative standards with regards to the status and mandate of National Human Rights Institutions. See chapter four of this handbook and “Paris Principles”

Non-binding: A document that carries no formal legal obligation, for example a declaration or platform for action. Non-binding documents express political and moral commitments.

Non-governmental organisation: see “civil society” and chapter four of this handbook.

-O-

Objection: Within the UN human rights system, a formal opposition by one State party to a reservation made by another States party that ratifies a treaty, e.g. if the reservation is considered to be incompatible with the purpose of the treaty.

Office of the High Commissioner of Human Rights (OHCHR): A department of the United Nations Secretariat, mandated to promote and protect the enjoyment and full realisation, by all people, of all rights established in the Charter of the United Nations and in international human rights laws and treaties. It is led by the High Commissioner for Human Rights. The regional office of OHCHR for the Pacific is located in Suva, Fiji.

Ombudsman: see “National Human Rights Institution” and chapter four of this handbook.

Optional protocol: A supplementing legal document to a human rights treaty, which may either provide for an individual complaints procedures with regard to the treaty or address a substantive area related to the treaty (such as children in armed conflict or the death penalty). Optional protocols to human rights treaties are treaties in their own right and are open to signature, accession or ratification by countries. A party to the main treaty can chose but is not required to ratify optional protocols to a treaty.

-P-

Pacific plan: An inter-governmental plan for strengthening regional cooperation and integration, endorsed by leaders of the Pacific Islands Forum in 2005.

Paris principles: UN principles that set forth minimum standards on the status and roles of National Human Rights Institutions. See also “National Human Rights Institution” and chapter four of this handbook.

Periodicity: Time interval between scheduled submissions of State reports to Treaty Bodies. An initial State report is required after a defined period following the treaty’s ratification by a State. Periodic reports are required at regular intervals. See chapter one of this handbook.

Petition: See “individual communication”

Preamble: An introductory statement at the beginning of legislation or an instrument providing information relating to the reason for the law’s or instrument’s enactment and intent.

Progressive realisation: The obligation of States with regards to economic, social and cultural rights. Progressive realization describes the State’s obligation to realize these rights gradually and to the maximum of resources available. Although economic, social, and cultural rights are generally subject to progressive realization, States are at the same time bound by several immediate obligations, such as the obligation not to discriminate and the obligation to take concrete steps towards the realisation of economic, social, and cultural rights.

-R-

Racial discrimination: Any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin, which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.

Rapporteurs: See “Special Procedures” and chapter one of this handbook.

Ratification: The formal step through which a State agrees to be legally bound by a treaty. It often requires the approval of the State’s legislative body. A State that has ratified a treaty is called a “State party” to that treaty. Ratification has the same legal effect as “accession” but differs slightly in procedure. Ratification involves a two-step procedure in which the State first signs and then ratifies the treaty. See also “accession” and chapter three of this handbook.

Remedy: The means by which a right is enforced or the violation of a right is prevented, redressed, or compensated. Processes that result in remedies include judicial decisions, mediation, arbitration, and dispute settlements.

Reporting procedure: Describes the reporting mechanisms under the treaty bodies. A State that has ratified or acceded to one of these treaties is required to submit periodic report on its fulfilment of obligations under the treaty. See also chapter three of this handbook.

Reservation: A formal act by a State upon ratification of a treaty by which it purports to exclude or alter the legal effect of certain provisions of the treaty in their application to that State. A reservation enables a State to accept a multilateral treaty as a whole by giving it the possibility not to apply certain provisions of that treaty. Reservations must not be incompatible with the object and the purpose of the treaty. See also chapter three of this handbook.

Resolution: Within the United Nations system, a formal statement adopted by a United Nations body, often calling for action by States on a specific issue.

Rights-based approach: see “human rights-based approach”

Rule of Law: A principle of governance in which all persons, institutions and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards.

-S-

Shadow report: See “alternative report”

Signatory State: A State that has signed but not ratified a treaty, convention, or covenant. See also chapter three of this handbook. By signing a treaty, a State commits itself to refrain from acts which would defeat the object and purpose of the treaty. The signature of an international instrument is a formal step toward a State becoming a Party to an international instrument. See also chapter three of this handbook.

Special Procedures: the general name given to mechanisms established by the Human Rights Council to monitor, advise, and publicly report on the human rights situations in a specific country (country mandate), or on a specific issue (thematic mandate) in any country. Individuals and groups who hold Special Procedure mandates act in their capacity as independent experts and are called Special Rapporteur or Special Representative, Independent Expert, and members of Working Group. See chapter one of this handbook.

Stakeholder submission: Term used to describe alternative information submitted by civil society organizations and National Human Rights Institutions ahead of a State’s Universal Periodic Review.

State obligations: The obligations on a State with regards to human rights law; States have the three-fold obligation to respect, to protect, and to fulfil the rights of a treaty.

State party: The legal term for a country that has ratified or acceded to a treaty.

State report: The report submitted by the State for review by a Treaty Body or under the Universal Periodic Review.

Succession: (of international human rights treaties) the taking over of human rights treaty obligations from another State. Some Pacific Island Countries have become parties to human rights treaties at independence by succeeding to treaty commitments made by the former colonizing country.

-T-

Temporary special measures (or special measures): Term used in CEDAW, CRPD and ICERD to describe measures put in place such as laws, policies, and practices aimed at achieving de facto equality of persons with disabilities, between men and women, and among ethnic groups, as a way of remedying the effects of past and current discrimination. Special measures should be appropriate to the situation to be remedied, be put in place by law, respect the principles of fairness and proportionality, and be discontinued when the desired results have been achieved and sustained. See also “affirmative action”

Treaty: see “convention”

Treaty-based mechanism: Human rights mechanisms set up under a treaty and applicable to a State that has ratified a given treaty. See chapter one and “Charter-based mechanisms”

Treaty Body: A group of independent experts elected according to the terms of a treaty to monitor State parties’ progress in fulfilling its obligations under that treaty and provide recommendations.

-U-

United Nations General Assembly: One of the principal organs of the UN, consisting of all UN Member States. The General Assembly issues declarations, resolutions, and may adopt human rights conventions. The actions of the General Assembly are governed by the Charter of the United Nations.

Universal Declaration of Human Rights (UDHR): The principal UN human rights document adopted in 1948 on the basis of which binding human rights treaties were subsequently developed.

Universal Periodic Review (UPR): a review mechanism under the Human Rights Council in which every UN member State’s progress on human rights, as defined in the Universal Declaration of Human Rights, is reviewed by other States every four to five years. See chapter one of this handbook.

-V-

Vienna Declaration and Platform for Action: The outcome document adopted at the 1993 United Nations Conference on Human Rights in Vienna, reaffirming among other issues that human rights are universal, indivisible, interconnected and interrelated; that human rights violations cannot be justified on the basis of culture, religion, or tradition; recognising violence against women as a human rights violation; and underlining the need for assisting States in the task of building and strengthening national institutions and legal systems to advance human rights.

Annex 3 – Contact of Key Human Rights Partners

- **Office of the High Commissioner for Human Rights - OHCHR**

Level 5, Kadavu House
414 Victoria Parade
Suva, Fiji Islands
Tel: (679) 3310 465
Fax: (679) 3310 485
E-mail: pacific@ohchr.org
<http://pacific.ohchr.org/>
www.ohchr.org

- **UNDP Pacific Centre**

Level 7, Kadavu House
414 Victoria Parade
Suva, Fiji Islands
Tel: (679) 3300399
Fax: (679) 3301976
Email: registry.pacificcentre@undp.org
www.undppc.org.fj
www.undp.org

- **United Nations Entity for Gender Equality and the Empowerment of Women (UN Women)**

Pacific Sub-Regional Office
Level 3, Kadavu House
414 Victoria Parade
Suva, Fiji Islands
Tel: (679) 330-1178 or (679) 330-1118
Fax: (679) 330-1654
Email: registry@unwomenpacific.com
Website: <http://www.unwomenpacific.org>

- **United Nations Children's Fund (UNICEF)**

Third & Fifth Floor
Fiji Development Bank Building
360 Victoria Parade
Suva, Fiji
Tel: (679) 3300439
Fax: (679) 3301667
Email: suva@unicef.org

- **United Nations Population Fund (UNFPA) Pacific Sub-Regional Office**

Level 6, Kadavu House
414 Victoria Parade
Suva, Fiji Islands
Tel: (679) 3308 022
Fax: (679) 3312 785
E-mail: pacificSRO@unfpa.org

- **Pacific Islands Forum Secretariat (PIFS)**

Headquarters
Ratu Sukuna Road
Suva, Fiji Islands
Tel: (679) 3312 600
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RRRTRegistry@spc.int

Annex 4 – Endnotes

¹ Pacific Islands Forum Secretariat, “The Auckland Declaration,” Pacific Islands Forum Special Leaders’ Retreat, Auckland, Apr. 6, 2004. In 2011, leaders reaffirmed their commitment to human rights principles: “Leaders also re-affirmed the shared values and principles of the Pacific Islands Forum and the UN, including important commitments to human rights, the rule of law, good governance and democracy.” Pacific Islands Forum Secretariat “Forum Communiqué,” Forty-second Pacific Islands Forum, September 2011, <http://www.forumsec.org/pages.cfm/newsroom/press-statements/2011/forum-communique-42nd-pif-auckland-new-zealand.html>

² All Pacific constitutions contain clauses that protect human rights, with the exception of Niue, and several constitutions contain bills of rights as stand-alone chapters. Accordingly, many human rights norms, and predominantly civil and political rights, are enshrined in Pacific Island countries’ laws. See Kelley Haines-Sutherland, “Balancing Human Rights and Customs in the Pacific Region: A Pacific Charter of Human Rights?” ANU Undergraduate Research Journal 2 (2010):134-5. Several constitutions have incorporated bills of rights into their constitutions, including RMI, Kiribati, Nauru, Solomon Islands, Vanuatu, Cook Islands, Tuvalu, and Fiji, see Jennifer Corrin Care, “Conflict Between Customary Law and Human Rights in the South Pacific” (Paper presented at the 12th Commonwealth Law Conference, Kuala Lumpur, September 1999).

³ “Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.” Universal Declaration of Human Rights, G.A. res. 217A (III), U.N. Doc A/810 at 71 (1948) [hereinafter ‘UDHR’] art. 2.

⁴ “Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.” UDHR, art. 2. ICCPR, art.26; ICESCR, art. 2.2; CEDAW, art.2; ICRMW, art.1; ICERD, art. 1.1. CRC, art.2.1; CRPD, art. 5.

⁵ United Nations International Covenant on Civil and Political Rights 999 U.N.T.S. 171 (1967) [hereinafter ‘ICCPR’], art. 4: “A state party may take measures derogating from its obligations under the International Covenant on Civil and Political Rights pursuant to Article 4 only when faced with a situation of exception and actual or imminent danger which threatens the life of the nation. A threat to the life of the nation is one that: (a) affects the whole of the population and either the whole or part of the territory of the State, and (b) threatens the physical integrity of the population, the political independence or the territorial integrity of the State or the existence or basic functioning of institutions indispensable to ensure and project the rights in the Covenant.” United Nations, Economic and Social Council, Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights, U.N. Doc. E/CN.4/1985/4, Annex (1985).

⁶ UDHR, arts. 29-30; ICCPR, art.19.

⁷ For a legislative history of the UDHR, see “Yearbook of the United Nations: 1948-49,” <http://www2.ohchr.org/english/issues/education/training/docs/UNYearbook.pdf>

⁸ United Nations, Charter of the United Nations, 24 October 1945, 1 UNTS XVI, Chapter 1.

⁹ Information about the Bubuti system in Kiribati was provided by Teweiariki Teaero, Senior Lecturer in Education, University of the South Pacific.

¹⁰ Ravuvu, A., The Fijian Chiefly System and the Democratic Process (Suva 1991), University of the South Pacific. See also chapter two of this handbook on the link between human rights and good governance.

¹¹ “All Pacific constitutions contain clauses that protect human rights, with the exception of Niue and several constitutions contain bills of rights as stand-alone chapters. Accordingly, many human rights norms, and predominantly civil and political rights, are enshrined in Pacific Island Countries’ laws,” Haines-Sutherland, “Balancing Human Rights and Customs in the Pacific Region,” 134-5. Examples of court cases in which these human rights standards have been demanded and enforced are included in the following chapters of this handbook.

¹² UN Committee on the Elimination of Discrimination against Women, “Concluding Observations of the Committee – Papua New Guinea,” CEDAW/C/PNG/CO/3, July 30, 2010. Amnesty International, “Papua New Guinea – Update to the Briefing to the UN Committee on the Elimination of Discrimination Against Women, 2010. UN Human Rights Council, “Report of the Working Group on the Universal Periodic Review: Papua New Guinea,” UN Doc. A/HRC/18/18, July 11, 2011, ¶ 78.

¹³ UN Office of the High Commissioner for Human Rights, Housing rights assessment mission to Papua New Guinea; June 29 - July 9, 2010, <http://pacific.ohchr.org/>. See also, UN Office of the High Commissioner for Human Rights, “Fact Sheet No.21 Rev.1: the Right to Adequate Housing,” http://www.ohchr.org/Documents/Publications/FS21_rev_1_Housing_en.pdf

¹⁴ UN Women, “Ending Violence Against Women and Girls: Evidence, Data and Knowledge in Pacific Island Countries,” 2nd Edition, July 2011, 16.

¹⁵ Secretariat of the Pacific Community, “Kiribati Family Health and Support Study: A study on violence against women and children,” 2010, 147-148, http://www.spc.int/hdp/index.php?option=com_docman&task=cat_view&gid=89&Itemid=44

¹⁶ United Nations Population Fund [‘UNFPA’], “Swimming Against the Tide: Lessons Learned from the Field Research on Violence Against Women in the Solomon Islands and Kiribati,” August 2010, 43.

¹⁷ The CEDAW Committee, which oversees the implementation of the Convention, defines gender-based violence - “violence that is directed against a woman because she is a woman or that affects women disproportionately” – as discrimination [...]” Committee on the Elimination of All Forms of Discrimination against Women, General Recommendation No.19 (1992), ¶6-7.

¹⁸ Refugee Review Tribunal Australia, “Research Response Number CHN30600” <http://www.unhcr.org/refworld/pdfid/4b6fe157d.pdf>. James To, “The Overseas Chinese in Tonga,” The Tokyo Foundation, July 2008, <http://www.tokyofoundation.org/en/topics/sylff/the-overseas-chinese-in-tonga>.

¹⁹ NGO Shadow Report on the Status of Women in Samoa, December 2004, [http://www.iwraw-ap.org/resources/samoa\(English\).pdf](http://www.iwraw-ap.org/resources/samoa(English).pdf), 11-13.

²⁰ Human Rights Council, “Report of the Working Group on the Universal Periodic Review: Samoa,” UN Doc. A/HRC/18/14/Add.1, ¶7-8.

²¹ UN Office of the High Commissioner for Human Rights, “Torture Prevention in the Pacific: Sharing Good Experiences and Lessons Learnt,” December 2011, http://pacific.ohchr.org/docs/Torture_prevention_in_the_Pacific_Dec_2011.pdf

²² For an explanation of the difference between the signing of a convention versus ratification of or accession to a convention, see chapter three.

²³ US Department of State, “Trafficking in Persons Report 2011,” June 2011, <http://www.state.gov/g/tip/rls/tiprpt/2011/164231.htm>

²⁴ Human Rights Council, “National report submitted in accordance with paragraph 15(a) of the annex to Human Rights Council resolution 5/1: Palau,” UN Doc. A/HRC/WG.6/11/PLW/1, ¶32-34.

²⁵ Please refer to the glossary in Annex 2 for an explanation of accession, ratification, and succession.

²⁶ Ratification and accession have the same legal effect. Ratification is a two-step procedure that includes the signature of a convention as a first step; accession is a one-step procedure where a state does not first sign on to a treaty.

²⁷ The Committee is currently discussing the periodicity of reporting.

²⁸ The factsheet can be accessed at this link: <http://www.ohchr.org/Documents/Publications/FactSheet30en.pdf>; the short movie is included in the memory stick enclosed with this handbook.

²⁹ The Cook Islands, Niue, and Tokelau are not UN member states and therefore not subject to the UPR review.

³⁰ Human Rights Council webcasts <http://www.un.org/webcast/unhrc/index.asp> ; See also the OHCHR UPR Documentation database which links directly to the webcasts and documentation of individual State UPR sessions: <http://www.ohchr.org/en/hrbodies/upr/pages/Documentation.aspx>.

³¹ All documents relating to the review of countries and its outcomes can be accessed at this link: <http://www.ohchr.org/EN/HRBodies/UPR/Pages/Documentation.aspx>

³² Information on financial and training assistance can be found at this link: <http://www.ohchr.org/EN/HRBodies/UPR/Pages/UPRFundParticipation.aspx>

³³ All documents relating to Fiji’s UPR review can be found online at: <http://www.ohchr.org/EN/HRBodies/UPR/Pages/FJsession7.aspx>. Human Rights Council, “Report of the Working Group on the Universal Periodic Review – Fiji,” Mar. 23, 2010, UN Doc. A/HRC/14/8, 11-12, ¶70. Recommendations 27-35 encourage the lifting of PER; See “Addendum to the Report of the UPR Working group, Fiji,” June 10, 2010, UN Doc. A/HRC/14/8/Add.1.

³⁴ Human Rights Council, “Report of the Working Group on the Universal Periodic Review – Vanuatu,” UN Doc. A/HRC/12/14, 6, ¶ 25. All documents relating to Vanuatu’s UPR review can be found online at: <http://www.ohchr.org/EN/HRBodies/UPR/Pages/VUSession5.aspx>

³⁵ Addendum to the Report of the UPR Working group, Palau UN Doc A/HRC/18/5/Add.1, para 61; see also page 6 in full, <http://www.ohchr.org/EN/HRBodies/UPR/PAGES/PWSession11.aspx> Ibid., ¶ 60.

³⁶ Human Rights Council, “Report of the Working Group on the Universal Periodic Review – Nauru,” May 30, 2011, Addendum, UN Doc. A/HRC/17/3/Add.1 – for views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review, see http://lib.ohchr.org/HRBodies/UPR/Documents/Session10/NR/A_HRC_17_3_Add.1_Nauru_E.pdf Recommended by 16 nations in the UPR process; Ibid., ¶ 2.

³⁷ This Protocol supplements the United Nations Convention against Transnational Organized Crime. It is often referred to as the Palermo Protocol.

³⁸ Human Rights Council, “Federated States of Micronesia National Report,” Aug. 23, 2010, UN Doc. A/HRC/WG.6/9/FSM/1, paras. 114-115; Human Rights Council, “Report of the Working Group on the Universal Periodic Review – Micronesia,” Mar. 14, 2011, Addendum, UN Doc. A/HRC/16/16/Add.1.

³⁹ Human Rights Council, “Report of the Working Group on the Universal Periodic Review - Republic of the Marshall Islands,” Jan. 4, 2011, UN Doc. A/HRC/16/12. <http://www.ohchr.org/EN/HRBodies/UPR/Pages/MHSession9.aspx>

⁴⁰ UPR Implementation documentation submitted by States can be viewed at <http://www.ohchr.org/EN/HRBodies/UPR/Pages/UPRImplementation.aspx>

⁴¹ The full title of the mandate-holder is: Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes.

⁴² UN OHCHR ‘Nuclear legacy in the Marshall Islands: “Nomads in their own country” – UN Expert,’ Majuro/ Geneva, Mar. 30, 2012 <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=12025&LangID=E>

⁴³ The full title of the mandate-holder is: Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights.

⁴⁴ UN OHCHR ‘UN rights expert urges Solomon Islands to break the cycle of aid dependency,’ Honiara/Geneva, Feb. 22, 2011 <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=10748&LangID=E>

⁴⁵ The full title of the mandate-holder is: Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment.

⁴⁶ UN OHCHR ‘UN Special Rapporteur on Torture presents preliminary findings on his Mission to Papua New Guinea,’ Port Moresby, May 25, 2010, <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=10058&LangID=E>

⁴⁷ The list represents active Special Procedures mandates as of October 2012. For an updated list of all country and thematic mandates, consult the following website: <http://www.ohchr.org/EN/HRBodies/SP/Pages/Welcomepage.aspx>

⁴⁸ Palau signed on to all core human rights treaties in September 2011, becoming the first Pacific Island country to have signed on to all human rights treaties.

⁴⁹ Nauru ratified the CEDAW Convention in June 2011, see Pacific Scoop, “Nauru MPs commit to ratifying CEDAW” Dec 7, 2009, <http://pacific.scoop.co.nz/2009/12/nauru-mps-commit-to-ratifying-cedaw>

⁵⁰ Pacific Islands Forum Secretariat, The Pacific Plan for Strengthening Regional Cooperation and Integration, Suva (October, 2005), [The Pacific Plan] Initiative 12.5: “At their 2006 meeting, Leaders agreed, “...that greater attention be given to implementing international conventions on human rights (Pacific Plan Initiative 12.5) as essential tools to underpin improvements in institutional governance.” Forum Communiqué, Thirty-Seventh Pacific Islands Forum, Nadi, Fiji, Oct. 24-25, 2006.

⁵¹ All Pacific Island Countries except for Niue maintain constitutional provisions on human rights; see Jennifer Corrin Care “Negotiating the Constitutional Conundrum: Balancing Cultural Identity with Principles of Gender Equality in Post-Colonial South Pacific Societies” Indigenous Law Journal 5 (2006), 53; ‘Dejo Olowu “Invigorating Economic, Social And Cultural Rights In The South Pacific: A Conceptual Approach,” University of Technology Law and Justice Journal 7 (2007) 83. The constitutions were largely drafted using overseas models of international standards as a reference point (Fiji Islands, Kiribati, Nauru, Papua New Guinea, Samoa, Solomon Islands and Tuvalu) or Constitutions in of other countries which have already incorporated international standards (i.e. Cook Islands and Vanuatu drew from the Canadian Bill of Rights; Tonga drew on the Constitution of Hawaii (1852)) – see Corrin Care, “Negotiating the Constitutional Conundrum,” 56.

⁵² UN Office of the High Commissioner for Human Rights, “A Region-wide Assessment of Laws on the Prevention of Torture and other Ill-treatment of Detainees, 2009.”

⁵³ Ibid.

⁵⁴ A survey in India, for example, showed women lost an average of seven working days after each incident of violence, see UN Population Fund [UNFPA], State of the World Population, Chapter 7 ‘Gender-Based Violence: A Price Too High,’ (2005).

⁵⁵ “Violence Cost \$498m,” The FijiTimes, July 6, 2012. In 2010, the UN Development Fund for Women [UNIFEM] Pacific published research with data on violence against women and girls in Pacific Island Countries: UNIFEM Pacific, Ending Violence against Women and Girls: Literature Review and Annotated Bibliography, August 2010, <http://unwomenpacific.org/pages.cfm/news-resources-centre/publications/2011-3/ending-violence-against-women-literature-review-2nd-edition.html>

⁵⁶ World Health Organization, “The Economic Dimensions of Interpersonal Violence,” Geneva, 2004.

⁵⁷ The authors of the study note that there is significant overlap between the children who make up the estimates for each of the categories. In other words, that a child who is sexually abused is likely to also be represented among children who are recorded as emotionally and physically abused. Gurr, S., and J. Pollett, “UNICEF Child Protection Costing Analysis – Phase 1,” Final Draft, 15. For a summary of that study, see: [http://www.unicef.org/pacificislands/Costing_Analysis_Final_\(email_version\).pdf](http://www.unicef.org/pacificislands/Costing_Analysis_Final_(email_version).pdf)

⁵⁸ Gurr, S., and J. Pollett, “UNICEF Child Protection Costing Analysis – Phase 1,” Final Draft.

⁵⁹ UNDP Pacific Centre, Pacific Islands Forum Secretariat, “Urban Youth in the Pacific,” 2011, pp.14-20, 35, 56, 121, 142.

⁶⁰ For additional information on Pacific Island Countries’ performance with regards to MDGs achievement, see Pacific Islands Forum Secretariat, “2010 Pacific Regional MDGs Tracking Report,” July 2010.

⁶¹ The table is based on the following two publications: United Nations Office of the High Commissioner for Human Rights (OHCHR) and Pacific Island Forum Secretariat (PIFS), “Ratification of International Human Rights Treaties: Added Value for the Pacific Region,” July 2009. United Nations Development Programme, “Human Rights and the Millennium Development Goals: Making the Link.”

⁶² This section draws extensively on the New Zealand Law Commission’s study paper: “Converging Currents: Custom and Human Rights in the Pacific,” September 2006, http://www.lawcom.govt.nz/sites/default/files/publications/2006/10/Publication_120_340_SP17.pdf

⁶³ Jennifer Corrin Care, “Negotiating the Constitutional Conundrum” as well as Sue Farran, “Land As A Fundamental Right: A Cautionary Tale” Victoria University Wellington Law Review 40 (2009), and Natalie Baird, “To Ratify Or Not To Ratify? An Assessment Of The Case For Ratification Of International Human Rights Treaties In The Pacific” Melbourne Journal of International Law, 12 (2011).

⁶⁴ “Aia Tatau - Perspectives on Human Rights in Samoa,” paradigm documentaries, Tiapapata Art Centre, 2008.

⁶⁵ New Zealand Law Commission, “Converging Currents” at footnote 62.

⁶⁶ Ibid., as well as UDHR, Preamble.

⁶⁷ Ibid.

⁶⁸ RRRT, FWRM, “Changing Laws: A Legislative Lobbying Toolkit,” July 2010, 27.

⁶⁹ For example, the Vanuatu Christian Council criticized the government for its failure to inform and consult with the public on the implications of Vanuatu’s WTO accession. The Council’s chair was quoted as saying, “the [government’s] failure to inform the public is an injustice to the people.” “Vanuatu Church Leaders Remain Opposed to WTO Membership,” Radio New Zealand, November 3, 2011. Also, the Pacific Conference of Churches specifically lists human rights as one of its programs (<http://www.pcc.org.fj/humanrights.aspx>).

⁷⁰ The New Zealand Law Commission’s study paper on custom and human rights in the Pacific concludes that it is not possible to say with certainty what women’s status in the Pacific was before the arrival of colonizers and missionaries, due to the fact that early records were biased European male interpretation of traditional practices. Nevertheless, the study paper concludes that much that is considered customary today with regards to women’s status was shaped by the influences of colonialism and Christianity. This includes the introduction by colonizing powers of wage-earning employment for men while confining women to low-status labour as well as the modification of the chiefly systems; it also includes the notion promoted by missionaries that wives should submit to their husbands and the abolishment of names for women that express authority and rank. See New Zealand Law Commission, “Converging Currents,” 87-89.

⁷¹ “Aia Tatau - Perspectives on Human Rights in Samoa,” paradigm documentaries, Tiapapata Art Centre, 2008.

⁷² General Assembly, “Vienna Declaration and Programme of Action,” UN Doc. A/CONF.157/23, 12 July 1993, ¶ 5. The World Conference on Human Rights in Vienna was attended by Fiji, RMI, Samoa, PNG, Vanuatu, and FSM.

⁷³ Sources: Pacific Regional Rights Resource Team (RRRT), Pacific Human Rights Law Digest, 1 (2005):26; Pacific Regional Rights Resource Team (RRRT), Pacific Human Rights Law Digest, 2 (2008): 24-38.

⁷⁴ Court of Appeal (Connolly & Kapi JJA, Wood CJ) [1986] SCA 1 (24 February 1986; Pacific Regional Rights Resource Team (RRRT), Pacific Human Rights Law Digest, 2 (2008): 24)

⁷⁵ Lafaiailii v Attorney General, Supreme Court of Samoa, [2003] WSSC 8 (24 April 2003), PacLII. – See also Miranda Forsyth “Banishment and Freedom of Movement in Samoa: Leituala v Maugakiti et al [2004]” Journal of South Pacific Law 8 (2) (2004) <http://www.paclii.org/journals/fJSPL/vol08/no2/12.html>.

⁷⁶ (Fisher & Paterson JJA; Tompkins JA dissenting) [2009] TVCA (4 November 2009; Pacific Regional Rights Resource Team (RRRT), Pacific Human Rights Law Digest, 3 (2011): 33)

⁷⁷ PNG Constitution s41(1). Teonea v Pule o Kaupule of Nanumaga, National Court of Justice (Woods J) PNG N 707 (M) (In Re Yongo Mondo, 10 May 1989 also cited in Pacific Regional Rights Resource Team (RRRT), Pacific Human Rights Law Digest, 2 (2008): 33).

⁷⁸ The State v. Kule, National Court of Justice (Doherty J) PNG [1991] PNGLR 404 (3 December 1991, also in Pacific Regional Rights Resource Team (RRRT), Pacific Human Rights Law Digest, 2 (2008): 37)

⁷⁹ Office of the High Commissioner for Human Rights, Good Governance Practices for the Protection of Human Rights (New York and Geneva 2007). UN Development Programme [UNDP], “Good Governance and Sustainable Human Development,” New York, 1997.

⁸⁰ “Solomons Lawmakers to get \$59’000 Bonuses,” Radio Australia, July 27, 2009. “Transparency Solomon Islands Condemns Parliamentary Entitlements,” Solomon Times Online, July 22, 2009. “Solomons Chamber, Unions Condemn Parliament Perks,” Solomon Times, Aug.11, 2009. Parliamentary House Committee, Committee Report No 2, Foreword, November 2009. High Court of Solomon Islands, Attorney-General v Members of Parliament (Entitlements) Commission, judgment of Oct. 22, 2009.

⁸¹ “Government says Nothing Will Stop WTO Accession,” Daily Post, Nov. 21, 2011. Pacific Network on Globalization, “Free Speech More Important than Free Trade,” Press Release, Nov. 29, 2011, <http://www.scoop.co.nz/stories/WO1111/S00807/vanuatu-free-speech-more-important-than-free-trade.htm> (accessed January 4, 2012).

⁸² For a more detailed discussion on the relation between justice and peace see for example Lambourne, W., “Post-Conflict Peacebuilding: Meeting Human Needs for Justice and Reconciliation” Peace, Conflict and Development (April 2004); and Human Rights Watch, “Selling Justice Short: Why Accountability Matters for Peace” July 2009, <http://www.hrw.org/reports/2009/07/07/selling-justice-short-0>.

⁸³ That is the case in Vanuatu, the Federated States of Micronesia, the Republic of the Marshall Islands, and Palau. For more information see: “PacLII – Pacific Island Treaty Series: How Treaties become Law,” <http://www.paclii.org/pits/en/domestication.shtml>.

⁸⁴ Vienna Convention on the Law of Treaties, May 23, 1969 (entry into force Jan. 27, 1980) art. 19(c).

⁸⁵ Constitution of Fiji (1997), Article 43(2) (a) states: “In interpreting the provisions of this Chapter, [Bill of Rights] the courts must promote the values that underlie a democratic society based on freedom and equality and must, if relevant, have regard to public international law applicable to the protection of the rights set out in this chapter.” The 1997 Fiji Constitution has been abrogated in 2009; a Constitution Commission is in the process of drafting a new Constitution for the country. Tuvalu Constitution, Section 15 (5) In determining whether a law or act is reasonably justifiable in a democratic society that has a proper respect for human rights and dignity, a court may have regard to- (c) international conventions, declarations, recommendations and judicial decisions concerning human rights. PNG Constitution Section 39 (3) (c) [a court may have regard to] the Universal Declaration of Human Rights and any other declaration, recommendation or decision of the General Assembly of the United Nations concerning human rights and fundamental freedoms; and (d) the European Convention for the Protection of Human Rights and Fundamental Freedoms and the Protocols thereto, and any other international conventions, agreements or declarations concerning human rights and fundamental freedoms; and (e) judgements, reports and opinions of the International Court of Justice, the European Commission of Human Rights, the European Court of Human Rights and other international courts and tribunals dealing with human rights and fundamental freedoms.

⁸⁶ (1997) Supreme Court of Samoa (Misc.) 20701.

⁸⁷ In Pacific Island countries with so-called dualist legal system an “act of transformation” may need to be passed to make the treaty applicable at the national level. For more information about the legal systems of Pacific Island Countries, see: “PacLII – Pacific Island Treaty Series: How Treaties become Law,” <http://www.paclii.org/pits/en/domestication.shtml>.

⁸⁸ Civil Jurisdiction No. 30 of 1996.

⁸⁹ A full collection of cases has been published by SPC RRRT in three publications, called Pacific Human Rights Law Digest.

⁹⁰ Fa’aoa v Rex, Court of Appeal [2010] TOCA 17 (14 July 2010), PacLII,, <http://www.paclii.org/to/cases/TOCA/2010/17.html>

⁹¹ State v Boila, High Court of Fiji [2004] FJHC 255; HAC0032D.2004S (25 October 2004), PacLII, <http://www.paclii.org/fj/cases/FJHC/2004/255.html>.

⁹² Those are the Constitutions of the Cook Islands (1980), Marshall Islands (1989), Federated States of Micronesia (1975), Kiribati (1979), Nauru (1968), Samoa (1960), Solomon Islands (1978), Tonga (1875), and Tuvalu (1978). Olowu “Invigorating Economic, Social, and Cultural Rights” 82-83.

⁹³ Article 33 (fair labour practises, labour relations and trade union rights) and Article 39 (education).

⁹⁴ Olowu, “Invigorating Economic, Social, and Cultural Rights,” 84.

⁹⁵ Notable examples of constitutional protection of economic, social and cultural rights include South Africa, Kenya, Uganda, Ghana. See also: A. Nolan, B. Porter, M. Langford, “The Justiciability of Social and Economic Rights: and Updated Appraisal,” CHRGI Working Paper No. 15, 2007.

⁹⁶ PAFCO Employees Union v Pacific Fishing Company Ltd, High Court of Fiji [2002] FJHC 60 (25 January 2002), PacLII <http://www.paclii.org/fj/cases/FJHC/2002/60.html>.

⁹⁷ Kambu v Lus, PNG National Court of Justice [2010] PGNC 208; N4437 (12 October 2010), PacLII <http://www.paclii.org/pg/cases/PGNC/2010/208.html>.

⁹⁸ Supreme Court (Kent J) Vanuatu, Case No 18 of 1994 (19 April 1995), PacLII <http://www.paclii.org/vu/cases/VUSC/1995/3.html>

⁹⁹ Human Rights Council, “Report of the Working Group on the Universal Periodic Review: Republic of the Marshall Islands,” UN Doc. A/ HRC/16/12, Jan, 4, 2011, ¶ 6.

¹⁰⁰ The Cook Islands Government for example adopted in May 2011 the national policy on gender equality and women’s empowerment (2011-2016) and designed an action plan on the basis of the policy that includes targets, indicators and estimated budgets.

¹⁰¹ Guidelines for reporting under the first option can be accessed on the website of Treaty Bodies: <http://www2.ohchr.org/english/bodies/treaty/index.htm>. Click on “Reporting Guidelines” in the left hand menu.

¹⁰² Guidelines for reporting under the second option can be accessed on the website of Treaty Bodies:

<http://www2.ohchr.org/english/bodies/treaty/CCD.htm>. Click on “HRI/MC/2004/3” in the body of the text.

¹⁰³ The scheduled sessions and all documents for Treaty Body reviews can be accessed at this link: <http://www2.ohchr.org/english/bodies/treaty/index.htm>; To find out the schedules of review for countries click on a Treaty Body, and then on “sessions” on the left-hand side of the Treaty Body’s website.

¹⁰⁴ This section draws extensively on: Inter-parliamentary Union, OHCHR, “Human Rights Handbook for Parliamentarians,” No.8, 2005.

¹⁰⁵ This section draws extensively on OHCHR, Working with the United Nations Human Rights Programme, A Handbook for Civil Society, (Geneva, 2008).

¹⁰⁶ “NGO Shadow Report on the Status of Women in Samoa,” 4th and 5th Periodic reports of State Parties (2005-2009), 2012, http://www2.ohchr.org/english/bodies/cedaw/docs/ngos/JointNGOsSubmission_for_the_session_Samoa_CEDAW52.pdf

¹⁰⁷ Committee on the Elimination of Discrimination against Women, “Concluding Observations of the Committee on the Elimination of Discrimination against Women – Samoa,” CEDAW/C/WSM/CO/4-5, July 27, 2012, <http://www2.ohchr.org/english/bodies/cedaw/docs/co/CEDAW-C-WSM-CO-4-5.pdf>

¹⁰⁸ OHCHR, A Handbook for Civil Society, 51.

¹⁰⁹ “A Global Voice for Child Rights,” NGO Group for the Convention on the Rights of the Child, <http://www.childrightsnet.org/NGOGroup/>; “UN Human Rights Committee 105th Session, 9-27 July 2012, Geneva,” The Centre for Civil and Political Rights, <http://www.ccprcentre.org>

¹¹⁰ The handbook can be accessed at this link: http://www.ohchr.org/EN/AboutUs/CivilSociety/Documents/Handbook_en.pdf

¹¹¹ Submissions were made by Citizen’s Constitutional Forum, Ecumenical Centre for Research, Education & Advocacy (ECREA), Fiji Disabled Peoples Association, Fiji Law Society, Fiji Women’s Crisis Centre, Fiji Women’s Rights Movement, Methodist Church Fiji, Pacific Concerns Resource Centre, Save the Children- Fiji, and Lechuga Foundation Fiji. Human Rights Council, “Summary prepared by the Office of the High Commissioner for Human Rights, in accordance with paragraph 15(c) of the Annex to Human Rights council Resolution 5/1 – Fiji,” Nov. 11, 2009, UN Doc. A/HRC/WG.6/7/FJI/3.

See also “Jail sentences for Fiji death in custody,” Radio Australia, March 18, 2009, <http://www.radioaustralia.net.au/international/2009-03-18/jail-sentences-for-fiji-death-in-custody/164150>

¹¹² Human Rights Council, “Report of the Working Group on the Universal Periodic Review: Fiji,” Mar. 23, 2010, UN Doc. A/HRC/14/8, 9.

¹¹³ The countries who made either or both recommendation included: Germany, Chile, Switzerland, Italy, Norway, United Kingdom, Netherlands, Brazil, Philippines, Republic of Korea. Human Rights Council, “Report of the Working Group on the Universal Periodic Review: Fiji,” Mar. 23, 2010, UN Doc. A/HRC/14/8, 9.

¹¹⁴ “Statement by H.E. Ambassador Peceli Vocea, Head Of The Fiji Delegation to the 14th Session Of The Human Rights Council” June 10, 2010. Human Rights Council, “Addendum to the Report of the UPR Working group, Fiji,” June 10, 2010, UN Doc. A/HRC/14/8/Add.1. The Fiji Government has not yet responded to the request to visit by the Special Rapporteur on Torture.

¹¹⁵ The Paris Principles were adopted by the UN General Assembly. They set forth standards with regards to a National Human Rights Institutions competence and responsibilities; its composition and guarantees of independence and pluralism; its methods of operation; and principles for institutions with competence resembling those of a court. The standards can be accessed at this link: <http://www2.ohchr.org/english/law/parisprinciples.htm>

¹¹⁶ For more information please consult the UNDP-OHCHR Toolkit for collaboration with National Human Rights Institutions at this link: <http://www.ohchr.org/Documents/Countries/NHRI/1950-UNDP-UHCHR-Toolkit-LR.pdf>



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