

# **THE SITUATION OF HUMAN RIGHTS DEFENDERS IN THE PACIFIC ISLANDS**

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## **Acronyms**

AIDS	Acquired Immune Deficiency Syndrome
AusAID	Australian Agency for International Development
BOR	Bill of Rights
CBO	Community Based Organisation
CEDAW	Convention on the Elimination of all forms of Discrimination Against Women
CERD	Convention on the Elimination of all forms of Racial Discrimination
CP	Community Paralegal
CPR	Civil and Political Rights
CPT	Community Paralegal Training
CRC	Convention on the Rights of the Child
CSO	Civil Society Organisation
DPB	Domestic Protection Bill
ESCR	Economic, Social and Cultural Rights
EU	European Union
FLA	Family Law Act
FWRM	Fiji Women's Rights Movement
HIV	Human Immunodeficiency Virus
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
IJALS	Institute of Justice and Applied Legal Studies
LRTO	Legal Rights Training Officer
MDGs	Millennium Development Goals
MP	Member of Parliament
NGO	Non-Governmental Organisation
PDLP	Professional Diploma in Legal Practice
PIC	Pacific Island Country
PNG	Papua New Guinea
RRRT	Regional Rights Resource Team
SMP	Sexual Minorities Project
WAC	Women's Action for Change
UDHR	Universal Declaration on Human Rights
UNDP	United Nations Development Programme
UNICEF	United Nations Children's Fund
UNIFEM	United Nations Development Fund for Women
USP	University of the South Pacific

## Introduction

This report has been prepared for the United Nations Special Representative of the Secretary General on the situation of human rights defenders, Ms Hina Jilani.

This is the UNDP/RRRT Human Rights Defender's Report for 8 Pacific Island Countries (PICs) where the Regional Rights Resources Team (RRRT) works nationally – Fiji Islands, Solomon Islands, Vanuatu, Samoa, Kiribati, Tonga, Tuvalu and the Cook Islands.

The Regional Rights Resource Team (RRRT) is a Pacific grown organisation that provides technical and policy advice, capacity building and training on human rights at macro, meso and micro levels. Its staff members are citizens of Fiji, Kiribati, Solomon Islands, Tonga and Vanuatu. RRRT is regional in composition and outlook and is the first **regional** human rights organisation in the Pacific Islands.

RRRT partners include governments, regional and civil society organisations. RRRT has programmes in the Cook Islands, Fiji, Kiribati, Samoa, Solomon Islands, Tonga, Tuvalu and Vanuatu. Through regional partnerships RRRT has also worked in Papua New Guinea, the Northern Pacific and French Territories.

This report attempts to deal with 8 PICs as a group by drawing together common threads. Where necessary or possible reference will be made to specific countries or specific issues but in general this report attempts to consider the PICs and the issues as a group.

## Background<sup>1</sup>

In the past 20 years, economic growth and development in the region have been disappointing. Regional fora and development reports<sup>2</sup> have repeatedly attributed the lack of progress to poor governance, which indicates a need for development to address democracy and human rights rather than focus predominantly on economic growth. The Pacific Island leaders meeting in Auckland, New Zealand in April 2004 pledged to “give the greatest support to maintaining and increasing efforts by the Forum Secretariat to enhance the governance capabilities of the Forum members and Forum-related agencies”<sup>3</sup> with specific reference to encouraging the creation of national human rights machineries. The so-called Pacific Plan of Action provides a strategic opportunity to further the promotion of human rights.

Across the region, human rights, good governance, democracy and the rule of law are often poorly understood because governments have not promoted civic and human rights

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<sup>1</sup> This part of the report is taken from *Using Rights Based Programming Principles to Claim Rights: The Regional Rights Resource Team (RRRT) Project in the Pacific Islands* By P. Imrana Jalal, Human Rights Adviser, with the support of RRRT staff for UNOHCHR/UNDP/HURIST

<sup>2</sup> Asian Development Bank and UNDP Human Development Reports.

<sup>3</sup> Paragraph 5 of the Leaders' Communiqué, Auckland Declaration, Pacific Islands Forum Secretariat.

education in the past. A recent pledge by the Pacific Islands Forum to engage civil society is a positive development that could usher in change.

Discrimination against women and children exists in most spheres of Pacific Island society due to tradition and cultural practices, which perpetuates domestic violence and child abuse. Ensuring equal opportunities for women and better protection for children requires long-term commitment and concerted effort. Creating opportunities for young people, who in many countries make up over half the population, requires innovation and resources.

In order to assess the contexts within which human rights defenders work it may be useful to consider some of the common human rights challenges in the PICs. These are summarised as follows:

- The most significant ideological challenge is that human rights are seen as being against Pacific culture and identity. As in most parts of Asia, cultural relativism, under the guise of “Pacific values”, is used as an argument against human rights – this may be finding favour at some regional fora which have a very strong policy influence on PIC governments. For example, the proposed Pacific Charter of Human Rights could be of positive strategic advantage or an opportunity for PICs to opt out of the universality of human rights at a regional level;
- Identity is tied up with the chiefly system in most parts of the Pacific and human rights are seen as threatening those chiefly systems;
- Non-responsive traditional leadership is an issue, such as the taken-for-granted attitude of traditional chiefs that they naturally must be elected to leadership in government;
- Increasing religious fundamentalism that views human rights with scepticism and as a threat to the considerable power of the churches;
- For all PICs, most of which are poor and under-developed, the emphasis of governments is on economic growth. Democracy and human rights are seen as obstacles to economic growth because of labour and other rights. The challenge is to convince governments and industry that both can occur simultaneously and that economic growth without the realisation of civil, political, economic, social and cultural rights is not positive sustainable development for Pacific Islanders;
- Of all PICs, Fiji has the only human rights commission. Thus the structures and mechanisms for promoting and protecting human rights are extremely limited. Existing mechanisms like Ombuds offices have poor enforcement powers and are inadequately resourced and funded;
- Pacific Island cultures have begun to tentatively embrace human rights but global moves against terrorism (i.e. counter terrorism) mean that those newfound gains will be severely tested. PIC governments are receiving mixed messages from the global community, particularly powerful states that human rights might also be an obstacle to national security. This is a dangerous trend;
- There is a lack of proper legal frameworks for robust non-governmental organisations (NGOs) – a consequence being that accountability of governments to its citizens is weak because, in the main, NGOs do not have sophisticated rights

- advocacy strategies. While NGOs are active in service delivery, many are hesitant to assume a political watchdog role fearing official backlash. NGOs in Tuvalu and Kiribati are almost quasi-governmental as their offices and secretariats are located in government departments. This makes it very difficult to demand accountability of state bodies;
- Some countries have shown tolerance towards the military, police and civilian militia who are willing to subvert the rule of law with the use of force when election results do not accord with the dominant ideology and group. This has resulted in racist nationalism in Fiji, ethnic tensions over resources in Solomon Islands and severe factionalism in Vanuatu. The potential of civil conflict puts the building of functioning democracies under threat. There have been incidences of suspension of rights during times of emergency, even of non-derogable rights such as free speech;
  - Frequent abuse of power by the police, armed forces and prison wardens;
  - Discrimination on the basis of race, ethnicity, gender and sexual orientation is evident in many PICs;
  - Domestic violence and child abuse – women and children’s rights are under threat despite the gains made in promoting and protecting these rights as backlash occurs;
  - When constitutions or laws embrace some form of human rights the emphasis is on civil and political rights (CPR) and not economic, social and cultural rights (ESCR). Most governments regard ESC rights as being too expensive to implement and are unable to accept that international law allows for the progressive realisation of rights;
  - The increasing number of HIV/AIDS cases presents not just health, but also social and rights concerns. Fighting discrimination against people living with HIV/AIDS will require education, policy and law change;
  - Cross cutting themes in the Pacific include growing threats to human security, a lack of livelihood opportunities and access to resources, such as land, is linked to rising income disparity and growing poverty. A lack of adequate housing and disregard for labour rights are additional concerns requiring attention;
  - There is growing poverty, instability and poor governance;
  - Migrant workers in Fiji and Tonga present growing problems; and,
  - The impact of globalisation on small island economies and states.

## 1. The “human rights defender’s” community.

**(a) Please briefly describe, with examples, the human rights defenders community in your country. Please cover considerations, such as: the numbers of human rights defender organisation; the range of the activities conducted; the quality, effectiveness and impact of human rights defenders work.**

### General

Human rights defenders do not call themselves this in the Pacific Island countries. The term is too threatening. Most defenders have unsophisticated strategies and would be surprised to think of themselves as human rights defenders. Identity is tied up with the chiefly system in most parts of the Pacific (even Melanesia has the “big man” system) and human rights are seen as being against those chiefly systems. Human rights norms are also perceived as threatening because they challenge the fundamental patriarchal nature of society.

There are generally two kinds of NGOs in the Pacific – the welfare or charity type and the advocacy NGOs. The bulk of NGOs tend to be the welfare and charity type NGOs and are **not covered in this report**. Human rights defenders tend to be located in the latter. In 2005, there are a number of national human rights organisations doing different types of human rights work, but mainly in the women’s rights areas. In both Fiji and Solomon Islands the loss of democracy and the overthrow of elected governments in 1997 (Fiji) and 2000 (both countries) gave rise to new type of good governance NGOs. These are not the traditional welfare type NGOs but are dedicated to challenging the traditional power structures and to demanding accountability of the State. Activists in these types of organisation are characterised as human rights defenders. These organisations are funded by development agencies such the EU, and by New Zealand and Australia, which are all now funding “human rights activities” either directly or through NGO partners in those countries.

Unlike many parts of Africa and Asia, defenders do not face immediate threats to their physical security. Exceptions to this include the coups of 1987 in Fiji, and in 2000, in Fiji and Solomon Islands. However, they face social isolation, alienation, hostility and structural and financial obstacles in doing human rights work.

The nature of PIC communities is small and intimate. It is very difficult to speak out against someone who is related in one way or another. The cliché ‘one good turn deserves another’ works many a time to the detriment of people’s rights being eroded. A perpetrator could be someone who has done a major favour for a family, an individual or a whole community and this favour is not forgotten. This works to the impediment of holding violators of human rights accountable.

The small size of island populations also makes it socially difficult for defenders to take an unpopular position against the State, the status quo or chiefs in villages or settlements.

Often they are related to or are *wantok* (belong to the same clan) to human rights violators. Openly taking a different position is seen as going against the culture or a betrayal of one's culture. To criticize one's community or province is seen as letting down the side, especially in relation to how foreigners might view them. Social exclusion may often result.

Bad leadership also erodes the possibility of growing a human rights culture. Both political and church leadership works actively against human rights seeing it as a threat to the unaccountable leadership of both the State and the powerful churches.

In bigger countries defenders have enough social networks to mitigate the loss of familial or social ties. In small PICs they often only have one social network. So advocacy can often mean loss of familial and social ties. When a defender in Tonga mobilised her women's group to fight against a new law that limited free speech she was ostracised by a social group very important to her.

When island defenders take a strong human rights position they are often accused of "not speaking on behalf of us" or of imposing Western values or of being used to impose donor agendas. There are not enough human rights defenders to support each other so defenders often work in isolation in their communities. There is not a sufficient critical mass of human rights defenders in most PICs (with perhaps the exception of Fiji). A related problem is that there are so few defenders that they are overburdened with human rights work. A Solomon Islands defender said recently that:

"People expect me to address all human rights issues in this country without realising that I am just a human being who has a limit ... for example, when prisoners went on a riot saying that they are treated less than human beings, I was fully booked up working on a particular program and addressing HIV/AIDS and other human rights issues. I practically did not have time to research into the prisoners issue which I do feel strongly needs to be addressed too. People started accusing me of why I am so silent on the matter. I have to tell them, I cannot speak until I research properly into the issue."

Another defender in the Solomon Islands says that:

"We are seen as culture/religion destroyers promoting a Western culture and usually this creates blockages in advocating for human rights. We are seen as people who are promoting marriage break downs, or who are promoting children under the CRC to rebel against parents or taking away parents rights. Equality is resisted so much because it is seen as against culture and religion ... People only run for human rights when they are in a problem and this is most irritating because then their expectations are so high about changes to be done over night. Most of our (Solomon Islands) Community Paralegals are volunteers so they face financial, transportation and communication problems in doing human rights work."

Fiji is the only PIC that has a Human Rights Commission. Many advocates underline the importance of having a commission to address rights cases.

Another related problem is that there are too few solid and good viable NGOs in the Pacific to address the variety of issues and violations. Most often there is only one and occasionally two in a country, especially the smaller PICs like Tuvalu, Cook Islands or Tonga, with the viability, accountability and capacity to mobilise for human rights. These NGOs complain about being overburdened by donor/development agencies and that they have too many programmes to acquit and reports to write. Naturally donors are attracted to the same viable and accountable NGOs. Generally they are doing the best rights work. These NGOs do not have the luxury to refuse financial support. This is why the work of RRRT, a regional organisation, increasingly focuses on how best to support the work of frontline human defenders at community level.

In small countries like Kiribati and Tuvalu, there are blurred lines between NGOs/civil society and the State. Sometimes the NGOs are administered by government departments and have their offices in government (as, for example, AMAK in Kiribati). This makes it very difficult to do human rights work. If, for example, an NGO wants to raise an issue in the media on good governance but has to proceed through the bureaucracy of government protocols in issuing a press release in response to a violation, the work is hampered at many different levels. This might mean that the statement might be watered down or the defender might become frustrated and the timeliness of releasing a statement is lost as it proceeds through bureaucratic government controls.

Having too few solid NGOs also poses other problems in lobbying and advocacy. Often the same NGO might be running several different campaigns simultaneously which may have ramifications for the success of the various campaigns, especially where it involves working with government. For instance a very effective NGO, the Fiji Women's Rights Movement (FWRM), campaigned for the passing of the Family Law Act which eventually became law in October 2003. Whilst it was lobbying for the new law it mounted an international campaign against the nomination of the former Fiji Chief Justice to the Bench of the International Criminal Court by the Government of Fiji. In the first campaign it lobbied Government for support for the Act and in the second, it lobbied internationally against the Government's nomination. It is testimony to the skill of FWRM that both campaigns were successful despite the delicate balancing act required.

But there are some advantages and opportunities to working in small island communities too. The small populations offer protection and assistance to defenders as well. Human rights defenders are highly visible and well known. It would be almost impossible, for example, to arrest a defender and for it not to be known and for the community or family not to do anything about it. Personal links also open doors for defenders in lobbying. It would be unthinkable for instance for a Minister of State to refuse to see a defender who is his or her *wantok*.

## ***Regional***

Based in Suva, RRRT is the only regional human rights organisation systematically promoting a broad range of human rights in 8 PICs. Its 8 regionally-based trainers/advocates in Suva and 8 nationally-based legal rights training officers (LRTOs) are human rights defenders working on a range of rights issues both regionally and nationally from civil and political rights to economic, social and cultural rights. Its main function is to build the capacity of national partners to promote and protect human rights.

It is a highly effective organisation and in 1998 won the internationally prestigious UNICEF Maurice Pate Award for its cutting edge work in the field of human rights promotion. The impact of its work with its local partners includes:

- Contributing to changing of the Fiji Constitution to give women equal citizenship rights;
- Taking the lead role in the successful passing of the Fiji Family Law Act which will give unprecedented rights to women and children;
- Making an MP in the Cook Islands accountable on public radio for bad governance processes;
- Mobilising against strict discriminatory dress codes for women in Solomon Islands and Vanuatu;
- Helping poor women gain custody of their children, enforce maintenance payments and get domestic violence orders in several PICs;
- Mobilising against the dumping of toxic waste by a Taiwanese company in Makira province in Solomon Islands;
- Negotiating speaking rights for women at the local village decision making bodies in Guadalcanal, Solomon Islands and in the *nakamal* (meeting houses in villages) in Vanuatu;
- Establishing a new kindergarten in Malaita, Solomon Islands, after many years of waiting for the State to do so;
- Mobilising against the setting up of casinos in Tonga;
- Mobilising against a village decree that sought to deny women rights to access land in Malekula in Vanuatu;
- Enforcing the proper counting of ballot boxes in a remote village in Guadalcanal, Solomon Islands;
- Helping migrant commercial sex workers in Tonga find decent jobs;
- Monitoring national elections in Tuvalu and holding the existing government accountable for the delayed handing over of the newly elected government;
- Resisting state interference in radio broadcasting in Tuvalu;
- Abolishing corporal punishment in schools in the Cook Islands and establishing an Anti-Corporal Punishment policy in schools in compliance with the Child Rights Convention (CRC);
- Helping obtain the provision of cement toilets to 28 households in Tebero village, Abaigang in Kiribati;

- Mobilising against attempts to expose the privacy of individuals living with HIV/AIDS in Tuvalu;
- Increasing access to justice by helping women file cases for unfair distribution of family lands in Tuvalu;
- Using knowledge of governance processes in an outer island in Vanuatu to mobilise a (the Community Paralegal's) village to begin its own education centre; and,
- Using their knowledge to assist in the constitutional reform process in Solomon Islands by ensuring full citizen participation.

The Suva-based Pacific Concerns Resource Centre (PCRC) is a regional NGO that serves as the secretariat for the Nuclear Free and Independent Pacific (NFIP) movement. It has an affiliation of around 80 grassroots indigenous organisations from most countries in the Pacific and beyond. Its main purpose is to inform, educate, advocate and campaign for justice, peace and the human rights of indigenous communities who have had to struggle against the legacies of colonialism in the Pacific through nuclear testing, environmental destruction and loss, being uprooted, and the struggle for self determination and independence for those PICs still under the control of colonial powers. These PICs include Kanaky (New Caledonia), Te Ao Maohi (French Polynesia), West Papua, Rapa Nui (Easter Island), Guam and others.

PCRC coordinates its programmes under four campaign desks: environment, decolonisation, sustainable human development, demilitarisation/peace and disarmament. Human rights, good governance and gender issues are cross-cutting advocacy tools to deal with the diverse range of issues to do with indigenous people's rights. These include peace and prevention of armed conflict, small arms and nuclear disarmament, demilitarisation, environmental sustainability, self determination, social justice and human security. PCRC strategises through advocacy, capacity building and skills transfer, public awareness and education, research and training, media advocacy, and lobbying at national, regional and international fora. In 1999, PCRC was granted general consultative status with the Economic & Social Council (ECOSOC), a privilege it utilises well at the international governance level.

PIANGO is also based in Suva and is a regional administrative umbrella NGO which has only recently re-emerged onto the regional NGO scene and is yet to prove its interest, capacity and effectiveness in human rights defence.

Trade unions and professional societies are not addressed in this study although they are part of civil society, are strong advocates of labour rights (certainly so in Fiji) and represent the interests of their professions.

### ***Fiji Islands (pop. 845,000)***

Fiji, in comparison to its Melanesian and Polynesian Island neighbours, has a larger number of NGOs and a few quite effective human rights organisations. In Fiji there are

about 10-12 human rights defence/good governance organisations doing openly human rights work out of hundreds of NGOs. The human rights NGOs include the Fiji Women's Rights Movement (FWRM), Fiji Women's Crisis Centre (FWCC), Citizens Constitutional Forum (CCF), Ecumenical Centre for Research, Education and Advocacy (ECREA), FemLINK Pacific, Women's Action for Change (WAC), the Sexual Minorities Project, the Fiji Aids Task Force, the Young Women's Christian Association (YWCA) and the Fiji Disabled People's Organisation (FDPA).

There are hundreds of NGOs but the bulk are service delivery NGOs and could not be classified as human rights defence organisations. Neither the Soqosoqvakamarama (SSV), nor the Stri Sewa Sabha (SSS), two of the largest race-based women's organisations, are human rights organisations. The National Council of Women (NCW), Fiji's overall women's umbrella organisation, has cautiously engaged of late in what might be termed as some human rights defence but it is hampered in doing such work because of its closeness to the Ministry of Women and Culture which recently controlled much of its activities due to its leadership being for a long while with senior employees of the Ministry.

It can be said that for a multi-cultural and multi-racial population of approximately 845,000, and for a country which has been affected by the "coup cycle" Fiji has only a very small number of human rights defenders. As human rights are viewed as a western concept and its principles seen to be against indigenous culture, very little support is given to the human rights advocacy work in Fiji from the State or general public.

They conduct a range of activities including: conducting legal literacy programmes and community paralegal programmes; campaigning for law reform which has brought about new human rights policy and new legislation once (Family Law Act 2003); teaching about the core human rights conventions and the Fiji Constitution; writing and presenting Shadow Reports for CEDAW, CRC and CERD despite Government antagonism; monitoring human rights violations at a national level but not recording in any systematic way individual rights violations; advocating for survivors of domestic violence and rape; campaigning against State corruption; capacity building their membership to promote human rights; training youth leaders in feminism and rights; finding legal support for poor individuals in court; challenging State actions through court (test) cases twice after the political and constitutional crisis of 2000; mobilising pro-democracy forces after illegal usurpations of democratic governments and lobbying for a return to democracy in 1987 and 2000 during the coups d'état and crisis; individual advocacy work for vulnerable groups; pushing for constitutional changes to grant women equal citizenship rights; establishing the only Pacific Islands human rights commission and pushing for non-discrimination in the democratic Constitution of 1987; operating a community radio station; participating in law-making and national policy; advocating for the right to water; working in peace building and restorative justice and working for the rights of sexual minorities.

The Sexual Minorities Project (SMP) in Fiji is the only such organisation representing the rights of the lesbian, gay, bisexual and transgender (LGBT) community in the Pacific. It

faces constant prejudices and defenders are particularly vulnerable despite the fact that the Fiji Constitution protects sexual orientation. In October 2003 the President of Methodist Church in Fiji (the most powerful institution in Fiji and the current government's main political supporters) called for all gays to be stoned to death. There has been no retraction or apology to date and no denouncement by the Government of these remarks. In June 2005 there was a public march denouncing gay marriage organised by the Methodist Church in Fiji despite the fact that there has been no call by the Fiji LGBT for same sex marriage. In April 2005 two consenting males were charged and convicted under the Penal Code sodomy provision. A High Court appeal overturned the ruling in August 2005. The homophobic and sensationalised media coverage and immediate backlash from the Methodist Church in Fiji and a local Islamic group has led to restricted movement of LGBT, community fear, young people stayed home from school and work while sex workers reported increases in abuse and violence.

Through the work of the SMP, lesbian, gay, bisexual and transgender individuals develop programmes and activities in reproductive and sexual health and rights; HIV/AIDS prevention and care; self esteem, anti-homophobia and self-care; community activities; and rights lobbying and advocacy.

Current programmes and activities include: affirming sexual diversity workshops; safe choices workshops; peer education in hiv/aids; facilitating a 'gender and sexuality' component of healthy choices workshops for young women (led by FWRM); telephone counselling; safe space and drop-in centre; condom provision; and a resource centre providing information materials on LGBT, gender and sexuality rights. SMP carried out the first Fiji LGBT Needs Analysis in 2001, with the assistance of Family Planning Australia and Northern Sydney Health.

The SMP also actively encourages the LGBT community to access mainstream justice systems and social services. WAC and SMP accompany members of the LGBT community, sex-workers and others to lodge complaints with police, to court hearings, seek legal advice on their behalf and lodge complaints with the Fiji Human Rights Commission. It also continually works for the retention of the sexual orientation clause in the Fiji Constitution's Bill of Rights, abolition of discriminatory clauses in the Fiji penal code and against homophobic discrimination and violence against sexual minorities.

The impact of defenders work in Fiji as a whole is wide ranging and includes getting new legislation passed including a new democratic Constitution, successfully restoring democracy through constitutional court cases, successfully initiating gender and human rights national policies, establishing a human rights commission and obtaining economic rights through successful advocacy.

Fijian human rights defence organisations are relatively sophisticated having learnt very quickly through coups and political upheavals that political engagement was a necessary tool of accountability. They are relatively strategic and campaign quite effectively but are quite unique in the Pacific. Very few PICs have similar sophisticated NGOs although

Solomon Islands, Samoa and Vanuatu NGOs are slowly evolving more sophisticated rights strategies.

*Solomon Islands (pop. 447,900)*

'Human rights defender' is not a term used in Solomon Islands. Only organisations like RRRT are familiar with these terms. Others might be able to make a correct guess due to the self-explanatory nature of the term. Neither is the term 'human rights' widely used in the country. Solomon Islands experiences human rights violations all the time. The problem is that these are viewed in the country as problems or needs and not cases of human rights violations or are not connected to human rights at all. So 'problems' and 'needs' are not viewed from a human rights based approach.

One reason is that the majority of civil society groups and individuals who might be termed 'human rights defenders' in the country are not familiar with the concept of human rights and do not have the background knowledge on human rights. They are not aware of the international human rights instruments such as the UDHR, the ICESCR, the ICCPR and the Conventions. Therefore when they address human rights violations they are addressing them according to the remits and objectives of their organisations and groups and not according to a holistic human right agenda and focus.

Advocacy of any sort is not part of the culture in Solomon Islands communities. People are generally complacent about their 'problems' and 'needs'. It takes a matter of life or death or when a particular problem is affecting their constituents in a deeply public and negative manner for people to actually respond. For example, in Makira Province shipping and transportation are perennial problems. Makirans accept such problems and have a fatalistic attitude to services, delivery and the corruption of the State. However they mobilised against the State when in partnership with the Taiwan government it tried to dump toxic waste in their province. It successfully campaigned with environmental and rights groups against the dumping.

In Solomon Islands there are about 6-7 small human rights defence/good governance organisations doing openly human rights defence work out of small numbers of NGOs. They include: the Family Support Centre (FSC), Solomon Islands Development Trust (SIDT), Vois Blo Mere Solomon (VBMS), Disabled Person's Rehabilitation Association (DPASI) and the new, loosely formed Community Paralegal Association (CPA). The Solomon Island Council of Women is the umbrella women's NGO which is running a campaign to get more women into Parliament in the upcoming 2006 national elections. A former Prime Minister of Solomon Islands recently asked that 10 seats be made available for women candidates in the Solomon Parliament.

Defenders in the Solomon Islands conduct a range of activities including: conducting legal literacy programmes; campaigning for an advanced Bill of Rights for the draft constitution currently being debated; improving the status of women; lobbying for better child protection legislation; writing and presenting a Shadow Report for the CRC;

advocating for survivors of domestic violence and rape; improving adult literacy; individual advocacy work for vulnerable groups in legal aid; advocacy to preserve the environment; working to alleviate poverty; promoting the rights of the disabled and people living with HIV/AIDS; awareness raising through street theatre and working in peace building and conflict resolution in the wake of the political crisis in June 2000 and trying to uphold indigenous landowners' rights against illegal logging companies.

The impact of their work includes establishing a sexual assault unit at the main police station, helping non-literate people learn to read and write and preventing the dumping of toxic waste.

Of particular note is the RRRT-trained Community Paralegal advocacy group. This group has gained advanced learning on human rights issues and is carrying out awareness raising and advocacy on human rights at the community and institutional level. Their impact includes lobbying for children to be returned to school to holding police officers accountable for unlawful entry.

A defender says: "The impact of human rights defenders in Solomon Islands usually is not sang from the roof tops because it is usually done by grassroots people or just small NGOs. What is sung from the roof tops is usually what government or development partners have done."

### ***Vanuatu (pop. 199,800 )***

In Vanuatu there are about 5-6 small human rights defence/good governance organisations doing some human rights defence work out of small numbers of NGOs. These include the women's umbrella organisation the Vanuatu National Council of Women (VNCW), the Vanuatu Women's Centre (VWC), Vanuatu Rural Development and Training Centres Association (VRDTCA), Wan Smol Bag and the Family Health Association

They conduct a range of activities including: conducting legal literacy and rural education programmes; improving the status of women; helping women interested in running for public office (NCW - Vanuatu Women in Politics VANWIP.); lobbying for better child protection legislation; advocating for survivors of domestic violence and rape; improving adult literacy; individual advocacy work for vulnerable groups in legal aid; advocacy to preserve the environment; working to alleviate poverty; promoting the rights of the disabled and people living with HIV/AIDS; and awareness raising through street theatre.

The impact of their work includes getting protection orders for women, preparing UN human rights reports for treaty bodies and teaching groups to read and write.

Civil society organisations are generally weak in Vanuatu with the exception of a notable few already mentioned. Despite their involvement in steering committees and advisory bodies, CSOs are in several instances marginalised from decision making circles. Of particular concern is the lack of self-sufficiency and organisational weakness. The

Vanuatu Association of Non-Government Organisations (VANGO), the peak national association, is currently restructuring after the withdrawal of its core-funding agency, Community Aid Abroad. VANGO is not able to support itself in its current situation. Few CSOs are self-sufficient. The support of civil society organisations is critical to the successful formulation and implementation of government policy in several government departments. Productive relationships have been developed between the Department of Youth and Sport and the Vanuatu Young People's Project, between the Wan Smol Bag Theatre and the Vanuatu Electoral Commission and between the Chambers of Commerce and the Department of Trade and Industry because of those organisations' input to departmental policies and programmes.

### *Samoa (pop. 169,200)*

There are a significant number of NGOs in Samoa and there appears to be a vibrant and dynamic NGO sector. But the human rights defence community is significantly smaller. As in most PICs, NGOs are generally welfare NGOs although there are an increasing number of good governance NGOs. The women's movement, under the umbrella of the Samoa Union of NGOs (SUNGO) wrote the CEDAW parallel report and went to New York to present it, providing the UN system with an alternative source of information on the status of women in Samoa for the Committee. The women's NGOs have been particularly active and have not hesitated to hold the Ministry of Women accountable. There is hostility between the Ministry and outspoken feminist type groups.

In Samoa there are about 6-8 emerging human rights defence/good governance organisations doing varying degrees of human rights work but they rarely come into conflict with the State. They conduct a small range of activities including conducting legal literacy programmes and community paralegal programmes; campaigning for law reform in the area of domestic violence; writing and presenting the Shadow Report for CEDAW; advocating for survivors of domestic violence and rape; and demanding accountability through the auditor general.

Organisations which could be said to be doing some degree of human rights work include SUNGO (Samoa Umbrella Non Government Organization), Mapusaga o Aiga, Women in Business Development, Human Rights (Samoa) Watch Inc., the Samoa AIDS Foundation and the recently formed Inailau Women Leadership Network which authored the Samoa CEDAW Shadow report despite high levels of government antagonism. The latter organisation appears to offer the best possibility of innovative and open human rights advocacy.

The level of human rights defence work is difficult to assess. Samoans are a tightly knit clannish community in which bad governance is only whispered about. Any person who publicly speaks out against human rights violations or who upsets the status quo runs the risk of being socially ostracised, a vicious price to pay in a community in which social and clan ties are critical. Nevertheless NGOs are becoming more outspoken and the high

levels of education have enabled human rights activists to become very effective in a relatively short time.

***Tonga (pop. 100,200 )***

There are very few NGOs which could be loosely termed human rights defence organisations in Tonga. Only during the last 2-3 years has there been a cautious human rights based approach to NGO work in Tonga. Until recently only few organisations could be said to be doing human rights defence work – the RRRT-supported legal rights project of the Catholic Women’s League, the Human Rights and Democracy Movement of Tonga (HRDMT) and the commoners group fighting for democracy and universal franchise in the Pacific’s only kingdom.

Power is firmly in the hands of the Royal family, which rules mainly as a semi-benevolent dictatorship. The HRDMT and 9 People’s Representatives in the 35-member Parliament (controlled by the royally appointed nobles) have focused their human rights work on obtaining the right for all citizens to stand for elections and for democracy as Tonga does not currently enjoy universal franchise in terms of every citizen having the right to stand for election to the national legislature.

During late 2004 and during the months of April–September 2005 Tonga experienced unprecedented rights activity with its first ever strike, a civil service strike, which eventually led to a small increase in salaries for lower level civil servants. Ordinary citizens and human rights activists have seized on this and the attempted violation of constitutional guarantees of free speech through an attempted constitutional amendment in 2004 to agitate for greater reform. It could be said that there is now a nascent human rights (political rights) movement consisting of these 3 organisations and other high profile individuals emerging in Tonga but is confined to the capital, Nuku’alofa.

NGOs in Tonga range from informal unincorporated organisations which are community based groups of women and men to incorporated bodies registered pursuant to law.

Some NGOs are small village based unincorporated associations consisting of groups of men, women and youth either for sports, agriculture or religious purposes. Lately some of these groups have received training on some aspects of human rights. They operate on the basis of written or oral agreement between members.

Others are incorporated bodies registered under either the Charitable Trusts Act or the Cooperative Society Act. The HRDMT has been refused registration due (at least this is the official reason) to the use of the name Tonga.

The 1992 formed Human Rights and Democracy Movement of Tonga promotes political and civil rights and democracy, with specific focus on good governance, transparency and accountability. Its biggest impact is defending Clause 7 of the 1875 Constitution which protects freedom of speech by suing the State (*Taione v. Kingdom of Tonga*

[2003]) for the passing of a Constitutional amendment restraining this freedom. The government made two constitutional amendments to enable it to pass a law to prohibit the importation of a particular Tongan newspaper which was seen as an enemy of the Tongan Royal family. The Court voided all amendments as well as the Act of Parliament that was passed pursuant to the amendments, and returned clause 7 to its original status.

The moderately feminist Catholic Women's League through the legal literacy project promotes women and children's right and trains people to become community paralegals. It also runs workshops and does training on family law, assault, domestic violence, human rights and international human rights conventions, especially on CEDAW and CRC. Its impacts include preventing the establishing of casinos and securing the right to water for villagers.

Other organisations include the Tonga Trust which advocates for economic rights such as housing, access to water and water and the Centre for Women and Children which works to combat domestic violence and child abuse. The Centre also has a safe house.

### ***Kiribati (pop. 90,700 )***

There are a very small number of non-government organisations in Kiribati and only about two which could be said to make up the human rights defenders community. The numbers of persons doing human rights defence work as such is negligible. For example the RRRT-trained Legal Rights Training Officer (LRTO) who is based with Aia Maea Ainen Kiribati (AMAK) plays a key role as a human rights defender, organising for the education and awareness of human rights at macro, meso and micro levels. It is difficult however to pinpoint any other NGO doing human rights defence work. RRRT is building up a network of community paralegals who are slowly reaching out into the community to promote the concept of human rights.

Although its work has mainly focused on traditional women's NGO activities, AMAK, Kiribati's umbrella women's organisation, strives to promote the realisation of the human rights of women at the national and international level. Its early history includes lobbying for women to be employed and have the same rights as men in the workforce during the 1960s. It also lobbied successfully against a government policy which aimed at sending Kiribati girls to Hong Kong as maids. Its recent major achievement was lobbying with the assistance of RRRT to get CEDAW ratified in 2004.

Another group recently set up which could be said to be doing some human rights work is the Kiribati National Association for People living with disabilities (*Te Toa matoa*). It has recently started to adopt a rights based approach to promoting and protecting the rights of people living with disabilities. This is a very active group and has already set up a centre in South Tarawa.

Other organisations include the Catholic Women's Organisation (*Teitoiningaina*) which does village education programmes to divert youths' activities from alcohol and

prostitution and the Protestant Women's Organisation (*Reitan Ainen ni Kamatu*) doing similar work.

### ***Cook Islands (pop. 18,700 )***

In the Cook Islands, NGOs and community based organisations (CBOs) are particularly active in the areas of women in development, gender issues, youth and sports, education, health, and environmental protection and conservation. They also provide an effective medium of communication between traditional leaders, communities and the government.

Many active NGOs (particularly women's groups) in the Cook Islands have promoted international human rights standards in the country. They have carried out workshops and training sessions in both the public and private sector and various communities on Rarotonga and the outer islands – so that vulnerable groups like women, children and the disabled are now more aware of their rights.

Of particular note is the rights based feminist oriented Punanga Tauturu Incorporated (PTI – Cook Islands Women's Counselling Centre) which was incorporated in 1994 to provide support to victims of violence and sexual assault, to develop and deliver educational materials on women and children's legal and human rights and to advocate for the improvement of legislation, public policy and programmes dealing with women and children's rights.

In the nine years since PTI commenced its Legal Literacy Programme, it has delivered legal literacy workshops and seminars and campaigned for the implementation of CEDAW.

The impact of PTI's Legal Literacy Programme has included the adoption of a No-Drop policy of prosecution of wife beaters in the Cook Islands Police Force and the inclusion of a programme of Human Rights Education and the Convention on the Rights of the Child (CRC) in some secondary and primary schools.

### ***Tuvalu (pop. 9,900 )***

The RRRT-supported legal rights training project based within the National Council of Women in Tuvalu is the only entity that is carrying out human rights work. There is only a single person (the LRTO) that is working in this project. Her activities include radio programmes, talkback, debates, penal law discussions, community workshops, presentations, a quarterly newsletter and pamphlets in the native language on human rights and international law and providing a one stop shop to assist women and the general public with their human rights problems. All these activities are carried out in Tuvaluan so as to ensure that the people understand well the core of the subject matter embedded in the programme.

The impact of this work has resulted in:

- More people, especially women, filing complaints in regard to land ownership and unfair distribution of lands and property;
- Elderly men challenging the traditional system for religious rights; and
- Changes in government policies that disadvantage women such as the no-scholarship policy for women who get pregnant.

**(b) (If relevant) Please list ways in which the role and situation of human rights defenders in your country need to be strengthened and how this can be achieved (e.g. improved human rights training, greater transparency, improved protection, etc)**

- Improved legal protection; there is a lack of proper legal frameworks for robust NGOs, a consequence being that accountability of governments to its citizens is weak because, in the main, NGOs do not have sophisticated rights advocacy strategies. While NGOs are active in service delivery, many are hesitant to assume a political watchdog role fearing official backlash. Of critical importance is new legislation in all PICs to enable human rights defenders to be able to advocate and mobilise without fear of reprisal or of deregistration of their NGOs.
- National human rights mechanisms are needed in all PICs to provide credibility and protection for defenders and to promote and protect human rights nationally. These institutions need to be properly resourced with trained personnel and more financial support.
- NGOs and defenders themselves need to become more knowledgeable about human rights and to become more strategic in their activities and how they deal with governments. This will require training.
- Defenders need to become more willing to challenge the status quo but the size of PIC populations is a major disadvantage.
- Some governments attempt and sometimes succeed in ensuring that money intended for rights NGOs are channelled and controlled through government aid or other committees. Donors will bend depending on the activity being funded and the level of pressure. Legal protection is needed to ensure that rights NGOs are able to receive grants without government control.
- There are no NGOs doing sustained human rights monitoring of individual violations. Training is needed for this.
- Defenders need to identify respected and forward looking traditional leaders who practice human rights and good governance principles and train them to be human rights defenders. Consistent with this there needs to be more human rights training and awareness in indigenous communities.
- Judges and magistrates need to have training on human rights and how it can be used or applied in case law.
- There is a great need for political leaders and MPs to receive training in human rights.

- It is of critical importance that those NGOs located within government bodies or which are administered by civil servants be separated from their government affiliations.
- It is important that both the State and rights NGOs raise awareness on the human rights defenders' declaration .

**2. Assessment of the current situation of the declaration's implementation in the country. [Answers should take into consideration: legislation, policies, and actions at national and local levels.]**

- (a) **Firmly established success in implementing the declaration: (if relevant) please summarise, with reference to brief examples and relevant Articles of the Declaration, those aspects of the Declaration whose implementation is firmly established within your country. [For example, you might consider that the Declaration's Article 5, referring to the right to association and assembly and communication between organisations, is well established in your country becomes it is widely respected and rarely questioned and because, where problems arise, these are dealt with in a fair manner.]**
- (b) **Recent progress: (if relevant) please indicate, with brief examples, the main progress that has been made in strengthening the Declaration's implementation in your country over roughly the last 4 years.**
- (c) **Remaining problems: (if relevant) please indicate with brief examples, which of the Declaration's provisions are not adequately implemented or respected in the country? What actions would ideally address these problems? Is any effort currently underway to take such remedial actions?**

Fiji has the only human rights commission in the PICs. Thus the structures and mechanisms for promoting and protecting human rights are extremely limited. Existing mechanisms like Ombuds offices have limited and poor enforcement powers and are inadequately resourced and funded.

The Declaration is not known to governments or human rights organisations in the region. It is one of the least known Declarations or Conventions.

***Art 1***

Most PICs have reasonable bills of rights in their constitutions with the exception perhaps of Tonga, which has a limited human rights regime. The general public are mostly unaware of their rights. Individuals and organisations are generally free to promote and protect human rights. In some PICs religious groups pose greater threats than the State and in countries like Fiji and Solomon Islands actively work against rights and defenders.

People who are particularly vulnerable in all PICs are people living with HIV/AIDS (PLWHA) and those with disabilities (PLDs). Most PIC constitutions do not protect them and they are vulnerable to victimisation and discriminatory acts.

### ***Articles 2 & 3***

Most PICs have a bill of rights in their constitutions. Most contain basic civil and political rights while some are more advanced. For example, Fiji's Bill of Rights contains a small number of ESC rights. Fiji, PNG and Tuvalu have constitutions that contain advanced sections allowing for the application of relevant international human rights law where relevant (the sections are silent about the need for ratification).<sup>4</sup>

All PICs have ratified the Convention on the Rights of the Child (CRC); all but Tonga, Palau, Nauru and the Marshall Islands have ratified the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW); only Solomon Islands has ratified the International Covenant on Economic, Social and Cultural Rights (ICESCR) and no PIC has ratified the International Covenant on Civil and Political Rights (ICCPR).

So far no PIC has passed legislation in compliance with any ratified convention except for Fiji, which has passed the Family Law Act 2003 which attempts to remove systemic discrimination against women and children in the area of family law.

No PIC has specific human rights legislation aside from what is contained in the bill of rights to guarantee the realisation of rights except Fiji's Fiji Human Rights Commission Act. PIC governments which do not have a national commission (all except Fiji) do not yet have specific human rights policy in place although almost all have varying degrees of gender policies. Most states have indicated a willingness to cautiously support gender progress but most balk at human rights.

The governments of most PICs are officially supportive of human rights but the culture is strongly resistant to it. The existence of the Fiji Human Rights Commission is a demonstration of the official position in Fiji. A human rights commission is included in the Draft Solomon Islands Constitution. Tuvalu is giving cautious consideration to setting up an extra position within the proposed office of the Ombuds to deal with rights. The Bill of Rights and the passing of the Family Law Act in Fiji are examples also of the state's official commitment to human rights. The indigenous traditional power structures in all PICs are patriarchal and hierarchal and identity is tied up with the inherited chiefly system in most PICs. This system is strongly resistant to human rights intervention as it seen as a "western imposition" on culture and identity.

The promotion and protection of human rights is mainly done by NGOs and civil society. Even lawyers are only just beginning to use the language of human rights.

### ***Art 5***

This provision is generally protected in all PICs but is inconsistently applied, especially in times of crisis. During the coups of 1987 in Fiji, and in 2000 in Fiji and Solomon Islands, defenders were refused permits to march and rally and even to participate in TV

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<sup>4</sup> (43(2) Fiji Constitution, s 15(c), Tuvalu Constitution) and s 39(3) of the PNG Constitution.)

and radio broadcasts. Several fundamental rights and freedoms were suspended by decree (although in Fiji this was later held to be illegal).

The right to form associations is generally respected in most PICs and only in Fiji have defenders faced open government hostility.

About 98% of Fiji NGOs are registered under the Charitable Trusts Act Cap. 67, and their human rights advocacy is carried out within the parameters of this Act. As this Act reinforces traditional approaches such as charity, welfare and relief, only a small fraction of the NGOS/CSOs conduct active human rights advocacy work. This legislation is inadequate for NGOs doing advocacy work as the government is able to deregister any NGO doing advocacy work which is regarded as anti-government. When a vocal NGO, the CCF, challenged the Government in court for the illegal abrogation of the 1997 democratic Constitution, the Government de-registered the CCF. The de-registration initially made it very difficult for CCF to receive donor funds but a new partnership with the EU allowed them to receive EU funds much to the Government's chagrin. The other PICs also have similar legislation to Fiji so protective legislation is needed in almost all PICs.

In Fiji despite the advanced 1997 Constitution Amendment Act and its extremely progressive Bill of Rights, limitations are often imposed for demonstration and rallies, especially where there is a clash between fundamental rights and indigenous rights. In general indigenous rights are given precedence over other rights by the State. A recent example (from April to August 2005) is the consistent refusal by the Government to allow NGOs to rally against the controversial amnesty Bill (euphemistically titled the "Reconciliation, Tolerance and Unity Bill") which will free those imprisoned for the coup of 2000. This stands in ironic contrast to the granting of a permit to march and rally to the Methodist Church in Fiji against the granting of rights to gay people in Fiji.

A subsequent community impact study by the SMP found that the march increased hate-directed action against the LGBT community, especially in Nausori and Suva surrounds where the march was held.

In both Samoa and Tuvalu groups mobilising to form new non-mainstream Christian churches have been threatened and victimised, thereby compromising freedom of religion secured in both Constitutions. Religious tensions are a potential source of major conflict in Samoa as the increasing number of Christian fringe churches grow and large numbers of Samoans leave the mainstream Christian churches. There have been a number of calls by the mainstream churches for the Government to restrict the number of churches that are allowed to register and operate in Samoa but so far the Government has not done so. There have been a number of court cases successfully challenging the power of the *fono* (village councils) to restrict certain churches from operating in some villages. The courts have consistently ruled in favour of constitutional guarantees of freedom of religion.<sup>5</sup>

In Tuvalu there has been one instance in which the right to assembly has been violated not by the State but by community people on the island of Nanumaga.

### ***Articles 6 -7***

This right is generally respected and in most PICs human rights groups are able to hold workshops and seminars and discuss human rights. These groups are minorities in all PICs and for the most part the notion of rights is not widely discussed or debated by the general public. With the exception perhaps of Fiji, advocacy is very weak on the part of civil society in most PICs.

The Government of Tonga has tried on numerous occasions to restrain the right to free speech. It began violating this right by the imprisoning news reporters and “government critics” from the early 1990s. In 2004 a newspaper, *Taimi o Tonga*, which is based in New Zealand was banned from Tonga through amendments to the Constitution and enactments of an Act of Parliament. In the case of *Taione v Kingdom of Tonga* [2004] TOSC 48; CV 374 2004 (15th October, 2004). the Supreme Court held that the Constitutional amendment as well as the Act of Parliament were unconstitutional and unjustifiably limited the press freedom including freedom of expression and freedom of the press protected under Clause 7 of the Constitution.

### ***Article 8***

In the main in most PICs civil society’s responsibility in this area has been quite neglectful due to the culture of silence in which people simply accept corruption, lack of good governance and violations of rights. This is exacerbated by a lack of information and investigative reporting on the part of the media.

The obvious problem in most PICs is that the vast majority of people are not aware of their rights. Therefore they do not have the tools to lobby their leaders to make changes in policies, laws or practices that affect them. Most people in most PICs would not know that MPs, civil servants and leaders are accountable to them.

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<sup>5</sup> For example, in the case of *Mau Sefo and others v Attorney General*, Samoa Civil Case 18/99 and the case of *Lafaialii and others v Attorney General*, Samoa Civil Case 8/2003.

Governments have an obligation to ensure that it provides regular information on all aspects of its governance role. The principle of accountability and transparency must be enforced if such information is going to be forthcoming from the government. This information is important to enable civil society and the media to make regular checks on government's governance performance and to participate in the governance of their country.

### **Art 9**

The courts are not widely spread in all PICs and are confined mainly to the urban centres, creating problems of access to justice in all matters not just for human rights remedies. As courts are the only avenues for citizens' constitutional rights and freedoms redress issues, this has implications for ordinary citizens. Litigation in court can be very expensive, time-consuming and very slow. Consequently, not everyone has the resources or the time to seek redress in court.

Therefore, whilst access to justice exists in theory, the reality is that it is *not* easily available to the ordinary citizen of any PIC country.

There are very few avenues for reporting rights violations in most PICs and very rarely are human rights violations reported at all. Both issues have a bearing on each other. Apart from Fiji which has a human rights commission the only avenues to obtain remedies in most PICs are the mainstream courts. On the rare occasion where rights come before the courts, they have been generally enforced. Most PICs have independent judiciaries in general and more often than not the courts have demonstrated a willingness to make findings consistent with the bill of rights where civil or political rights violations are concerned and where victims have been persistent about asserting their rights. Where ESC rights are contained in the constitution they are not generally challenged.

However women's rights are inconsistently applied in PIC courts, particularly in the area of rape, domestic violence and family law. The laws and practices are discriminatory against women and reveal the deeply patriarchal nature of the legal system throughout the PICs.

A major problem is the expense involved in challenging a rights violation in court. A related problem is that of conflicting jurisdictions between traditional or village courts and mainstream courts.

Many PICs have traditional courts which exercise minor jurisdiction over village, family and personal matters which have a huge impact on human rights. An example is provided in Samoa.

In Samoa many civil and criminal matters are handled by village *fono* (councils), which vary considerably both in their decision making style and in the number of *matai* (chiefs) involved in the decisions. The 1990 Village Fono Act gives legal recognition to the decisions of the *fono* and provides for limited appeal to the Lands and Titles Court and to the Supreme Court. In 2000, the Supreme Court ruled that the Village Fono Act may not

be used to infringe upon villagers' freedom of religion, speech, assembly, or association. More recent court decisions reinforced this principle (see Samoan cases discussed under Art 5). The *fono* concept sits uncomfortably within the formal legal system because of its dual role in administering both *fa'a Samoa* (customs) and village matters under the Act. Although its formal jurisdiction is circumscribed by the Act, the reality is that the *fono* exercises far much more power than it is legally empowered to. Samoa citizens are unclear about its place in the legal system and there have been a significant amount of cases successfully challenging its rulings.

During the tensions in 2000 in Solomon Islands there was no or little access to the courts for ordinary people because the police had become compromised or were logistically handicapped. Many human rights abuses were never reported and perpetrators were never punished. Even now participation in the legal process and access to justice is restricted. The legal sector has always experienced shortages in staff and finance restricting its ability to provide adequate numbers of magistrates and lawyers for each province. There are no magistrates on Malaita and the majority of the other provinces. Even if there were, the geographical scattered nature of the country makes transportation hard, expensive and sometimes dangerous for people to get to the courts. Hence community problems are often settled through local courts. However the ability of traditional leaders to provide fair judgments outside their traditional knowledge, norms and practices is a concern especially when they lack knowledge of the constitution, the laws of the country, human rights conventions and principles, are not gender sensitised and generally support traditional practices and rules which discriminate against women. There is concern about an imbalance of provincial representation in the current judicial personnel.

The PICs do not have an established history of private lawyers who represent the poor or who do pro bono human rights cases. Lawyers are too expensive for ordinary citizens to engage. Some countries have state supported legal aid facilities (Fiji, Solomon Islands, Vanuatu, Kiribati and Tuvalu) but in most cases the services are very limited due to lack of funds and inadequate human resources.

Only Fiji has a relatively new human rights commission (1998). It is charged with the responsibility for the protection and promotion of human rights. Although it has not been independently reviewed (and if it has the findings are not known) and its performance has been inconsistent it appears to have done well in protecting some specific civil rights in high profile court cases. The majority of its complaints are to do with unlawful dismissal and complaints by prisoners. It is not fully independent as its finances are generally controlled by government and its staff are civil servants but the two (out of three) independent Commissioners are generally from the NGO and legal communities and have been respected rights advocates. The Commission has had little impact on changing the internal culture of government. The defenders' community in Fiji are very supportive of the Commission and would like to see it function more effectively.

There have been some 20 judgments in the region in which the courts have used human rights conventions in their reasoning as a result of RRRT-initiated training for lawyers, judges and magistrates.

These cases have resulted in numerous court decisions in which judicial officials have shown intolerance to domestic violence, greater willingness to order more realistic financial settlements to deserted women and children and to apply human rights conventions to decision making. Judgments in Fiji, Vanuatu, Samoa, Solomon Islands and Kiribati indicate that lawyers, magistrates and judges use human rights language more often and as guidance in decision making or as the basis of arguments. RRRT is in the process of preparing a Digest of Pacific Islands Human Rights Case Law which it hopes to make available in 2006. This Digest will contain synopses of all the judgements in the PICs which have used conventions and those which have some strategic impact on the human rights landscape.

Some decisions are shown below to indicate the range of ways the courts have used conventions. In all the following cases RRRT either did human rights training with the judge, magistrate and/or lawyers who argued the rights issues and/or provided technical advice and materials (for example, international judgments from all over the common law world that had used conventions or international norms as precedents in the decision making process). In some instances an opinion was sought on some element of the relevant convention before the submission or decision was made.<sup>6</sup>

In *PAFCO Employees Union v Pacific Fishing Company Ltd*<sup>7</sup> the **ICESCR** was used to guide the interpretation of the right to fair practices under section 33 (2) and (3) of the Constitution. Consistent with human rights, the High Court of Fiji said that trade disputes between unions and employers can be adjudicated by the court.

In *Taito Rarasea v The State*<sup>8</sup> the Fiji High Court used **ICCPR** and **ICESCR** to reinforce section 25 (1) of the Fiji Islands Constitution which protects the rights of a prisoner. By incorporating the conventions, the Judge ruled against a directive by the Commissioner of Prisons to reduce the food ration for a prisoner as further punishment.

In *Leituala v. Mauga*<sup>9</sup>, in a landmark decision, the court penalised the customary authority – the all powerful Village *Fono* (council and local traditional law body), for banishing children and their families from their village homes by awarding the amount of ST\$50,000 in punitive damages as a deterrent measure against future violations of the rights of the child under the **CRC**. In Samoa banishment is a customary punishment.

In the Tuvalu case of *Simona v. The Crown*<sup>10</sup> the court found a need to examine Section 17 of the Constitution of Tuvalu. It found that the section did not cover situations of a child defendant prior to being interviewed by the police. The court used the **CRC** to interpret section 17 of the Constitution to say that a child in police custody has the right to be informed by the police that he/she has a right to have a parent, guardian or legal

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<sup>6</sup> More cases can be found on the RRRT website

<sup>7</sup> [2002] FJHC 60; HBC0543 of 2000

<sup>8</sup> Criminal Appeal No. HAA0027 of 2000 (Fiji)

<sup>9</sup> [2004] WSSC 9 (13<sup>th</sup> August, 2004)

<sup>10</sup> [2002] TVHC 1; Case No. 1 of 2002 (12<sup>th</sup> August, 2002)

adviser present and the police must take reasonable steps to secure such attendance before the child is interviewed.

In the *State v Filipe Bechu*<sup>11</sup> the Fiji Magistrate used **CEDAW** in a rape case to make comments about the standards of treatment of women in society. Women in a Fijian cultural context are not considered as equal in status to men and certain traditional practices even purport to categorise women as chattels or the property of men. The court said that men should be aware of CEDAW and the rights of women. He said that “women are equal and therefore must not be discriminated against on the basis of gender. The old school of thought that women were inferior to men or part of their personal property to be discarded or treated unfairly at will was now obsolete and should no longer be accepted by society.” The convicted rapist was given a hefty sentence of imprisonment.

In *The Republic of Kiribati v Tieta Timiti & Rabaere Robuti*<sup>12</sup> the prosecutor argued that the gender discriminatory corroboration warning should be dispensed with as it was discriminatory against women and was against **CEDAW**. At the time of this judgment Kiribati had not ratified CEDAW. However, CEDAW was argued to persuade the court to abolish the need for corroboration of evidence by victims in sexual offences, pointing out that it prejudiced the victim’s evidence. Although the court was reluctant to rule on the application of CEDAW, it did not rule out the relevance of CEDAW in Kiribati. The prosecutor who argued CEDAW had attended human rights training provided to lawyers in Kiribati (by RRRT in partnership with the Asia Pacific Forum on Women Law and Development (APWLD)).and is now a Training Officer at RRRT. Now that Kiribati has ratified CEDAW the further opportunity exists to again argue CEDAW as a means of combating legal discrimination against women. Unfortunately the Constitution of Kiribati does not contain an equal rights clause or a non-discrimination clause clearly making discrimination against women illegal. CEDAW may provide the only short term opportunity to do so.

In the next three cases the lawyers were unable to persuade the courts to use the conventions as a guide. However the courts took notice of the conventions and made comments on them.

Women do not have a guaranteed right to matrimonial property after divorce in Vanuatu and shares are dependent on judicial discretion under the law of constructive trusts. In *Joli v Joli*<sup>13</sup> the Supreme of Court of Vanuatu used the principle of the equality of the sexes under **CEDAW** to formulate a principle for distribution of matrimonial assets stating that there is a presumption of joint or equal ownership of all matrimonial assets. The Court of Appeal overruled the Supreme Court’s formulation on the basis that distribution of matrimonial assets has to be dealt with under the existing laws of Vanuatu. It went on to say that if CEDAW is to be reflected in the domestic law it is not for the court to decide but Parliament, which is equipped to reflect community views of this

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<sup>11</sup> Criminal Case No. 79/94

<sup>12</sup> HCCrC 43/97

<sup>13</sup> *Joli v Joli* [2003] VUSC 63; Matrimonial Case No 8 of 2002 (25th March, 2003).

kind. Although this judgment did not result in a gender equality ruling, it represents an opportunity for further arguments on the use of CEDAW.

In the *Republic of Kiribati v Iaokiri*<sup>14</sup> the court looked at the **CRC** to consider whether corroboration of a child complainant's evidence in sexual offences was required. The court ruled that corroboration is still required under the existing laws of Kiribati and that the principles of CRC cannot be applied in Kiribati unless it has been given the force of law by an Act of the *Maneabe ni Maugatabu* (Legislature). Again the fact that the courts in Kiribati are even looking at the conventions is a step in the right direction. Having the conventions to look at is a result of RRRT intervention.

In the Tuvaluan case of *Tiau Tepulolo v. Teala Pou & AG*<sup>15</sup> the argument before the court was whether **CEDAW** and **CRC** could be relied on to look at a dispute over a child. The court commented that although these conventions had been ratified by Tuvalu, the Parliament must enact laws to apply the conventions locally, otherwise they will only apply in the event of ambiguity or inconsistency in the domestic law in Tuvalu. This despite a clear provision in the Tuvalu Constitution allowing the use of human rights conventions where relevant. Fiji and Papua New Guinea have similar constitutional provisions.<sup>16</sup>

### **Art 10**

This principal is not well established in the PICs and rarely are non-state perpetrators taken to task for violating human rights. Of course in most instances state or state agents are the biggest violaters.

In one of the southern most islands of Kiribati, village elders only allow one religion to be practiced – that of Christian Protestantism. Despite complaints by residents, the State has refused to take any action against the elders. No islander has filed suit in court.

In Tuvalu “creep crawlers” (young peeping toms or men who sneak into homes) are punished with a form of corporal punishment. The victim, usually a young man, is tied to a post and caned. Corporal punishment is not permitted by law in schools. The government has yet to prosecute perpetrators.

In some secondary schools in Tonga some teachers use corporal punishment on students. One of the methods is to get the student prefects to beat a “misbehaving” student. This practice is common in single sex male schools. If a student who was beaten complains to any authority (his parent or the police) the student will be further subjected to teasing that he is a sissy and more assaults from both students and teachers will result. There is a silent code that physical abuse is allowed and expected without complaints.

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<sup>14</sup> *Republic v. Iaokiri* [2004] KIHC 142; Criminal Case 25 of 2004 (16th June, 2004).

<sup>15</sup> Case No. 17/03 (24 January 2005)

<sup>16</sup> s15(d) Tuvalu Constitution.

In the year 2004, a government school teacher punished a secondary school male student by ordering the girls in the class to walk up to the front of the classroom and slap the student on his face. However, the authority and power of the teacher to order the girls to carry out this punishment is to be construed as forcing the female students to commit a physical abuse. The act of slapping someone on the face is highly unacceptable in the Tongan culture. Any such act is rarely done and if done is only acceptable if the perpetrator is the “*fahu*” or the father’s sister.

Throughout the PICs wife and child beating is common and culturally accepted by the majority. Offenders are rarely prosecuted.

#### ***Art 11***

This principle is reasonably established in the PICs. The impediments to the realisation of this right have to do with social and economic obstacles rather than other obstacles.

#### ***Article 12***

This principle is reasonably well established in most PICs. Most NGOs are able to engage in peaceful activities to protest violations of human rights with the exceptions noted under Art 5.

#### ***Art 13***

This principle is reasonably well established in most PICs despite attempts by many PIC governments to control the flow of aid funds to controversial NGOs.

There is a heavy and unavoidable reliance on external funding for human rights activities in all PICs. NGOs rely on the donation or funds from donors for their operations. In smaller PICs like Tonga the main donors who might be able to give large amounts of money are under bilateral agreements with the government of Tonga. Only a small amount of foreign aid is left to the discretion of the High Commissioners and only a few can access this amount which are mainly granted to assist in only small scale activities. For work that requires larger amounts, the NGO has to go through the government for its endorsement. Any application to bilateral aid must be in line with government national objectives. These national objectives are however set by government without consultation with the NGOs. Human rights are not considered a priority for development and hence at the bottom of the list if on the list at all. The consequences for human rights defenders is that they rarely get government endorsement of their proposals for funding and are denied or granted limited/rare access to these potential funds for human rights work.

There is a strong desire on the part of NGOs to be free of the bureaucracy and political controls in accessing funds from bilateral and multilateral donors. To ensure the autonomy of human rights defenders a removal of governmental controls is imperative.

#### ***Art 14***

This principle is poorly observed by all PIC States. PIC States rarely involve themselves in dissemination of human rights knowledge. Fiji does this to a limited extent through the FHRC. Only NGOs have attempted to do this in any systematic way.

### *Art 15*

This principle is poorly observed by all PIC States. On a national basis only a few NGOs attempt to do this, lacking both funds and skilled human resources. RRRT has a sustained programme teaching human rights to police officers, law graduates, magistrates and judges in some countries.

Of particular note is the RRRT initiative with the University of the South Pacific's (USP) Professional Diploma in Legal Practice (PDLP) programme, the equivalent of the Bar exams or professional examinations after law school graduation. The USP is the only regional university serving all 16 PICs except for Papua New Guinea. The PDLP is supposed to prepare new law graduates for legal practice with an emphasis on the practical elements of law practice and is coordinated by USP's Institute of Judicial and Applied Legal Studies (IJALS). The programme has been running since 1997.

RRRT teaches family law and human rights for legal practice for three weeks every year to every graduating class consisting of, on average 40 students, from almost every country in the region. In 2005, 54 students from various PICs participated in the course. IJALS has become an important ally in promoting human rights in the region. The PDLP course also provides RRRT with an opportunity to set regional human rights standards and to build the capacity of lawyers to promote and protect human rights.

This helps build an extremely important network of human rights lawyers who will promote human rights and who can continue to work with RRRT. It is this group of lawyers that have argued the human rights issues using conventions in the courts, and have influenced policy in government by arguing for rights compliance. They have been key actors in building a nascent human rights culture in the Pacific.

### *Art 16 & 18*

This has been answered in earlier sections. Civil society also does not generally have the capacity and knowledge to do this in most PICs. However some human rights defence organisations are attempting to educate themselves and the general public about human rights.

### *Art 17*

This principle is reasonably well established.

## **3. Bad practices**

**(if relevant) Please indicate, with brief examples, the worst practices affecting implementation of the Declaration in your country.**

This question is largely answered. To highlight a few:

- The lack of proper legal frameworks to allow robust NGOs to function;
- Ignorance of human rights by NGOs themselves and consequent weakness and inability for them to demand accountability and good governance;
- Lack of viability and internal cohesion of NGOs;
- Lack of human rights legislation;

- Lack of national human rights institutions and lack of support by the State;
- Signing international conventions and not reporting or implementing them; paying lip service to human rights standards at international level or to UN groups without carrying it out at the local national scale;
- Giving precedence to customary law over human rights;
- Unwillingness of citizens and even some human rights NGOs in small PICs to demand accountability for violations of rights because it will upset the status quo;
- Lack of rights based approaches to development projects;
- There is a heavy reliance on external funding for human rights projects.

#### **4. Good practices**

**(if relevant) Please indicate, with brief examples, the best practices affecting implementation of the Declaration in your country.**

- Greater levels of willingness on the part of senior government officials to listen to human rights concerns;
- Slightly greater degree of willingness to accept the role of NGOs;
- NGOs are slowly becoming more effective;
- The same voices are raised in defence of human rights all the time generally with some exceptions eg in Fiji. Human rights need to be defended by a wider variety of actors;
- Defenders do not face threats to their physical security generally;
- There has been a substantial increase in the awareness of women's rights in all PICs. This is mainly due to the active efforts of various women's organisations. Gender mainstreaming for example is broadly accepted at a policy level by most governments;
- PIC courts are willing to enforce civil and political rights;
- 3 PIC constitutions have provisions allowing for the application of international human rights law;
- PIC courts have generally been open minded about hearing arguments about applying human rights conventions;
- In several PICs a core group of community paralegals have emerged after undergoing extensive human rights training by RRRT on all aspects of human rights, democracy, good governance and the rule of law. These community paralegals are beginning to advocate for human rights in their communities and raise the profile of human rights at community level;
- There are strong networks and relationships between defenders in Fiji and the Pacific, and these continue to grow;
- There is increased acceptance of the need for broad rights-based approaches in organisations working on specific areas such as women's rights, child rights, disability issues and sexual minority rights;
- Most PIC States broadly accept partnerships for capacity building between NGOs and overseas organisations such as donors and development agencies and do not generally interfere even though they may criticise.

## **5. The contributions of different actors**

**Please briefly assess, with examples:**

**(a) The awareness, commitment and contributions of national (state) authorities to implementing the Declaration.**

**(b) The awareness, commitment and contributions of local (state) authorities to implementing the Declaration.**

For this particular Declaration there is no awareness at any level of state, provincial or local government. An international instrument such as a declaration has a weak status legally hence it is not given much consideration at first glance by most people.

Generally, government officials become aware of international conventions through regional organisations meetings and NGO awareness raising. For all levels, awareness is raised through regional organisation meetings where participants are informed of topical issues. So far this Declaration has not been raised at any meeting.

The state is not really aware of any rights declarations unless a group approaches it to talk about it. For example, in some PICs, advocates report that in their advocacy on CEDAW, most government officers are amazed that it is government who has signed the convention for them and that they are bound to comply with CEDAW in terms of policy and law.

**(c) The awareness, commitment and contributions of human rights defenders to implementing the Declaration.**

Human Rights defenders are usually trained on human rights by regional organisations as well as international organisations. Awareness raising, commitment and contributions of the human rights defenders partly depends on the availability of resources to carry out their work. Due to limited resources, most human rights defenders become expert strategists and opportunists but they do so without being aware of this particular convention.

Some human rights defenders are aware of some human rights declarations and conventions while others work in defending human rights without knowing about the declaration or let alone human rights conventions. For example, some churches work to implement human rights though they are not aware that what they are doing is implementing rights. These are committed defenders of specific rights such as for example, children's rights.

**(d) (If relevant) The awareness, commitment and contributions of United Nations bodies in the country to implementing the Declaration.**

No UN body in the PICs has worked specifically on this particular Declaration although various UN bodies focus on their specific mandates and to that extent focus on specific groups of rights. Thus for human rights conventions in general, UN bodies concentrate on

issues such as the MDGs and other thematic topics particular to their organisation which are similar to the objectives of the Declaration. Thus UNICEF focuses on children's rights, UNIFEM on CEDAW, UNDP on the right to development and so on. UN OHCHR has only just started an Office in the Pacific after an initial failed attempt in the Solomon Islands in 2000. There is a great need for United Nations staff within country to be trained on human rights including expatriates because most are not aware of most UN human rights conventions nor do they understand the connection between rights and development or rights-based approaches to poverty reduction.

## **6. Evolution of the situation**

**Very briefly, please indicate whether you think respect for the Declaration (and therefore the role and situation of human rights defenders) is improving or worsening in your country. Please indicate what factors you believe are having the most significant impact in this regard.**

Respect for human rights in general is improving very gradually in most PICs but this has nothing to do with the Declaration itself. It has more to do with the work of human rights organisations and their lobbying using other human rights conventions (like CEDAW and CRC) and a growing awareness of the BORs in PIC Constitutions. A major contributing factor to this evolution is the sustained training and awareness raising done by RRRT and its partners in its CPT programmes and training of NGOs, police, welfare officers, lawyers, magistrates, judges and policy makers.

Respect for the human rights defenders is improving slightly at least by officials and members of the communities who are aware of the human rights defenders' work. Governments are beginning to grudgingly respect the role of the human rights defenders as they realise that they are a force to be reckoned with and that civil society listens and respect their views. However, government support and respect is usually on an absolutely "need to" basis and most PIC governments resent the accountability that goes with a rise in respect for human rights.

Some factors that contribute to this increased respect are the credibility of the human rights defenders as well as the empowering strategies utilised to reach out to people. Additionally international organisations, donors and development agencies are insisting on the government working together with NGOs to achieve the objectives they obtained the donor funds for. Women's organisations for example have worked with women's ministries to both get CEDAW ratified and/or implemented.

Partners have donor roundtable meetings to assess whether there are overlaps in funding and to attempt projects being complementary to each other. Currently human rights activities are high on the donor agenda. The EU has also used human rights violations and constitutional concerns to withhold promised funding for governments. These actions have actually helped create an awareness of human rights.

In both Fiji and Solomon Islands, the level of respect for human rights worsened during the crises of 1987 and 2000 with the concomitant loss of democracy and defenders in

these countries faced threats to their lives. With the return of law and order, defenders in most PICs are usually left alone to carry out their work unless there is a direct confrontation with government over a particular issue. For example, in Fiji currently (2005) defenders are facing threats of de-registration of their organisations as the State and rights NGOs battle over the constitutionality of the amnesty Bill.