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United Nations Human Rights

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Session on “Implementation of Civil and Political Rights”

Address by

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Prime Minister, Attorney-General, Acting Solicitor-General, representatives of Government, judges and practitioners of the legal profession, ladies and gentlemen,

I thank the organisers for the invitation to the Attorney-General's 15th Annual Conference, and for the opportunity to present in this session on implementing civil and political rights.

With thanks for the kind introduction, if I may just add some information regarding the UN's Human Rights Office – the Office of the UN High Commissioner for Human Rights (OHCHR) – Regional Office for the Pacific. OHCHR Pacific covers and works with 16 countries in the region, in cooperation with Governments, UN and regional organisations, civil society organisations and other partners, to promote and protect human rights. The headquarters of OHCHR is in Geneva, Switzerland, and is headed by the High Commissioner for Human Rights, Ms. Navi Pillay. OHCHR has some 60 field presences around the world, one of which is the Regional Office for the Pacific, based in Fiji since 2005.

In the time available for my presentation, I will focus my remarks on two areas:

- (1) UN human rights instruments and standards – and domestic application; and
- (2) Human Rights Committee's jurisprudence and Special Rapporteurs' recommendations.

Allow me first to propose a brief moment of reflection.

The universality, indivisibility and interdependence of all human rights, whether civil, cultural, economic, social or political, were reaffirmed at the World Conference on Human Rights in 1993 and the resulting Vienna Declaration and Programme of Action. It crystallized the principle that human rights are universal, and committed States to the promotion and protection of all human rights for all people, regardless of their political, economic and cultural systems. As we celebrate the 20th anniversary of that event, which also led to the creation of the post of the UN High Commissioner for Human Rights, this is a good moment for states to reflect on their achievements or progress across the full spectrum of rights.

In short, human rights reflect the profound aspirations of all peoples, of every human being to be treated with respect by others. Human rights are the basic values of us living together.

(1) UN human rights instruments and standards – and domestic application

In turning to my first theme, the engagement by States in the Pacific with the UN human rights mechanisms – notably the Universal Periodic Review and the special procedures of the UN Human Rights Council, and the UN human rights treaty bodies – have increased in recent years and is a positive and welcome development. The fact that all UN Member States in the Pacific participated in the 1st cycle of the UPR was recognised as an achievement by the UN Secretary-General as well as political leaders in the region. However, ratification in the Pacific of some of the key international human rights treaties remains low, including those that form part of the International Bill of Rights: the International Covenant on Civil and Political Rights (ICCPR), and the International Covenant on Economic, Social and Cultural Rights (ICESCR).

ICCPR was one of the first legally binding international human rights treaties and has been ratified by 167 countries. The Committee monitoring its implementation registers complaints

of violations to rights such as the right to freedom of speech, the right to vote, and the right to a fair trial. Over the years, the Human Rights Committee has developed a body of legal principles that originate from the interpretation of rights contained in the Covenant. Many success stories have arisen from the implementation of remedies recommended to States such as commutations of the death penalty; early releases from prisons; receipts of residents permits; and compensation for victims of human rights violations.

As we celebrate the 65th anniversary of the Universal Declaration of Human Rights, the UN High Commissioner for Human Rights encourages States in the Pacific, including Fiji, to renew consideration of and become State Parties to the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention against Torture, and their respective Optional Protocols. The UN's Human Rights Office is available to assist in these efforts.

In all, the ICCPR provides a comprehensive and legally binding framework to ensure civil and political rights. It addresses issues such as the right to life, prohibition of torture, inhuman or degrading treatment or punishment, security of person, arbitrary detention, freedoms of movement, expression, thought, conscience and religion, rights associated with ensuring a fair trial, rights guaranteed throughout criminal proceedings, and rights relevant to the determination of criminal charges, recognition before the law, the right to privacy and electoral rights, equality and non-discrimination, among others.

OHCHR has produced a fact sheet and other publications about the ICCPR and the Human Rights Committee, which we are pleased to make available to all participants.

In connection with encouraging further ratification of international human rights treaties, allow me also to highlight that national courts in the Pacific are increasingly aware of international human rights standards and applying them in resolving domestic legal issues.

In this connection, it is significant that also Fiji's Constitution, Section 7(1), provides that *"[...] when interpreting and applying this Chapter [Bill of Rights], a court, tribunal, or other authority [...] may, if relevant, consider international law, applicable to the protection of the rights and freedoms in this Chapter."*

As documented in compilations of case-law, national courts in the Pacific have considered in particular those international human rights treaties to which their respective countries are parties, such as CEDAW and CRC, for example in cases under which imprisonment should be the last resort when determining the appropriate sentence for juvenile offenders. Interestingly, national courts have also been prepared to consider treaties to which their countries are not yet parties, and drawing upon precedents also in other jurisdictions on a range of issues such as setting out the criteria for the independence and impartiality of a tribunal established under the law.

On another level of executive government, there are several decisions that address violent and unlawful practices by members of the police, as inconsistent with human rights obligations and the rule of law. In this regard, as has been the case also here in Fiji, the UN High Commissioner for Human Rights has called for the investigation of cases of torture and inhuman and degrading treatment. The High Commissioner encourages Governments to send a strong public message of zero tolerance for such abuses, and to bring perpetrators to justice.

(2) Human Rights Committee jurisprudence and Special Rapporteur recommendations

In turning to my second theme I will speak to some of the thematic human rights guidance provided by UN human rights mechanisms.

National courts can take useful guidance also from jurisprudence from the UN Human Rights Committee, in making determinations on key terms such as “fair”, “reasonable”, and “arbitrary”, in outlining the positive and negative obligations of States, on issues of direct and indirect discrimination, and the application thereof in the public and private spheres.

There exist good compilations outlining on a right-by-right basis what these provisions have come to mean in the domestic context for State parties to the ICCPR and their obligations to respect, protect and fulfil the human rights of individuals under their jurisdictions. This can range from the procedural issues such as those of admissibility and exhaustion of domestic remedies, to substantive issues as clearly demarcating non-derogable rights such as the absolute prohibition of torture and of slavery. It also provides authoritative guidance as to when limitations may be imposed on other rights, when provided by law and complying with the strict tests of necessity and proportionality in a democratic society.

In addition to State reporting, individual cases, the Human Rights Committee (and other treaty-monitoring bodies) publishes its interpretations of the contents of human rights provisions of the ICCPR in the form of General Comments on thematic issues. To date, the Human Rights Committee has issued 34 General Comments.

By way of example, the Human Rights Committee is currently preparing a draft General Comment on Article 9 of the ICCPR, on the right of everybody to liberty and security of person. In October 2013, the Human Rights Committee provisionally adopted paragraphs of this draft General Comment which covered issues including that the detention in custody of persons awaiting trial being the exception rather than the rule; excluding the necessity of automatic pre-trial detention for certain crimes; the right to take proceedings for release from unlawful or arbitrary detention; and the scope of the legal principle of *habeas corpus*.

I will now turn to exemplify one of the newer UN Special Procedures mandates of the Human Rights Council in Geneva (UN independent experts of which there are currently 37 thematic mandate-holders), the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, Mr. Maina Kiai. The Special Rapporteur presented last month his first report to the UN General Assembly on the enjoyment of the rights to freedom of peaceful assembly and of association in the context of elections. This global report is relevant also in this region, in light of the upcoming elections in 2014 in Fiji, Solomon Islands and Tonga.

The Special Rapporteur agrees with the Human Rights Committee (General Comment No. 25), that freedom of expression, assembly and association are essential conditions for the effective exercise of the right to vote and must be fully protected. The Special Rapporteur is convinced that the context of elections deserves special focus because the ability of individuals and associations to form and operate freely is particularly at risk during those periods. He draws this conclusion as a result of the increasing complaints he has received, from across the world, concerning harassment, intimidation and the undue restrictions placed

on individuals, associations and their members in the run-up to or following contested elections.

He highlights that civil society organizations have also an important role to play in the context of elections. The Special Rapporteur is of the view that the strength of a democracy can be gauged by the extent to which diverse views and differing opinions are accommodated and even encouraged in public debate.

In his report, the Special Rapporteur calls upon all States in times of elections inter alia to:

- Recognize that the rights to freedom of peaceful assembly and of association play a decisive role in the emergence and existence of effective democratic systems;
- Ensure that no one is criminalized for exercising the rights to freedom of peaceful assembly and of association, nor is subject to threats or use of violence, harassment, persecution, intimidation or reprisals;
- Ensure that an enabling framework is provided for political parties to be formed - regardless of their political ideology - and to enjoy the level playing field, in particular in relation to their ability to access funding, and to exercise their rights to freedom of expression, including through peaceful demonstrations and access to the media;
- Increase the threshold for imposing legitimate restrictions on the rights to freedom of peaceful assembly and of association, that is, to ensure that the strict test of necessity and proportionality in a democratic society, coupled with the principle of non-discrimination, is made particularly difficult to meet;
- Ensure that a well detailed and timely written explanation for the imposition of any restriction is provided, and that such restrictions can promptly be the subject of an independent and impartial judicial review;
- Ensure that victims of violations and abuses of the rights to freedom of peaceful assembly and of association have the right to a timely and effective remedy and obtain redress.

The UN Secretary-General has reiterated his hope that the forthcoming 2014 election in Fiji will take place in a transparent, participatory and democratic manner. The High Commissioner for Human Rights encourages the protection of all human rights, including civil and political rights, in the lead-up, during and after the elections.

In closing, 2014 will also see Fiji's reporting to the second review under the Universal Periodic Review by the UN Human Rights Council in Geneva, in October/November 2014. This will be an opportunity for the Government and stakeholders to present views on implementation of prior UPR recommendations from 2010 and on key developments since, including the law and practice of the Bill of Rights in Fiji's Constitution.

The UN's Human Rights Office is available to assist and advise the Government and civil society on engaging in the UPR process, in undertaking human rights treaty action, domesticating international human rights law, all of which provide excellent occasions to further advance an inclusive and open national dialogue to enhance the respect of all human rights for all.

Thank you for your attention.