



UNITED NATIONS  
**HUMAN RIGHTS**  
OFFICE OF THE HIGH COMMISSIONER

*Pacific Regional Office*

**REPORT ON THE SITUATION OF  
HUMAN RIGHTS DEFENDERS,  
WITH A FOCUS ON WOMEN  
HUMAN RIGHTS DEFENDERS  
IN SELECTED PACIFIC ISLAND  
COUNTRIES**



*OHCHR assessment of the situation of human rights defenders, with a focus  
on women human rights defenders in Fiji, Kiribati, Republic of Marshall Islands,  
Papua New Guinea, Solomon Islands, Tuvalu and Vanuatu*

*2019-2021*





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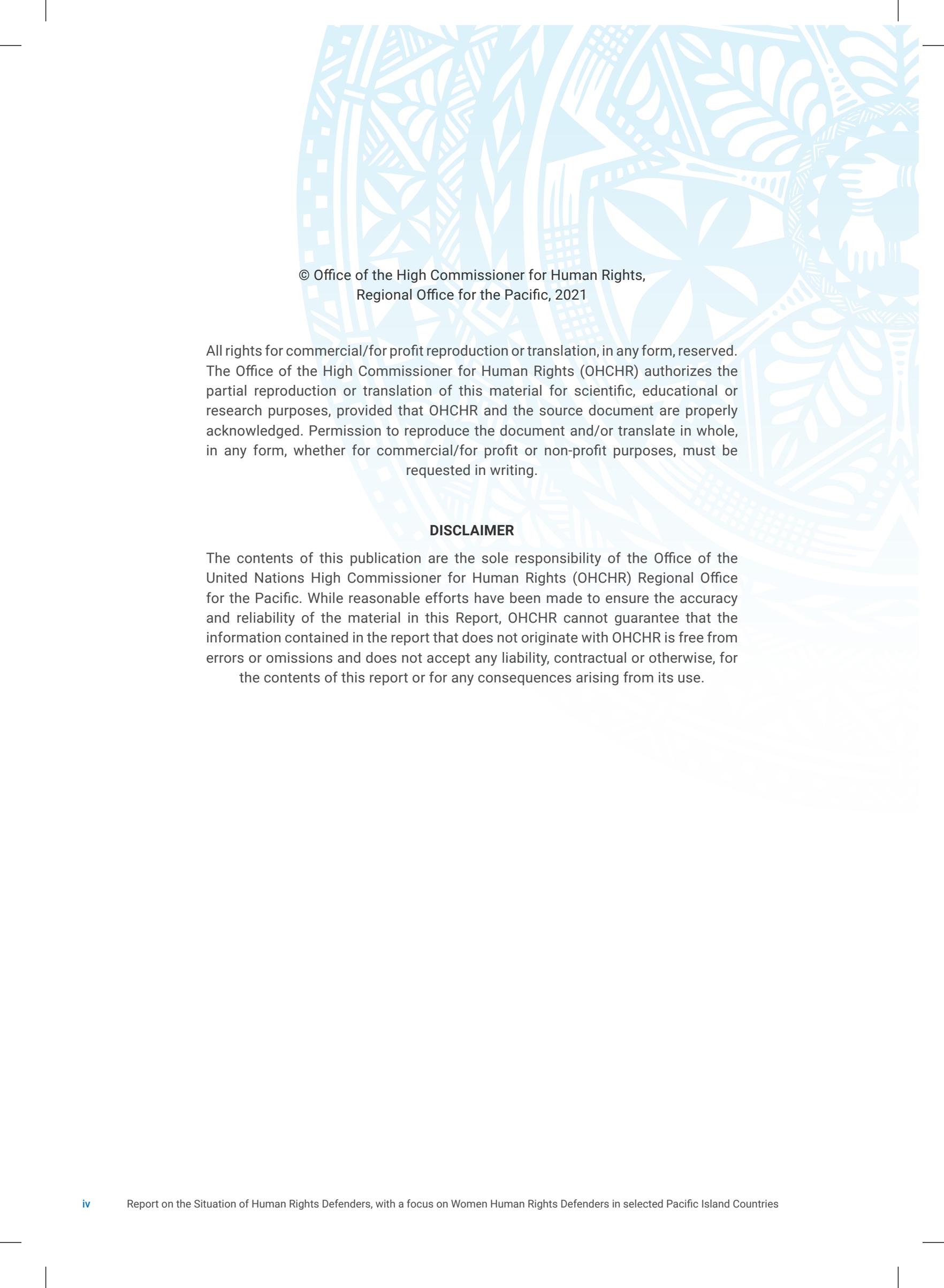
*Pacific Regional Office*

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# ACKNOWLEDGMENTS

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The Office of the High Commissioner for Human Rights expresses its sincere gratitude to all who have contributed information and analysis that made this report possible. We were grateful for the financial contribution made by the Government of Switzerland towards the OHCHR Pacific Regional Office's work with women human rights defenders.

OHCHR is grateful to the Pacific islanders who have given their knowledge, expertise, voice, and mana. Contributors have sacrificed time with their families, communities, and their core work to travel to workshops, join online discussions with the researchers, provide detailed information through the questionnaires and assisted in mapping fellow human rights defenders across Fiji, Kiribati, Republic of Marshall Islands, Papua New Guinea, Solomon Islands, Tuvalu and Vanuatu.

In particular, we acknowledge the generous contributions of the 195 human rights defenders who were directly involved in providing content and pictures and thank all stakeholders who took part in the validation workshop of the draft report findings.

We acknowledge the responses received from the concerned governments who were provided with an advance copy of the report.

We are appreciative of staff of OHCHR headquarters for their valuable insights and review of the report and the guidance they contributed, and to partners at UN Women and the International Commission of Jurists for their suggestions and comments.

# FOREWORD

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The Pacific region has in recent years witnessed increasing ratification by States of core international human rights treaties and progressive legal and institutional reforms, which contribute to the enhanced protection of human rights. This should also be leading to more enabling environments for human rights defenders (HRDs).

Some of the key elements of an enabling environment, such as fundamental freedoms, including freedom of expression, the right to peaceful assembly and association and the right to information and participation are not fully in place in all Pacific Island Countries. Some countries exhibit social divisions, inequality and discriminatory customary laws that hinder the work of human rights defenders, particularly women human rights defenders.

Climate change impacts threaten to reverse development gains and along with COVID-19 has a significant impact on the rights of those already in precarious situations, with women and persons with disabilities, children, older persons, LGBTI persons and indigenous people, particularly affected.

Human rights defenders make key contributions in addressing socio-economic challenges and supporting the rights of people at risk of marginalization and discrimination. Their work is vital for the development and monitoring of democratic processes and institutions, ending impunity, speaking out against violations and flagging trends relating to the promotion and protection of human rights. They stand up for people so they can claim their rights.

Due to the nature of their work, HRDs may face harassment and attacks, detention, defamation and stigmatization, suspension from their employment, denial of freedom of movement, assembly and difficulty in obtaining legal recognition for their associations.

This Report presents a snapshot of the committed and dedicated action undertaken by human rights defenders, especially women human rights defenders (WHRDs), in selected countries of the Pacific region. It also amplifies a clarion call by Pacific human rights defenders for more supportive political engagement in addition to programmatic support from its partners and stakeholders. HRDs call for flexible funding and donor policies from the international community and governments that can assist in expanding and protecting civic space, addressing violence and enabling human rights capacity building and training for HRDs.

Although restrictions of civic space affect all defenders, WHRDs face additional and specific obstacles and gendered risks of violations, which are shaped by who they are (women, girls, LGBTI, etc.), who they identify with or are part of (such as the feminist movement), and/or what issues they are working to advance (such as participation of women in public life).

This Report makes recommendations for action by Governments. The State is the primary architect of a national system to protect HRDs through institutions, including independent national human rights institutions, and legal reform to protect their rights, to respect their freedoms and ensure that private actors, such as businesses and corporations, do not infringe these rights.



*Human rights defenders (HRDs) are vital to the development of democratic processes and institutions, ending impunity, speaking out against violations and the promotion and protection of human rights in all situations.*

Pacific regional institutions can also seize additional opportunities for initiatives to provide wider regional support to the work of human rights defenders.

International organisations including the United Nations agencies in the Pacific can play a more strategic role by encouraging and supporting national authorities to ratify international human rights conventions, to bring national legislation in line with international commitments and not to hinder the work of HRD. While the UN can do more to stand up for HRDs in instances when they are at risk, its greater engagement with HRDs in the form of regular, institutionalized consultations will also be beneficial to the promotion of human rights.

Along with its partners, the OHCHR Regional Office for the Pacific will continue to support HRDs and encourage regular dialogue and visibility of HRDs with governments and the international community. This Report complements ongoing work of the Office on civic space including engagement with youth, environmental and indigenous human rights defenders and their networks, support to the Pacific Human Rights Defenders Network (since 2019), and the partnership with the University of the South Pacific in the development and launch of the first Human Rights Defenders course in the Global South in (2021).

I thank the team who prepared this Report and hope that its findings and recommendations will lead to concrete action and make a contribution towards protecting and promoting all those who defend human rights in the Pacific.

A handwritten signature in blue ink, appearing to read 'Heike Alefsen', written in a cursive style.

**HEIKE ALEFSEN**

Regional Representative

Office of the High Commissioner for Human Rights

Regional Office for the Pacific



Photo Credit: Fiji Women's Rights Movement.

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*“What human rights defenders teach us is that all of us – no matter where we are, or the circumstances of our lives – can stand up for our rights and the rights of others.”*

MICHELLE BACHELET

United Nations High Commissioner for Human Rights,  
Human Rights Defenders World Summit, Paris,  
29 October 2018.

# INTRODUCTION

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Human rights defenders (HRDs), particularly women human rights defenders (WHRDs), have played a crucial role in advancing and shaping the human rights agenda in the Pacific. HRDs also represent a constituency and partner for advancing the United Nations 2030 Agenda for Sustainable Development (2030 Agenda).

The United Nations Secretary-General has emphasized the critical role of civic space and human rights defenders in his Call to Action for Human Rights 2020 and encouraged more strategic approaches to civil society participation, the promotion of offline and online civic space and the protection of civil society actors. This includes HRDs.<sup>1</sup>

As part of its priority to support civic space, OHCHR's Regional Office for the Pacific conducted scoping missions in seven Pacific island countries to analyze the situation of HRDs with a special emphasis on WHRDs between 2019 and 2021. These countries are Fiji, Kiribati, Republic of Marshall Islands, Papua New Guinea, Solomon Islands, Tuvalu and Vanuatu.

The project is part of a larger joint programme with the OHCHR Regional Office for South-East Asia, UN Women Regional Office for Asia and Pacific and the International Commission of Jurists. The activities of this project and scoping missions have been implemented by the Regional Office for the Pacific with dedicated financial support from the Government of Switzerland, which is gratefully acknowledged.

The main objective of the scoping missions was to identify HRDs in the seven Pacific island countries, assess their country's human rights situation relating to the protection of HRDs, and their personal situation as HRDs across selected themes: legal frameworks and institutions, institutional policies and mechanisms for the promotion and protection of human rights, enabling environments and support systems as well as violations and attacks against HRDs.

The findings and recommendations of the report, encompassing material from the scoping missions and consultative discussions with HRDs aim to develop and strengthen protection of HRDs by States as the main duty bearers, as well as context tailored interventions by regional and international organizations. The report also makes recommendations to HRDs.

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<sup>1</sup> <https://ohchr.org/EN/Issues/CivicSpace/Pages/UNRoleCivicSpace.aspx>.

# METHODOLOGY

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The Report provides analysis based on information from HRDs, complemented by desk reviews and analysis of the legal and institutional frameworks, national reports submitted by the selected Pacific island countries for their Human Rights Council universal periodic reviews (UPR) and UN human rights treaty body reviews, concluding comments, observations and recommendations emanating from States and experts bodies following such reviews, as well as from the Human Rights Council's independent Special Procedures.

A questionnaire was disseminated to human rights defenders that captured a diverse range of information and data including facts and figures as well as perceptions of defenders on the state of civic space in their environments of operation. Responses capture the views of 195 HRDs from Fiji, Solomon Islands, Marshall Islands, Kiribati, Tuvalu, Papua New Guinea and Vanuatu.

The recommendations were developed as part of a consultative process that included individual conversations and group workshops that brought together HRDs from the seven countries.

A validation of the findings of the Report took place on 8 September 2021. 80 percent of the HRDs consulted were women and 50 percent of WHRDs operated from and were based in rural and remote areas.

# EXECUTIVE SUMMARY

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This report uses the broad definition of HRDs as “individuals, groups and associations contributing to, the effective elimination of all violations of human rights and fundamental freedoms of peoples and individuals...” as stipulated in the 1998 UN Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (Declaration on HRDs).

The Declaration does not create new rights. As a standard adopted by the General Assembly, it contains a series of principles and rights that are based on existing human rights standards. These are enshrined in international instruments that are legally binding, including on a number of States in the Pacific – such as the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. The Declaration thus “articulates existing rights in a way that makes it easier to apply them to the practical role and situation of HRDs.”<sup>2</sup> Their work derives its legitimacy from these and other instruments.

No “qualification” is required to be a human rights defender, and the Declaration makes clear that all who choose to be defenders of human rights can be HRDs. But defenders also have responsibilities: They must champion or work to promote human rights causes, recognize the universality of human rights i.e. all human rights as universal and indivisible, interdependent and interrelated, and their actions must be peaceful in order to fall under the protection of the UN Declaration on HRDs.

Women human rights defenders, as defined by WHRD organisations, includes “both women active in human rights defence who are targeted for who they are as well as all those active in the defence of women’s rights who are targeted for what they do.”<sup>3</sup> The definition also extends to everyone, regardless of their gender, who defends women’s rights, gender equality or sexual and reproductive health rights. The Special Rapporteur on Human Rights Defenders endorsed this understanding in her report to the Human Rights Council in 2011, focused on this topic.<sup>4</sup>

**Findings** from the scoping missions, surveys and desk review are the following:

- PICs have vibrant civil societies with HRDs working in a range of human rights either independently or as active members of various civil society organisations, national women’s and/or youth councils, or of recognised organisations of persons with disabilities. Yet, the terms ‘human rights defender’ or ‘woman/women human rights defender’ are not widely used across the Pacific; alternatively ‘human rights advocates’ and ‘civil society actors’ are common parlance. Most HRDs interviewed were unaware of their rights, roles and responsibilities under the UN Declaration on Human Rights Defenders. This report makes a case for the need for Pacific Island Countries (PICs) governments, HRDs and their partners to fully acknowledge, own and implement the UN Declaration.

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<sup>2</sup> United Nations Office of the High Commissioner for Human Rights, HRDs: Protecting the Right to Defend Human Rights, Fact Sheet No. 29, p. 19

<sup>3</sup> APWLD, Claiming Rights, Claiming Justice, A Guidebook for Women Human Rights Defenders, p. 17 (2007)

<sup>4</sup> 3 A/HRC/16/44, para 30.

- Human rights defenders recognize the value in forming networks and have established links with defenders working on similar issues through networks within and beyond their respective countries. This provides opportunities for solidarity, to share knowledge and conduct joint advocacy efforts. The networks could be stronger and less ad hoc and be better supported through regional networks linking all HRDs for greater solidarity and protection.
- Digital technologies have opened up new avenues for visibility and mobilization of human rights defenders and increase their participation and ability to join networks and strengthen linkages with each other. While digital technologies have enabled civil society mobilisation, a digital divide exists that limits participation because of high costs and lack of access and accessibility, particularly for those living in rural areas. HRDs, mostly WHRDs are also increasingly subjected to online threats and attacks such as trolling, cyber-bullying, doxing, harassment and smear campaigns. Some countries have attempted to silence online speech and limit information flows and expression.
- The Pacific has some of the highest rates of violence against women and girls in the world, and as a region, it is around twice the global average.<sup>5</sup> When it comes to victims of family, gender-based and sexual violence, HRDs are the main providers of counselling services, legal literacy, preliminary legal assistance and refuge for victims. Most are members of existing networks such as the Pacific Human Rights Defenders Network or the NGO Coalition for Human Rights or the Pacific Women's Network Against Violence Against Women.
- Most HRDs are conducting work voluntarily with limited resources and are not professionally paid to carry out the human rights work, with some notable exceptions. There is hardly any financial support given to HRDs by governments, and most of the HRDs' human rights work is funded by international organizations and development partners as well as other donors. A small fraction of funding provided by donors in support of gender equality goes directly to WHRDs operating outside urban areas.
- There are difficulties in obtaining authorization from the authorities in some countries to receive or use funds, and/or obligations to report on all funds received from foreign sources.<sup>6</sup>
- There is a greater need for international cooperation to provide meaningful assistance to human rights defenders, through flexible funding and technical support and a need to provide technical assistance to enable states to create human rights-informed enabling environments that support the engagement of human rights defenders.
- The majority of PICs provide constitutional protections on equality, non-discrimination and freedoms of expression, assembly, association and participation but these are generally limited in law and in practice. The protection and promotion of HRDs is not specifically enabled by legal or institutional frameworks, even where otherwise supportive environments exist.
- Some PICs continue to use colonial-era laws and heavy-handed law enforcement to restrict rights leading to arbitrary arrests, detention and prosecution, which may affect human rights defenders, including journalists and trade unionists. Sedition and treason laws have been used to silence criticism and dissent, restrict attempts to unionize, demonstrations and protests, political participation and to raid defenders' homes and offices.

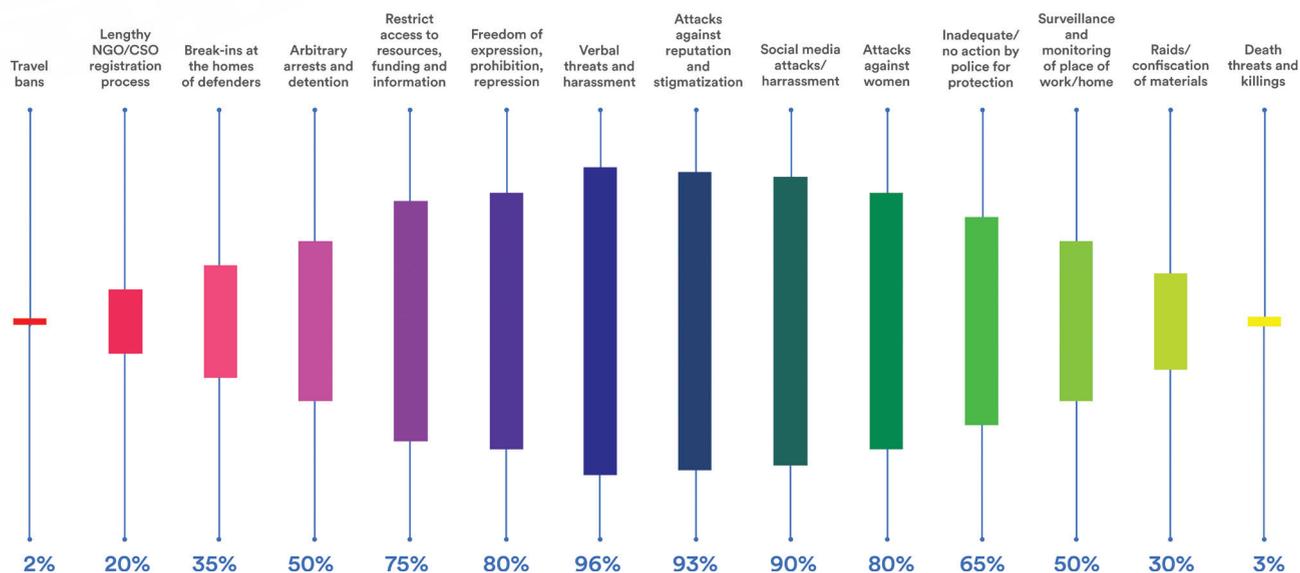
<sup>5</sup> UN Women, Ending Violence against women and Girls, Available at: <https://asiapacific.unwomen.org/en/countries/fiji/ending-violence-against-women> (Accessed: 20.06.2021)

<sup>6</sup> OHCHR, Human Rights and Civic Space In The Un System Supporting Women Human Rights Defenders. Available at: [https://www.ohchr.org/Documents/Issues/Women/WRGS/Supporting\\_WHRDs\\_UN\\_System.pdf](https://www.ohchr.org/Documents/Issues/Women/WRGS/Supporting_WHRDs_UN_System.pdf) (Accessed on 30.06.2021)

- Some PICs proactively consult HRDs on bills and policies but the dialogue between HRDs and governments may be ad-hoc on issues such as repealing discriminatory laws and policies. In denial of their right to participation, HRDs may be marginalized, silenced, belittled and withheld access to policy- and law-making and other decision-making spaces.
- Laws on public order and “public morals” that are not in line with international human rights standards are also used by some countries to curtail activism by human rights defenders working on gender equality and LGBTI issues and reproductive health rights. Human rights defenders, particularly those working on the above-mentioned issues, women’s rights and gender justice, climate change and environmental rights continue to face varying risks of violence, arrest and detention and harassment depending on the country.
- In some PICs, work of HRDs, especially those in remote and rural areas is not considered legitimate by both government and HRDs’ own communities as well as social structures including families. There are barriers to registration especially for those HRDs who work in promoting LGBTI rights and sexual reproductive health rights and those in rural areas.
- HRDs are often perceived as challenging traditional notions of family and gender roles in society, a perception that can generate hostility, including from the public, the media, faith-based groups, the community, family and other non-State actors. A common assertion impeding the work of HRDs is that these defenders advocate or attempt to import ‘foreign’ or ‘Western’ values that are said to contradict traditional norms or Pacific culture(s).
- WHRDs, particularly those working at the grassroots and community-level, face gendered risks and violations, such as threats of sexual assault, harassment, violence, from State and non-State actors.

The graph below shows the types of threats and harassment against human rights defenders in the seven scoped countries.

**Types of Threats and Harrassment against Human Rights Defenders**



- States of emergency and disaster due to the COVID-19 pandemic have in some instances disproportionately restricted democratic space, with excessive limitations on public freedoms, arbitrary arrests of members and supporters of the political opposition and of journalists, shrinking space for human rights defenders and restrictions on media freedom.<sup>7</sup> The capacity of the HRDs to observe and investigate alleged violations of human rights has diminished due to COVID 19.
- Climate change poses a progressive threat to human rights, and at its most extreme a threat to the rights to life, food, water, health, housing, and culture. WHRDs have reported disproportionate impact of climate change on women and girls and highlighted the need for gender responsive climate action. There is concern that the right of HRDs must be honoured to participate in public dialogue and decision-making about sustainable policies to counter climate change, such as social protection, humanitarian assistance, frameworks for human mobility including potential migration and displacement and others that will need to accompany increased and more frequent impacts of climate change.
- The nine core international human rights instruments guarantee various rights and freedoms to human rights defenders that are critical for a safe and effective civic space. Core international human rights instruments include provisions that are directly relevant to the protection of fundamental freedoms and rights of HRDs.<sup>8</sup> Soft law and the jurisprudence of international human rights bodies complement these instruments in expounding the content of these rights. Ratification by PICs overall has improved but more should ratify all core international human rights treaties and engage in continued dialogue with the international human rights mechanisms, including the treaty bodies, universal periodic review and special procedures of the Human Rights Council. Most of the seven countries scoped continue to lag behind in their reporting obligations.
- In some States, there are mechanisms for consultation with HRDs for the drafting of national reports to international human rights mechanisms, but in many they are ad hoc or infrequent and would be enhanced through a standing national mechanism on monitoring, implementation and follow up the recommendations of the international human rights system.

National and regional human rights mechanisms are still lacking in the countries reviewed in this report<sup>9</sup> as most of them have not yet established National Human Rights Institutions (NHRIs) (e.g. a Commission or an Ombudsman office).

<sup>7</sup> OHCHR & SPC-HRSD, Human Rights Situational Analysis Report 2020

<sup>8</sup> The International Covenant on Civil and Political Rights provides for the rights to freedom of opinion and expression, peaceful assembly and association, and participation in public life (articles 19, 21, 22 and 25); the International Covenant on Economic, Social and Cultural Rights provides for the right to form or take part in a trade union and to participate in cultural life (articles 8 and 15); the Convention on the Elimination of All Forms of Discrimination against Women provides for the right of women to participate in political, economic and cultural life (article 3); the International Convention on the Elimination of Racial Discrimination prohibits discrimination in relation to expression, assembly and association, and in conduct of public affairs (article 5); Convention on the Rights of the Child provides for freedom of expression, association and peaceful assembly (articles 13 and 15); the Convention on the Rights of Persons with Disabilities guarantees the rights to freedom of opinion and expression, and access to information, participation in political and public life, as well as in cultural life (articles 21, 29 and 30); the International Convention for the Protection of all Persons against Enforced Disappearance provides for the right to form and participate freely in organizations and associations concerned with attempting to establish the circumstances of enforced disappearances and the fate of disappeared persons, and to assist victims of enforced disappearance (article 24); and the International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families provides for the right to association (article 26).

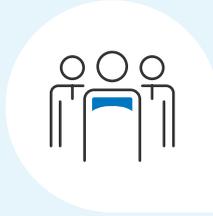
<sup>9</sup> With the exception of Fiji, no PIC reviewed had a functioning independent NHRI. Fiji was re-accredited by the Global Alliance of NHRIs as a B-status institution on 1 July 2021.

# UN DECLARATION ON HRDS

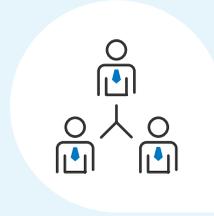
## RIGHTS AND PROTECTION ACCORDED TO HUMAN RIGHTS DEFENDERS



To promote human rights in their countries and globally.



To defend human rights alone or with others



To form associations and non-governmental organizations



To submit to the authorities criticism and proposals for improving their functioning and to alert them on any threat on the realization of human rights



To make complaint about official policies and acts relating to human rights and to have such complaints reviewed.



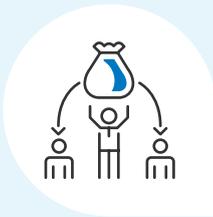
To offer and provide professionally qualified legal advice and assistance in defence of human rights



To the lawful exercise of the occupation or profession of human rights defender



To effective protection under national law when peacefully acting against human rights violations



To solicit, receive and utilize resources for the purpose of protecting human rights



To meet or assemble peacefully



To seek, obtain, receive and hold information relating to human rights



To develop and discuss new human rights ideas and principles and to advocate their acceptance



To attend public hearings, proceedings and trials to assess their compliance with national law and international human rights obligations



To communicate without any restriction with non-governmental organizations



To benefit from an effective remedy



### ARTICLES

1, 5, 6, 7, 8, 9,  
11, 12 & 13

Specific rights under United Nations human rights treaties are shown in the graph below.

	ICESCR Article 15 8	ICESCR- OP	ICCPR Article 25 22 21 19	ICCPR- OP1	ICCPR- OP2	CERD Article 5	CERD Article 21	CEDAW- OP	CAT	CAT OP- CAT	CRC Article 15 8	CRC- OPAC	CRC- OPSC	CRC- OPIC	CMW Article 1	CRPD Article 21 29 30	CRPD- OP	CRPD Article 24
	16.08.18		16.08.18			11.01.73	28.08.75		14.03.16			29.03.21			19.08.19		02.09.10	19.08.19
						17.03.04			22.07.19		11.12.95	16.09.15				27.09.13		
	12.03.18		12.03.18			11.04.18	02.03.06		12.03.18		04.10.93		29.01.19		17.03.15			
	21.07.08		21.07.08			27.01.82	12.01.95				02.03.93				26.09.13			
	24.09.19					17.03.82	06.05.02				10.04.95	24.09.09			23.09.08	24.09.09		
							06.10.99				22.09.95				18.09.13			
			21.11.08			08.09.95		17.05.07	12.07.11		07.07.93	26.09.07			23.10.08		06.02.07	

OP: Optional Protocols of the United Nations Human Rights Treaties

-  Fiji
-  Kiribati
-  Marshall Islands
-  Papua New Guinea
-  Solomon Islands
-  Tuvalu
-  Vanuatu

- Some HRDs have begun engaging with United Nations mechanisms such as Special procedures and taking an active role in voicing priorities internationally. Human rights defenders engage with United Nations special procedures mandate holders in three main areas, namely thematic reports; country visits; and communications. Their engagement is also essential as it helps in the elaboration of international human rights standards; follow up to country visits and the sharing of information on actual and potential human rights violations so that mandate holders can take appropriate action. About 10 % of the HRDs polled indicated that they had collaborated with the special procedures in some way including seeking redress for human rights violations. It was found that there is overall limited use of these mechanisms in the Pacific region.

Graph below shows the visits by Special Procedures made to the Pacific region from 2010 to 2020.

### Visits by Special Procedures



The primary responsibility for the protection of human rights defenders lies with Governments, as set out in the UN Declaration on HRDs to take effective measures to ensure protection of human rights defenders.

Based on the findings and opportunities, the Report makes recommendations that are country specific as explored in the following chapters, as well as general recommendations aimed at protecting human rights defenders and promoting their work.

# UN DECLARATION ON HRDS

## THE DUTIES OF STATES



To promote, protect and implement all human rights



To ensure that all persons under its jurisdiction are able to enjoy all human rights and fundamental freedoms



To adopt such legislative, administrative and other steps to ensure effective implementations of rights and freedoms



To provide an effective remedy for persons who claim to have been victims of a human rights violation



To conduct prompt and impartial investigations of alleged violations of human rights



To promote and facilitate the teaching of human rights at all levels of formal education and professional training.



To promote public understanding of civil, political, economic, social and cultural rights



To ensure and support the creation and development of independent national human rights institutions



To make all necessary measures to ensure the protection of everyone against any violence, threats, retaliation, adverse discrimination, pressure or any other arbitrary action as a consequence of the human rights work



**ARTICLES**

**2, 9, 12, 14 & 15**

# LIST OF ACRONYMS

<b>CAT</b>	Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
<b>CEDAW</b>	Convention on the Elimination of all forms of Discrimination Against Women
<b>CRC</b>	Convention on the Rights of the Child
<b>CRPD</b>	Convention on the Rights of Persons with Disabilities
<b>CSO</b>	Civil Society Organisation
<b>GANHRI</b>	Global Alliance of National Human Rights Institutions
<b>ICCPR</b>	International Covenant on Civil and Political Rights
<b>ICERD</b>	International Convention on the Elimination of All forms of Racial Discrimination
<b>ICESCR</b>	International Convention on Economic, Social and Cultural Rights
<b>ILO</b>	International Labour Organization
<b>LGBTI</b>	Lesbian, Gay, Bisexual, Transgender, and Intersex
<b>NGO</b>	Non-Governmental Organisation
<b>NHRI</b>	National Human Rights Institution
<b>OHCHR</b>	Office for the UN High Commissioner for Human Rights
<b>OP-CRPD</b>	Optional Protocol–Convention on the Rights of Persons with Disabilities
<b>PDF</b>	Pacific Disability Forum
<b>PIANGO</b>	Pacific Islands Association of Non-Governmental Organisation
<b>PICs</b>	Pacific Island Countries
<b>PIFS</b>	Pacific Islands Forum Secretariat
<b>SDGs</b>	Sustainable Development Goals
<b>SPC HRSD</b>	Pacific Community Human Rights and Social Development Division
<b>UN</b>	United Nations
<b>UNAIDS</b>	Joint United Nations Programme on HIV and AIDS
<b>UNFCCC</b>	United Nations Framework Convention on Climate Change
<b>UNFPA</b>	United Nations Population Fund
<b>UNICEF</b>	United Nations Children’s Fund
<b>UPR</b>	Universal Periodic Review
<b>VAWG</b>	Violence Against Women and Girls

# TYPES OF THREATS AND HARASSMENT AGAINST HRDS IN THE SEVEN COUNTRIES

## PAPUA NEW GUINEA

**Capital:** Port Moresby  
**Population:** 8.947 million people in 2020\*  
**Area:** 462,840 (km<sup>2</sup>)  
**Major Languages:** English 49%, Tok Pisin 57%, Hiri Motu 5%, spproximately 860 indigenous spoken languages (2011)

### Main Issues:

1. Discriminatory legislation, Death penalty and harsh legal punishments.
2. HR violations in the context of climate change, migration, environment protection
3. GBV and VAWG especially using sorcery and witchcraft accusations
4. Tribal warfare and customary practices not compliant with HR Standards
5. Lack of access to justice and effective human rights framework
6. Lack of Funding and Resources

♀ 13

♀ 5

♂ 5

### Main CSOs Scoped:

Bougainville Women's Federation, Community Development Workers Association Inc. Family for Change, Femili PNG, Ginigoada Bisnis Development Foundation, Highlands Women Human Rights Defenders Network, Kafe Urban Settlers Association, Kup Women for Peace and Nazareth Centre for Rehabilitation, PNG Media Workers Association, Papua New Guinea Eco-Forestry Forum, National Disability Resource & Advocacy Centre, Papua New Guinea Trade Union Congress

## SOLOMON ISLANDS

**Capital:** Honiara  
**Population:** 686,878 people in 2020\*  
**Area:** 28,400 (km<sup>2</sup>)  
**Major Languages:** Melanesian pidgin (in much of the country it is the lingua franca), English (official but spoken by only 1-2% of the population), 120 indigenous languages

### Main Issues:

1. Discriminatory legislation
2. Lack of protection re rights of the disabled and people living with HIV/AIDS and indigenous landowners rights against illegal logging . . . companies or mining
3. Lack of access to justice and institutions for peace building and conflict resolution
4. Trafficking and Forced labour
5. HR violations in the context of environmental rights, customary practices not compliant with HR Standards
6. Intimidation of HRDs expressing criticism of the Government
7. Lack of funding and resources

♀ 9

♀ 1

♂ 0

### Main CSOs Scoped:

Christian Care Centre; Family Support Centre (FSC), Solomon Islands National Council of Women; Solomon Islands Women in Business Association (SIWIBA); Vois Blong Mere Solomon (VBMS) and Solomon Islands Development Trust (SIDT), Disabled Person's Rehabilitation Association (DPASI) and Community Paralegal Association (CPA), Women's Right Movement (WRAM) and Solomon Island Planned Parenthood Association-SIPPA, The Solomon Island Council of Women

## VANUATU

**Capital:** Port Vila  
**Population:** 307,150 people in 2020\*  
**Area:** 12,189 (km<sup>2</sup>)  
**Major Languages:** Local languages (more than 100) 63.2%, Bislama (official; creole) 33.7%, English (official) 2%, French (official) 0.6%, other 0.5% (2009 est.)

### Main Issues:

1. Discriminatory legislation,
2. Lack of access to justice,
3. Violence against LGBTI, women and girls
4. Intimidation of HRDs expressing criticism of the Government
5. Discriminatory customary practices and policies and entrenched inequality
6. HR violations in the context of climate change, migration, environment protection

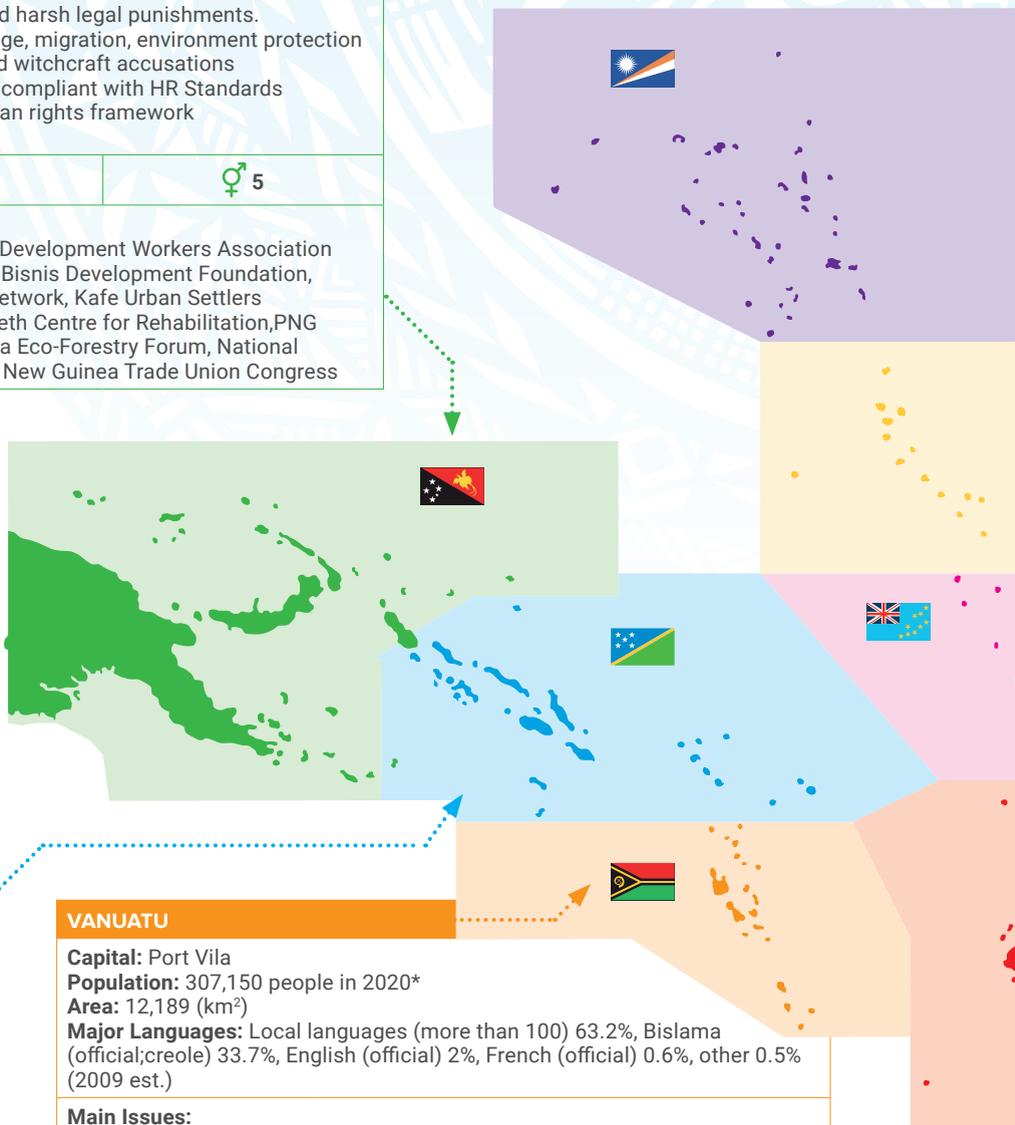
♀ 10

♀ 2

♂ 0

### Main CSOs Scoped:

The Disability Promotion and Advocacy Association, Vanuatu Association of NGOs, Vanuatu National Council of Women, Vanuatu Society for Disabled People, Vanuatu Family Health Association, Vanuatu Women's Centre, Live and Learn Environmental Education Vanuatu, Transparency Vanuatu, Vanuatu Council of Trade Unions, Foundation for the Peoples of the South Pacific Vanuatu



## MARSHALL ISLANDS

**Capital:** Majuro

**Population:** 59,194 people in 2020\*

**Area:** 181.3 (km<sup>2</sup>)

**Major Languages:**

Marshallese (official) 98.2%, other languages 1.8% (1999 census)  
English (official) widely spoken as second language

**Main Issues:**

1. Lack of access to justice and protection and remedies for violations,
2. Lack of compliance of national laws to international standards
3. Discriminatory customary practices and policies and entrenched inequality
4. HR violations arising out of disposal of hazardous substances, wastes and nuclear legacy
5. Lack of Funding and Resources

♀ 7

♀ 4

♂ 0

**Main CSOs Scoped:**

Women United Together Marshall Islands' (WUTMI) Weto in Mour: Violence Against Women and Girls Support Services, Marshall Islands Council of Non-Governmental Organisations (MICNGOS), Women United Together Marshall Islands (WUTMI).

## KIRIBATI

**Capital:** Tarawa

**Population:** 119,446 people in 2020\*

**Area:** 811 (km<sup>2</sup>)

**Major Languages:**

I-Kiribati spoken by 90%; English by 80%(2017), both official

**Main Issues:**

1. HR violations in the context of climate change, migration, environment protection
2. Lack of access to justice especially for HRDs operating in outer islands
3. Intimidation of HRDs and attacks against reputation and stigmatization of HRDs
4. Discriminatory legislation
5. Violence against women and girls.
6. Lack of Funding and resources

♀ 9

♀ 2

♂ 0

**Main CSOs Scoped:**

Boutokaan Inaomataia ao Mauriia Binabinaine Association (BIMBA), Kiribati Association of Non-Governmental Organisations (KANGO), Women and Children's Support Centre and the Catholic Church Crisis Centre, AMAK, Kiribati National Association for People living with disabilities (Te Toa matoa), Catholic Women's Organisation (Teitoiningaina), Foundation of the Peoples of the South Pacific-Kiribati Protestant, Women's Organisation (Reitan Ainen ni Kamatu), Male Elders Association (Unimwane) and Kiribati Trade Union Congress.

## TUVALU

**Capital:** Funafuti

**Population:** 11,792 people in 2020\*

**Area:** 24.9 (km<sup>2</sup>)

**Major Languages:**

English and Tuvaluan are official languages but also use other language such as Samoan, Kiribati (on the island of Nui) and Gilbertese

**Main Issues:**

1. Lack of access to justice and protection and remedies for violations,
2. Presence of discriminatory legislation,
3. HR violations in the context of climate change migration and environment,
4. General lack of statistical data,
5. Lack of funding and resources.

♀ 8

♀ 4

♂ 1

**Main CSOs Scoped:**

Tuvalu's Association of NGOs (TANGO), The Tuvalu Family Health Association, Tuvalu Red Cross Society, National Preschool Council, the Preschool Teachers Association, Tuvalu National Council of Women (TNCW), Fusi Alofa Association, the Tuvalu Overseas Seamen's Union (TOSU), the Tuvalu Women in Maritime Association, Live and Learn Environmental Education Society

## FIJI

**Capital:** Suva

**Population:** 896,444 people in 2020\*

**Area:** 12,189 (km<sup>2</sup>)

**Major Languages:** English (official), Fijian (official), Hindi, Fiji Hindi

**Main Issues:**

1. Laws limiting freedom of association, freedom of expression and freedom of assembly.
2. Lack of media freedom,
3. Violence against LGBTI, women and girls
4. Intimidation of HRDs expressing criticism of the Government
5. Travel Bans and arbitrary deportations
6. HR violations in the context of climate change migration and environment.

♀ 100

♀ 10

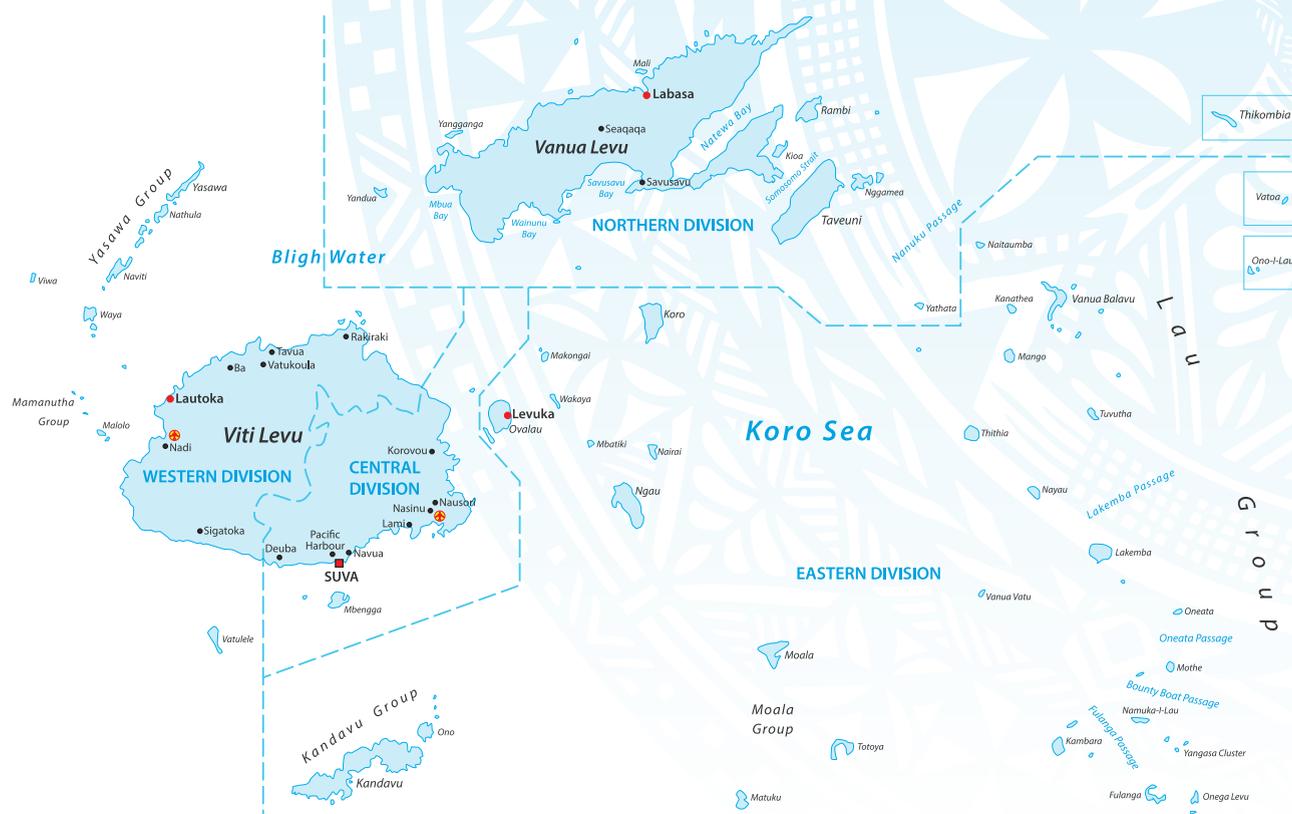
♂ 5

**Main CSOs Scoped:**

Fiji Women's Rights Movement, Fiji Women's Crisis Centre, Foundation for Rural Integrated Enterprises & Development, Citizens Constitutional Forum, Pacific Youth Council, Alliance for Future Generations, Ecumenical Centre for Research, Education and Advocacy, FemLINK Pacific, Social Empowerment and Education Program, Diverse Voices and Action for Equality, Pacific Network on Globalization, Women's Action for Change, the Young Women's Christian Association and the Fiji Disabled People's Organisation, Rainbow Pride Foundation, Diverse Voices and Action for Equality, Haus of Khameleon and Survival Advocacy Network, Youth Ignite for Change, House of Sarah, Pacific Conference of Churches, Medical Services Pacific Fiji Law Society and Fiji Trade Union Congress.

\* Source: world bank

# FIJI



## Overview

The Republic of Fiji (Fiji) is comprised of 332 islands and 522 smaller islets.<sup>10</sup> The two largest islands, Viti Levu and Vanua Levu, are home to approximately 80 per cent of the country's population. Fiji is a multi-ethnic and multicultural country. The Republic of Fiji received its independence from Great Britain in 1970. Fiji has a multiparty system with the Prime Minister as the head of government and President as the head of state and Commander-in-Chief of the armed forces.<sup>11</sup> The President is elected for a three-year term by Fiji's Parliament. Executive power is in the hands of the Cabinet, presided over by the Prime Minister. Under the 2013 Constitution, Fiji's Parliament members are elected for four-year terms by a multi-member open list proportional representation.<sup>12</sup>

Fiji has shown global human rights leadership over the past few years.<sup>13</sup> It is the only Pacific island country to have ratified all nine core international human rights treaties and was the first Pacific Island Nation to be elected to the United Nations Human Rights Council to serve from 1 January 2019 to 31 December 2021. Fiji's Permanent Representative to the UN in Geneva was the Vice President of the Council in 2019 and is President of the Human Rights Council for 2021.<sup>14</sup>

<sup>10</sup> Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance on his mission to Fiji, (A/HRC/35/41/Add.3), 12 June 2017, Human Rights Council, 34th Session

<sup>11</sup> Section 81(3) of the 2013 Constitution of Fiji.

<sup>12</sup> Constitution of the Republic of Fiji. Available at: <http://www.pacii.org/fj/Fiji-Constitution-English-2013.pdf> (accessed 7 July 2019).

<sup>13</sup> These include Presidency of the UNGA in 2016-2017, Presidency at Cop 23 and Co-leadership in the World Ocean Conference in 2018, being co-host of the first ever UN Conference on Oceans, Chair of G77 Plus China and being the first country in the world to ratify the Paris Agreement. Fiji is the first signatory to the UN Convention on the Law of the Sea. Fiji has over 41 years in UN Peacekeeping operations around the world.

<sup>14</sup> United Nations Human Rights Council, 2021, Human Rights Council Elects Nazhat Shameem Khan of Fiji to serve as its President for 2021. Available at: <https://www.ohchr.org/EN/HRBodies/HRC/Pages/NewsDetail.aspx?NewsID=26663&LangID=E>

Fiji issued a standing invitation to Special Procedures on 17 March 2015.<sup>15</sup> Ten visit requests have not received any response from Fiji.<sup>16</sup>

### Human rights defenders and civil society

The scoping mission to Fiji was carried out between January 2020 and 20 February 2021. In their responses, women and other HRDs noted that they conduct a range of human rights activities. Cross-cutting work includes advocacy to preserve the environment and working on climate change and migration; working to alleviate poverty; promoting the rights of persons with disabilities, LGBTI persons and people living with HIV/AIDS, monitoring and documenting human rights violations, improving the status of women and children through awareness campaigns on preventing violence and discrimination; writing and presenting parallel reports for CEDAW, CRC and other treaty bodies; advocating for survivors of domestic violence, gender based violence and rape; work with vulnerable groups to increase access to justice, policy and legislative reforms to advance human rights and obligations under international treaties.

It was found that Fiji, in comparison to its neighboring PICs, has a larger number of civil society organisations and HRDs openly carrying out human rights work, and many of its most prominent HRDs are women. HRDs are predominantly active in faith-based organisations at the community level, and these HRDs are generally under resourced. Generally, Fijian HRDs belong either to a group that is urban, large, well established, and well resourced with a mix of paid educated staff and volunteers, or to a group/ association that is small, rural, poorly resourced, and staffed by local volunteers. Many of the international civil society organisations, which are a part of the Pacific Island Association of Non-Governmental Organisation (PIANGO), act as a platform for HRDs in the region. Unlike most of the Pacific, Fiji does not face chronic staff shortages as a high number of educated young people join the workforce every year.

Prominent CSOs include the Fiji Women's Rights Movement<sup>17</sup>, Fiji Women's Crisis Centre<sup>18</sup>, Foundation for Rural Integrated Enterprises & Development, Citizens Constitutional Forum, Pacific Youth Council, Alliance for Future Generations, Ecumenical Centre for Research, Education and Advocacy, FemLINK Pacific, Social Empowerment and Education Program, Diverse Voices and Action for Equality, Pacific Network on Globalization, Women's Action for Change, the Young Women's Christian Association and the Fiji Disabled People's Organisation. The Fiji Trades Union Congress is the largest federation of trade unions in Fiji, representing the majority of working men and women and their families.



Photo Credit: Fiji Women's Rights Movement.

<sup>15</sup> Office of the High Commissioner for Human Rights, Special Procedures. Available at: <https://spinternet.ohchr.org/StandingInvitations.aspx>

<sup>16</sup> Office of the High Commissioner for Human Rights and the Pacific Community (SPC), 2020, Human Rights in the Pacific: A situational Analysis

<sup>17</sup> More on Fiji Women's Rights Movement can be found on their website, available at <http://www.fwrn.org.fj/about/pillars>

<sup>18</sup> More on Fiji Women Crisis Centre can be found on their website, available at <http://www.fijiwomen.com/>

Some of the aforementioned are part of the NGO Coalition for Human Rights that monitors and speaks up against human rights violations. Several organisations work in the field of LGBTI rights. This includes Rainbow Pride Foundation<sup>19</sup>, Diverse Voices and Action for Equality (DIVA for Equality)<sup>20</sup>, Haus of Kameleon<sup>21</sup> and Survival Advocacy Network (SAN)<sup>22</sup> to name a few.

HRDs in Fiji have been monitoring the COVID-19 pandemic and working across different sectors to contribute to relief efforts where possible and to provide humanitarian support. To strengthen this network of solidarity, seven NGOs and CSOs from across different areas in Fiji have come together to form the Fiji CSO Alliance for COVID-19 Humanitarian Response.

Unlike in other Pacific islands, HRDs in Fiji have formal and informal networks linking them to each other. All civil society organisations carrying out human rights work have strong links with HRDs. Larger CSOs appear well connected to each other.

Most HRDs lacked awareness of the definition of defenders in line with the UN Declaration on HRDs and of the protection provided to them under the Declaration. Many of the individuals working to promote, protect and defend human rights did not necessarily self-identify as such.

Generally speaking, Fijian HRDs appear to be more reactive than proactive in terms of seeking funding opportunities. They seek funding on a project by project basis rather than through an annual planning process. Part of this can be attributed to the funding environment, where little domestic funding is available, and partly to the informal structures of CSOs.<sup>23</sup> There is lack of access to flexible funding especially for HRDs in rural and remote areas.

### Enabling environment for human rights defenders

Fiji became the first in the Pacific to ratify all nine core international human rights treaties<sup>24</sup>. Implementation of the treaty obligations is lacking, and collective effort is needed to implement them in domestic laws and institutions. In Fiji's third UPR cycle in 2019/20, it was recommended that the Government systematically consult on the implementation of the universal periodic review, including by holding periodical comprehensive consultations with a diverse range of civil society.<sup>25</sup> The UPR noted that while conditions for HRDs have improved, and they can now operate in a relatively free environment, the rights and freedoms especially related to freedom of expression and assembly continue to be limited and more remains to be done to ensure an enabling environment for HRDs.<sup>26</sup>

<sup>19</sup> More on Rainbow Pride Foundation can be found on their website, available at <https://rainbowpridefoundation.org/> and their Facebook page, available at <https://www.facebook.com/rainbowpridefoundation/>

<sup>20</sup> More on DIVA for Equality can be found on their website, available at <https://www.divafiji.com/> and on their Facebook page, available at <https://www.facebook.com/DIVAFiji/?pnref=story>

<sup>21</sup> More on Haus of Kameleon, available at <http://www.hausofkameleon.org/about> and on their Facebook page available at <https://www.facebook.com/hausofkameleonofficial/>

<sup>22</sup> More on Survival Advocacy Network is available at <https://www.facebook.com/SANFIJI>

<sup>23</sup> UNDP, A Capacity Assessment of CSOs in the Pacific: Six Country Profiles, available: [http://www.undp.org/content/dam/rbap/docs/Research%20&%20Publications/democratic\\_governance/UNDP\\_PC\\_DG\\_A\\_Capacity\\_Assessment\\_of\\_CSOs\\_in\\_the\\_Pacific\\_Six\\_Country\\_Profiles.pdf](http://www.undp.org/content/dam/rbap/docs/Research%20&%20Publications/democratic_governance/UNDP_PC_DG_A_Capacity_Assessment_of_CSOs_in_the_Pacific_Six_Country_Profiles.pdf)

<sup>24</sup> Fiji has ratified the Convention Against Torture, and the Convention on the Rights of the Child together with its Optional protocols, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, and Convention on Enforced Disappearances, the Convention on the Elimination of All Forms of Discrimination against Women as well as the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

<sup>25</sup> Summary of Stakeholders' submissions on Fiji's third Universal Periodic Review (A/HRC/WG.6/34/FJI/3), 22 August 2019, 34th Session of the Human Rights Council

<sup>26</sup> Ibid.





The Fiji Human Rights and Anti-Discrimination Commission (FHRADC) is a National Human Rights Institution established under the Human Rights and Anti-Discrimination Act 2009 and continued under the 2013 Constitution.<sup>27</sup> FHRADC cannot receive complaints regarding the legality of legislation adopted between 2006 and 2013 as Fiji has not repealed the legal prohibition on challenging decisions of the military Government as stipulated under section 160. OHCHR and partners worked with FHRADC on a capacity assessment with the view to strengthening FHRADC and ensuring further compliance with the Paris Principles.<sup>28</sup> The Commission was re-accredited by the Global Alliance of National Human Rights Institutions (GANHRI) with B-status in 2021.

Fiji has a robust bill of rights in its 2013 Constitution. Fiji has however not repealed the provisions under section 6 (5) of the Constitution that limit guaranteed rights and is yet to comply with international human rights law prohibiting immunity for those responsible for serious human rights violations. The international human rights monitoring mechanisms have noted that this impedes bringing alleged perpetrators to justice and victims' access to justice and reparation; the provisions may also delay genuine reconciliation within society.<sup>29</sup>

The Committee on the Elimination of Discrimination against Women expressed concern about the possibility under the Constitution, the Public Order (Amendment) Act of 2012 and the Media Industry Development Act of 2010 of restricting freedom of expression, assembly and association.<sup>30</sup> Authorities have prevented peaceful protests under the Public Order Act.<sup>31</sup> The Special Rapporteur for human rights defenders communicated concerns to the Government relating to the suppression, on 17 May 2012, of a gay pride march to celebrate the International Day against Homophobia and Transphobia.<sup>32</sup> The Special Rapporteur on racism noted that the lack of a definition of what constituted racist or hate speech gave wide-ranging discretionary powers to the Media Industry Development Authority and the executive, which was problematic.<sup>33</sup>

The sedition provisions of the Crimes Act 2009 have affected journalists or the media or dissenting voices.<sup>34</sup> The UN has encouraged the State to revise the Penal Code to remove sedition charges for acts of speech, in line with international standards.<sup>35</sup>

<sup>27</sup> Section 45 (1) of the 2013 Constitution.

<sup>28</sup> A/HRC/WG.6/20/FJI/1. Available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G14/146/28/PDF/G1414628.pdf?OpenElement>

<sup>29</sup> Cf. Committee on the Elimination of Discrimination against women, 2018, Concluding observations on the fifth periodic report of Fiji Available at: <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=60kG1d%2FPPRiCAqhKb7yhsjuNjw8cUF3pRrdCdanf79l9Ymo-zLGdH2T6Rp2kdRyD%2BXVo21u4hZWC2wGx3rEdH6h05kssvngQtlJ3JbeTrXXJT0hjgzuzTHtoQTOGPG9yF>

<sup>30</sup> CEDAW/C/FJI/CO/5, para. 21 (b)

<sup>31</sup> Communication dated 31 March 2021 sent to the Government of Fiji under the Mandates of the Special Rapporteur on the right to education; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Rapporteur on the situation of HRDs. Available: <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gld=26111> Joint Public Statement By Amnesty International And Civicus: World Alliance For Citizen Participation, FIJI: Stop Harassing Peaceful Protesters At The University Of The South Pacific, 19 June 2020, ADD LINK

<sup>32</sup> Mandates of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; and the Special Rapporteur on the situation of human rights defenders, 18 June 2012, AL G/SO 214 (67-17) Assembly & Association (2010-1) G/SO 214 (107-9) FJI 1/2021 Available at: <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gld=17034>

<sup>33</sup> Special Rapporteur on Racism, A/HRC/35/41/Add.3

<sup>34</sup> State -v- Epeli Niudamu & Ors [2017] FJHC 691; State -v- Tasere & Ors – Sentence [2017] FJHC 918; State -v- Josaia Waqabaca, Anare Ravula, Fred Wesley, Hank Arts and the Fiji Times [2018] FJHC 400; State v Karunaratne & Bulitavu, [2018] Criminal Case 1618/2011

<sup>35</sup> UN Compilation Report for Fiji's third UPR, 22 August 2019, <https://undocs.org/A/HRC/WG.6/34/FJI/2>

Laws grant the State the power to detain persons without charge and are used to suppress criticisms and dissenting views of HRDs.<sup>36</sup> Allegations of police summoning, arrest and detention of, and charges against, trade unionists; and refusal of entry in Fiji for an international trade union delegation were brought to the attention of Government by the Special Rapporteur on the situation of human rights defenders in a Communication on 3 March 2011, 21 September 2011 and 21 December 2011 respectively.<sup>37</sup>

Fiji has seen allegations relating to arbitrarily carried out deportation cases on the basis of national security and public safety. These have affected journalists or academics, including reported whistle-blowers.<sup>38</sup> The Special Rapporteur on the situation of human rights defenders sent a communication to Fiji concerning the alleged arbitrary deportation of the Vice-Chancellor of the University of the South Pacific who had raised issues of allegations of corruption and financial mismanagement under the university administrations, and his spouse.<sup>39</sup> There has been no response to the SR's Communication as yet.

The prevalence of gender-based violence in Fiji is high, with almost two out of three women who have been subjected to physical or sexual violence in their lifetime.<sup>40</sup> Women with disabilities and people with diverse sexual orientation, gender identity and expression, experience higher rates, and more severe forms, of violence. The fear of being physically attacked or retaliated against and the stigma associated with reporting violence remains at the top of concerns experienced by victims of gender-based violence.<sup>41</sup> WHRDs are affected by this trend and face cyberbullying and harassment both online and offline.<sup>42</sup>

Some HRDs are subjected to stigmatization and ostracism by community leaders, faith-based groups, families and communities who consider them to be threatening religion, honour or culture through their work. This is prevalent amongst the interviewed HRDs who advocated for LGBTI rights, gender equality and sexual and reproductive rights.



<sup>36</sup> ILO Committee of Experts on the Application of Conventions, Observations (CEACR) - adopted 2018, published 108th ILC session (2019). With regard to the practical application of the Public Order Act, the ILO Committee of Experts on the Application of Conventions noted the allegations of the Fiji Trades Union Congress that permission for union meetings and public gatherings continued to be arbitrarily refused. It also noted with concern the allegations raised by the Fiji Trades Union Congress that harassment and intimidation of trade unionists continued to take place on a regular basis and legitimate union activities like organizing demonstrations, holding meetings and resolving disputes had become difficult, if not impossible. In June, 2020 trade union leader Felix Anthony was charged and appeared in court under the Public Order Act for statements made in support of workers' rights.

<sup>37</sup> <https://spcommreports.ohchr.org/TmSearch/Results>

<sup>38</sup> Deportation cases involved journalists such as Michael Field in 2007; Evan Hannah, publisher of the Fiji Times in 2008, Russell Hunter, publisher of the Fiji Sun in 2009, Reporter Sia Aston and cameraman Matt Smith of New Zealand's TV3 and Australian Broadcasting Corporation reporter Sean Dorney in 2009;

<sup>39</sup> Mandates of the Special Rapporteur on the right to education; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Rapporteur on the situation of human rights defenders, 31 March 2021, AL FJI 1/2021 <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=26111>

<sup>40</sup> Information received from Fiji on follow-up to the concluding observations on its fifth periodic report to Committee on Elimination of Discrimination against women, CEDAW/C/FJI/FCO/5, 14 May 2021 Available at: [https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/FJI/CEDAW\\_C\\_FJI\\_FCO\\_5\\_44874\\_E.docx](https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/FJI/CEDAW_C_FJI_FCO_5_44874_E.docx)

<sup>41</sup> Fiji Women's Rights Movement, *Fijian Women's Access to Justice during COVID-19 Response Period*, 2021

<sup>42</sup> The NGOCHR Condemns Bullying Tactics on Fiji Citizens and the Continuous Violation of Fundamental Human Rights 1 April 2021, Available at <https://www.scoop.co.nz/stories/WO2104/S00014/ngochr-condemns-bullying-tactics-on-fiji-citizens-and-the-continuous-violation-of-fundamental-human-rights.htm>



The Committee on the Elimination of Discrimination against Women recommended that the State make the necessary legislative changes and implement a policy to eliminate discrimination, hate speech and violence against women, including by prosecuting and adequately punishing perpetrators, and conduct awareness-raising activities to address stigma within society.<sup>43</sup> The Committee on the Elimination of Discrimination against Women recommended that the State ease registration requirements for NGOs.

Few LGBTI organisations are able to successfully register. The Special Rapporteur on environment noted concerns expressed by environmentalists and human rights activists about being threatened and feeling intimidated during his visit to Fiji.<sup>44</sup>

There has been ongoing consultation within Fijian civil society to propose draft legislation that recognises the role of civil society and HRDs. The operations of civil society are outlined, though not specifically, in a number of laws such as Charitable Trust Act (Cap 67); Business Licensing Act (Cap 204); Friendly Societies Act (Cap 253); Registration of Clubs Act (Cap 194); Co-operative Societies Act (Cap 250) and Social Justice Act passed in 2002. The enactment of the Essential National Industries Decree of 2011 voided all the organisations that existed prior to it. It required that all trade unions re-register. Three large unions were registered: Fiji Islands Council of Trade Unions, the Fiji Trade Union Congress, and the Public Employees Union.

Sixty percent of HRDs interviewed during the scoping mission noted that they did not feel safe when criticising government or discussing political issues and there was lack of enabling environment due to issues including corruption, laws restricting rights and freedoms of HRDs, ill-resourced NHRI and heavy-handed law enforcement, lack of effective systems for ensuring safety and protection of HRDs, lack of remedies and redress of defenders who face increased risk, lack of information and data. They expressed concern about a lack of public statements and show of solidarity by authorities and the FHRADC in support of HRDs and limited partnership by FHRADC with HRDs on collective strategies in addressing human rights violations.

<sup>43</sup> Committee on the Elimination of Discrimination against Women Concluding observations (2018) CEDAW/C/FJI/CO/5

<sup>44</sup> Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment on his visit to Fiji, 24/02/2020, A/HRC/43/53/ADD.3

# FIJI'S CHALLENGES AND RECOMMENDATIONS

Laws limiting rights used to suppress criticisms/ dissenting views by HRDs and deny public freedoms such as opinion, expression, assembly/ association, participation and information.

Lack of media freedom due to the chilling effect of the Media Industry Development Act 2010 and the seditious provisions under the Crimes Act.

Violence and Harassment Against LGBTI, Women and Girl HRDs



## 1 CHALLENGES FACED BY HRDs AND GOVERNMENTS



## 2 RECOMMENDATIONS



## 3

### GOVERNMENT

- > Work in partnership with HRDs to intensify efforts towards the harmonization of domestic legislation with the international obligations undertaken;
- > Amend the Fijian Constitution to repeal the provisions under section 6 (5) of the Constitution for limiting guaranteed rights in particular, the Public Order (Amendment) Act of 2012, the Media Industry Development Act of 2010, seditious provisions under the Crimes Act and immunity provisions under the 2013 constitution;
- > Establish a permanent mechanism for consultation with HRDs for the drafting of national reports to international human rights mechanisms & implement a national mechanism for following up the recommendations.

### HRDS

- > Constantly lobby with the Fiji Government to amend laws undermining the work of HRDs and repeal provisions under s6(5) of the 2013 Constitution limiting rights;
- > Call for genuine compliance with all provisions in international law that protect HRDs and not undermine their legitimate work;
- > Engage with government in public consultations and communicate the problematic provisions to the relevant authorities.

### GOVERNMENT

- > Repeal/ amend provisions in laws that undermine the work of HRDs;
- > Adopt an agenda that supports the UN Declaration and human rights defenders

### HRDs

- > Constantly lobby with the Fiji Government to amend/ repeal laws undermining the legitimate work of HRDs;
- > Call for genuine compliance of provisions in international law that protect HRDs and not undermine/ criminalise their legitimate work;
- > Provide human rights training to journalists/ media houses and secure improved and regular access to the media, to information on human rights concerns.

### GOVERNMENT

- > Government authorities, notably political office holders, law enforcement, the judiciary and public social service providers, should be sensitized on issues and challenges faced by HRDs;
- > Publicly condemn violations and attempts to undermine HRD work.

### HRDs

- > Collaborate in meaningful and coordinated dialogue with the Government on issues affecting HRDS on a regular basis.



Intimidation of HRDs and attacks against reputation and stigmatization of HRDs especially of WHRDS both online and offline

4

#### GOVERNMENT

- Invite the mandate holders of UN special procedures and Special Rapporteur on the situation of HRDs, and implement recommendations made in their report for the benefit of the HRDs;
- Publicly acknowledge the work of the HRDs and commit to supporting WHRDS at all levels;
- Take necessary measures to ensure that security forces are adequately trained in human rights, gender and the Declaration on HRDs to reduce arbitrary arrests, unlawful detention and unjustified deportation.

#### HRDs

- Translate the various international instruments and Declaration on HRDs into the indigenous languages of its people and make these widely available to create more awareness and an enabling environment;
- Demand inquiries into defamation of HRDs, threats and attacks against them, and criminal prosecution of the perpetrators;
- Training for HRDs should include training on professionalizing their work, accurate reporting on human rights violations, funding and protection mechanisms.

Lack of access to flexible funding especially for HRDs in the rural and remote areas

5

#### GOVERNMENT

- Increased and Flexible Programming and Funding Initiative should be created for HRDs, especially women HRDs who operate from the rural and remote areas;
- Ease registration restrictions of NGOs.

#### HRDs

- Engage with UN field presences and international organisations with a view to secure technical support and funding for projects;
- Make efforts to be registered.

Lack of effective remedies to HRDs who suffer violations of rights.

6

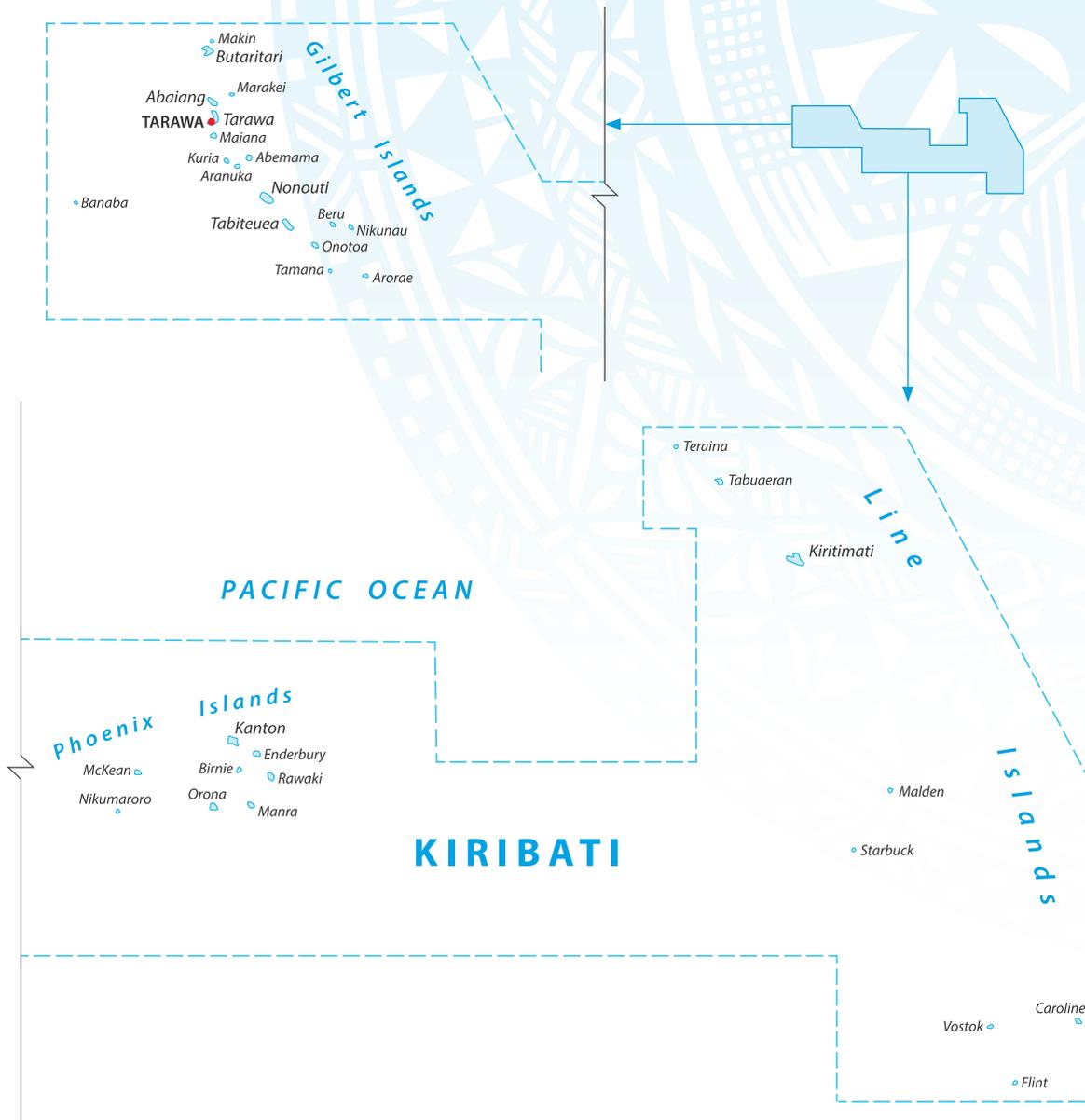
#### GOVERNMENT

- Partner with HRDs and set up a national mechanism and protection guidelines for HRDs who are at risk because of their work in protecting and promoting human rights and/or because of their vulnerabilities;
- Draw up national protection programmes for HRDs and abide by them at all times.

#### HRDs

- Create and/or strengthen support networks among human rights defenders and also with other key actors, such as the media, the church, civil society in general and relevant private sector actors;
- Join existing regional networks such as the Pacific Human Rights Defenders Network;
- Define a protection strategy and procedures for safety of HRDs at risks or facing threats.

# REPUBLIC OF KIRIBATI



## OVERVIEW

Before independence in 1979, the Republic of Kiribati (Kiribati), was a protectorate administered by Britain between 1892 and 1916. From 1916 to 1979, it was part of Britain's Gilbert and Ellice Islands colony before being granted independence on 12 July 1979. Kiribati is a constitutional democracy. It has a unicameral Parliament, or 'Auti ni Maungatabu' of 44 members elected every four years from 23 constituencies. The President is both the Head of Government and Head of State.

Kiribati is comprised entirely of low-lying atolls with an average elevation of 2 -3 metres above sea level.<sup>45</sup> Many of the atolls are at risk from rising sea levels.<sup>46</sup> Kiribati is one of the most vulnerable countries in the world to the effects of climate change. Small land areas separated by vast oceans, high population concentration, and the costs of providing basic services make Kiribati especially vulnerable to external shocks.<sup>47</sup>

The Kiribati 20-Year Vision 2016-2036 includes plans to reclaim and raise land up to 2 metres above sea level.<sup>48</sup> Under Pillar 4 of its 20- Year Vision, Kiribati Government expressly articulated an active engage of the local governments, civil society, academia and the private sector in strengthening partnerships during the implementation phase concerning governance and the cross cutting issues of gender rights, youth, climate change and environment and providing for the most vulnerable members of the community. This includes, consultative mechanisms and implementing the Public-Private-Civil Dialogue at the community level. Sea wall construction, home and business relocations to higher ground, and restrictions on activities that undermine the integrity of the land are short-term solutions to the climate change related issues, with some predicting Kiribati to be uninhabitable, or to become substantially submerged, by 2050.<sup>49</sup>

The high rates of migration and rural to urban drift to South Tarawa have led to it being characterised as one of the most overcrowded places on earth, with infrastructure, facilities and natural resources overburdened.<sup>50</sup> Migration results in climate refugees and persons seeking asylum outside Kiribati as well.<sup>51</sup> Under these circumstances, the Government of Kiribati in 2014 bought 20 km<sup>2</sup> of land in Vanua Levu, Fiji, to enable its people to “migrate with dignity”<sup>52</sup> when the islands of Kiribati would no longer be habitable. Kiribati is still recognized as a Least Developed Country (LDC) in the United Nations categorization of countries on the basis of their wealth and stages of socio-economic development.<sup>53</sup>

### Human rights defenders and civil society

The virtual scoping mission to Kiribati was carried out from 12 January 2021 to 25 February 2021. The HRDs informed OHCHR that they work in a wide range of areas including women’s rights, empowerment and leadership, gender based violence, legislative reforms for the Penal code and Family Peace Act, opposing the Death Penalty Bill, preventing crime and rape, child abuse, decriminalization of consensual sexual activities between persons of the same sex, and human rights violations in the context of climate change, migration, environment protection and disaster risk management.

<sup>45</sup> United Nations Conference on Trade and Development. 1999. Least developed countries 1999 report. New York and Geneva: United Nations.

<sup>46</sup> BBC World News, Kiribati Country Profile 2018 <https://www.bbc.com/news/world-asia-pacific-16431122>

<sup>47</sup> Government of Kiribati. Kiribati 20-Year Vision 2016–2036. Available at [http://www.president.gov.ki/wp-content/uploads/2019/04/kiribati-20-year-vision-2016-2036%E2%80%A2sept.final\\_.pdf](http://www.president.gov.ki/wp-content/uploads/2019/04/kiribati-20-year-vision-2016-2036%E2%80%A2sept.final_.pdf) (accessed 10 August 2019).

<sup>48</sup> Ibid.

<sup>49</sup> Intended Nationally Determined Contribution, 2015 Available at [https://www4.unfccc.int/sites/ndcstaging/PublishedDocuments/Kiribati%20First/INDC\\_KIRIBATI.pdf](https://www4.unfccc.int/sites/ndcstaging/PublishedDocuments/Kiribati%20First/INDC_KIRIBATI.pdf)

<sup>50</sup> UNICEF (2017). Situation analysis of children in Kiribati. Suva: UNICEF Pacific Office. Available at [https://www.unicef.org/pacificislands/04\\_Situation\\_Analysis\\_of\\_Children\\_Kiribati.pdf](https://www.unicef.org/pacificislands/04_Situation_Analysis_of_Children_Kiribati.pdf).

<sup>51</sup> A noteworthy climate refugee case involved that of an indigenous Kiribati man, Mr. Teitiota, who brought his case against the government of New Zealand to the UN Human Rights Committee (HRC) in February 2016 after authorities denied his claim of asylum as a ‘climate refugee.’ While the UN Human Rights Committee in concerning Communication No. 2728/2016 rejected his claims because he didn’t face an immediate danger to his life in Kiribati, it did leave the possibility open for a future successful claim on the basis that “expelling an individual to a place where they may be exposed to life threatening risks due to the adverse effects of climate change could violate the right to life.”

<sup>52</sup> Laurence Caramel, “Besieged by the rising tides of climate change, Kiribati buys land in Fiji”, *The Guardian*, 1 July 2014.

<sup>53</sup> United Nations, Committee for Development Policy 20th Plenary Session, 2018 <https://www.un.org/development/desa/dpad/wp-content/uploads/sites/45/CDP-PL-2018-6b.pdf>

Interviews were held with, and data collected from, HRDs working in established civil society organisations. The numbers of individual persons doing human rights defence work outside civil society organisations are negligible. Most persons doing human rights work with international organizations who have existing projects in Kiribati.

The Kiribati Association of Non-Governmental Organisations (KANGO) serves as an umbrella group for forty local NGOs, including church-based groups.<sup>54</sup> Civil society organisations are able to apply to a government small grants scheme for project funding, and many development partners also offer small grants for projects. The Pacific Women programme provides funding to the Women and Children's Support Centre and the Catholic Church Crisis Centre.<sup>55</sup> 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. Human rights work is undertaken by the Kiribati National Association for People living with disabilities (*Te Toa matoa*). 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. Community awareness and outreach programmes to the Outer Islands are normally conducted with resource persons from the Male Elders Association (Unimwane) and island Council staff. The Kiribati Trade Union Congress (KTUC) is the national trade union organisation and is associated with the International Trade Union Confederation. NGOs are involved in various environmental and sustainable development programmes. One such project - The Kaoki Mange (Return the Rubbish) project was started by an NGO, Foundation of the Peoples of the South Pacific-Kiribati. The project was later adopted nationally with the help of the government and private sector.

Collaborative work between Government, local partners/stakeholders through taskforces, donors and partners like DFAT, SPC, UN Women and OHCHR supporting implementation of policies and legislation is said to have contributed to improving the human rights situation.

There are blurred lines between HRDs and the State. Some NGOs are administered by government departments and have their offices in government. There are few domestic sources of funding for independent HRD work, and limited access to resources by HRDs, which affects their capacity to independently promote, monitor, evaluate and advocate the advancement of rights. CSOs working with HRDs are also confronted with uncertainty in the tenure of staff positions due to the uncertainty of funding sources.

Having few civil society organisations and HRDs also poses challenges to independent capacity and advocacy. Often the same persons might be running several different campaigns simultaneously, which may have ramifications for their success. While NGOs are active in service delivery, many appeared hesitant to assume a political or human rights watchdog role fearing backlash by the authorities and de facto donors given some NGOs' quasi-governmental or government-organised status. This increases challenges in seeking accountability of state bodies.

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<sup>54</sup> Freedom House, Note. 681.

<sup>55</sup> Kiribati Country Plan Summary January 2019. Available at <https://pacificwomen.org/wp-content/uploads/2019/01/Kiribati-Pacific-Women-country-plan-summary-Jan-2019.pdf> (accessed 20 August 2019).

## Enabling environment for human rights defenders

Kiribati is party to three core international human rights treaties<sup>56</sup> and underwent its third universal periodic review in 2020. It continues to face challenges in implementing the recommendations of the various human rights commitments. In July 2014, Kiribati established the National Human Rights Task Force by cabinet decision with a view to coordinating and facilitating its engagement with the United Nations human rights mechanisms and fulfilling its human rights obligations. It oversees all human rights treaties ratified by Kiribati and provides advice. While the establishment of the Task Force was positive, the body has had insufficient resources, dedicated staff and focal points to fulfil its major tasks.<sup>57</sup> The Human Rights Unit at the Ministry of Justice, focuses on the implementation of Kiribati's human rights commitments at the domestic level.

There is no independent dedicated national human rights institution (NHRI) to assess the State's efforts to protect and promote human rights. OHCHR and the Asia-Pacific Forum on NHRIs have been requested to support Kiribati and are engaged with the Government. At the request of the government, a national consultation on the feasibility of establishing an NHRI in Kiribati was conducted by SPC HRSD, OHCHR and APF in September-October 2019. Technical guidance on establishing founding legislation for the NHRI and for a national human rights framework was provided by OHCHR in 2020 and 2021 at the request of the Ministry of Justice.

The Government of Kiribati has made efforts to strengthen its legislative framework to promote and protect the rights of women and girls through the adoption of a constitutional amendment to establish the Ministry of Women, Youth, Sports and Social Affairs and the enactment of the Employment and Industrial Relations Code. HRDs interviewed expressed the need to review all discriminatory laws, in particular customary laws related to the participation of women in decision-making bodies at all levels, including the community councils, as well as the Native Lands Ordinance, chapter 16, on inheritance rights, the Citizenship Act and the Constitution.

Section 15 (3) of the Kiribati Constitution<sup>58</sup>, on protection from discrimination, does not contain sex or gender as prohibited grounds of discrimination in its definition of discrimination. The Committee on the Elimination of Discrimination against women recommended that efforts be strengthened to incorporate into the Constitution or other legislation a comprehensive definition of discrimination against women and girls, encompassing direct and indirect discrimination in both the public and private spheres and recognizing intersecting forms of discrimination. The UN Special Rapporteur on water and sanitation in 2012 also encouraged Kiribati to broaden the definition so as to bring it into alignment with international norms.<sup>59</sup> The CEDAW Committee also recommended that discrimination based on sex or gender be prohibited in any relevant new or revised laws.<sup>60</sup>

Kiribati continues to criminalize homosexuality and consensual same-sex relations between adults. Gender equality and non-discrimination as it pertains to 'same sex' is yet to be accepted for both cultural and religious belief reasons.

<sup>56</sup> Convention on the Elimination of All Forms of Discrimination against Women, the Convention on the Rights of Persons with Disabilities and the Convention on the Rights of the Child, as well as to the Optional Protocols to the Convention on the Rights of the Child on children in armed conflict and on the sale of children, child prostitution and child pornography. Kiribati is also party to the following International Labour Organization (ILO) conventions: the Abolition of Forced Labour Convention, 1957 (No. 105), the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), the Collective Bargaining Convention, 1981 (No. 154), the Equal Remuneration Convention, 1951 (No. 100), the Minimum Age Convention, 1973 (No. 138), and the Worst Forms of Child Labour Convention, 1999 (No. 182), among others.

<sup>57</sup>

<sup>58</sup> Constitution of Kiribati. Available at <https://www.wipo.int/edocs/lexdocs/laws/en/ki/ki001en.pdf> (accessed 10 August 2019).

<sup>59</sup> OHCHR website; Available at [https://ap.ohchr.org/documents/dpage\\_e.aspx?si=A/HRC/24/44/Add.1](https://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/24/44/Add.1)

<sup>60</sup> Committee on the Elimination of Discrimination against Women, Concluding observations on the combined initial, second and third periodic reports of Kiribati, 11 March 2020

The threat of violence, including sexual violence, has been alleged to sometimes silence HRDs. There is also persistence of discriminatory stereotypes regarding the roles and responsibilities of women and men in the family and society which undermine their work. HRDs may be at risk of rape, arbitrary arrest, detention and violence in an environment where gender-based violence is high. Gender inequality is due to cultural and social norms inherent in the traditional patriarchal system.<sup>61</sup> In Kiribati overall, 73% of women reported experiencing some form of physical or sexual violence.<sup>62</sup> Around one in five women aged 15-49 had experienced physical and/or sexual violence by a non-partner and at least 68% of women between the ages of 15-49 reported experiencing either physical or sexual violence, or both, by an intimate partner.<sup>63</sup>

In this regard, the CEDAW Committee recommended that adequate financial support be provided to women's human rights organizations offering services to women and girls that are not yet provided by the State and strengthen its collaboration with those organizations in the implementation of plans and activities for the advancement of women's rights.<sup>64</sup> The Committee also recommended that faith-based organizations carry out awareness-raising programmes on gender and provide education on CEDAW for faith-based and civil society organizations.

There is lack of access to justice to HRDs who may be operating in the outer islands. Legal assistance is provided by the Office of the People's Lawyer,<sup>65</sup> however, increases in civil and criminal cases is affecting its capacity to handle the multitude of cases at one time. Legal assistance is not readily available on the outer islands unless a formal request is received.<sup>66</sup> It is often difficult for those residing in outer islands to request support due to communication, transport and accessibility barriers. Magistrates on the outer islands have been undergoing capacity training around their roles, with the aim of providing appropriate tools to handle cases and deal with the population more effectively. In 2019, the judiciary established the Chief Magistrate's Office to deal with issues and services of magistrates at the national level, with a focus on magistrates in the outer islands.

In 2021, a formal complaint was laid with the UN Special Rapporteur on the Situation of HRDs over the suspected murder of I-Kiribati fisheries observer Eritara Kaierua, who was working on a Taiwanese fishing vessel for the Kiribati government.<sup>67</sup> HRDs referred to his death as a case of concern.<sup>68</sup> Rights advocates had previously claimed sub-standard labour working conditions, and harmful fishing techniques in the fleet which the vessel belonged to, and reported that there had been at least 14 fishery observer deaths in the last decade, but none properly investigated. Greenpeace warned that observers like Kaierua have reported "intimidation and crew requests to not report events", and "companies, governments, and multilateral organisations continue to fail to protect them from intimidation, abuse, and death."

<sup>61</sup> OHCHR & SPC-HRSD, Human Rights Situational Analysis Report 2020 Available at: <https://www.spc.int/resource-centre/publications/the-pacific-human-rights-situational-analysis-report-2020>

<sup>62</sup> National Report of Kiribati dated 11 November 2019 submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21 (A/HRC/WG.6/35/KIR/1), Third Universal Periodic Review, Thirty fourth session of Human Rights Council

<sup>63</sup> Pacific Community, 2010, Kiribati Family Health and Support Study: A study on Violence against Women and Children, Available: [https://pacific.unfpa.org/sites/default/files/pub-pdf/Kiribati-Family-Health-and-Support-Study\\_0.pdf](https://pacific.unfpa.org/sites/default/files/pub-pdf/Kiribati-Family-Health-and-Support-Study_0.pdf) and Kiribati Family Health Association (KFHA) Report 2010

<sup>64</sup> Committee on the Elimination of Discrimination against Women, Concluding observations on the combined initial, second and third periodic reports of Kiribati, 11 March 2020

<sup>65</sup> Office of the People's Lawyer website. <http://www.opl.org.ki/> (accessed 10 August 2019).

<sup>66</sup> OHCHR & SPC-HRSD, Human Rights Situational Analysis Report 2020 Available at: <https://www.spc.int/resource-centre/publications/the-pacific-human-rights-situational-analysis-report-2020>

<sup>67</sup> The complaint was filed by Greenpeace and the Association for Professional Observers: Andrea Vance, "UN asked to step in after mysterious death of fisheries observer", Stuff, 13 July 2020, <https://www.stuff.co.nz/environment/122112141/un-asked-to-step-in-after-mysterious-death-of-fisheries-observer>.

<sup>68</sup> CIVICUS, **Still no accountability for death of Kiribati fisheries observer**, 14 September 2020 Available at: <https://monitor.civicus.org/updates/2020/09/14/still-no-accountability-death-kiribati-fisheries-observer/>

A May 2021 independent review of the case reports on 26 questions which Kiribati authorities had not answered at the time.<sup>69</sup>

Concerns have been raised about the lack of transparency with respect to the registration of media organisations as well as the lack of local independent media.<sup>70</sup> UNESCO reported that newspapers were required to register with the Government under the Newspaper Registration Act 1988 and that, under the 2004 amendment to that Act, the Government was granted the power to terminate the publication of newspapers that faced complaints.<sup>71</sup> UNESCO also reported that the Communications Commission of Kiribati was charged with implementing and enforcing the Communications Act, including the granting and management of licences. All members of the board of the Commission were appointed by the Government.

A more effective legal framework for protecting the rights of climate migrants and refugees is required, including indigenous I-Kiribati peoples who migrate and may become subject to the laws of their new country should they chose to or be forced to move eventually due to climate change and sea level rise. In this context, the Special Rapporteurs on the rights of indigenous peoples, and on the environment, have urged States to provide (in accordance with international standards including with respect to 'loss and damage') reparation for damages to indigenous peoples' natural resources and forced displacement due to climate crisis.<sup>72</sup>

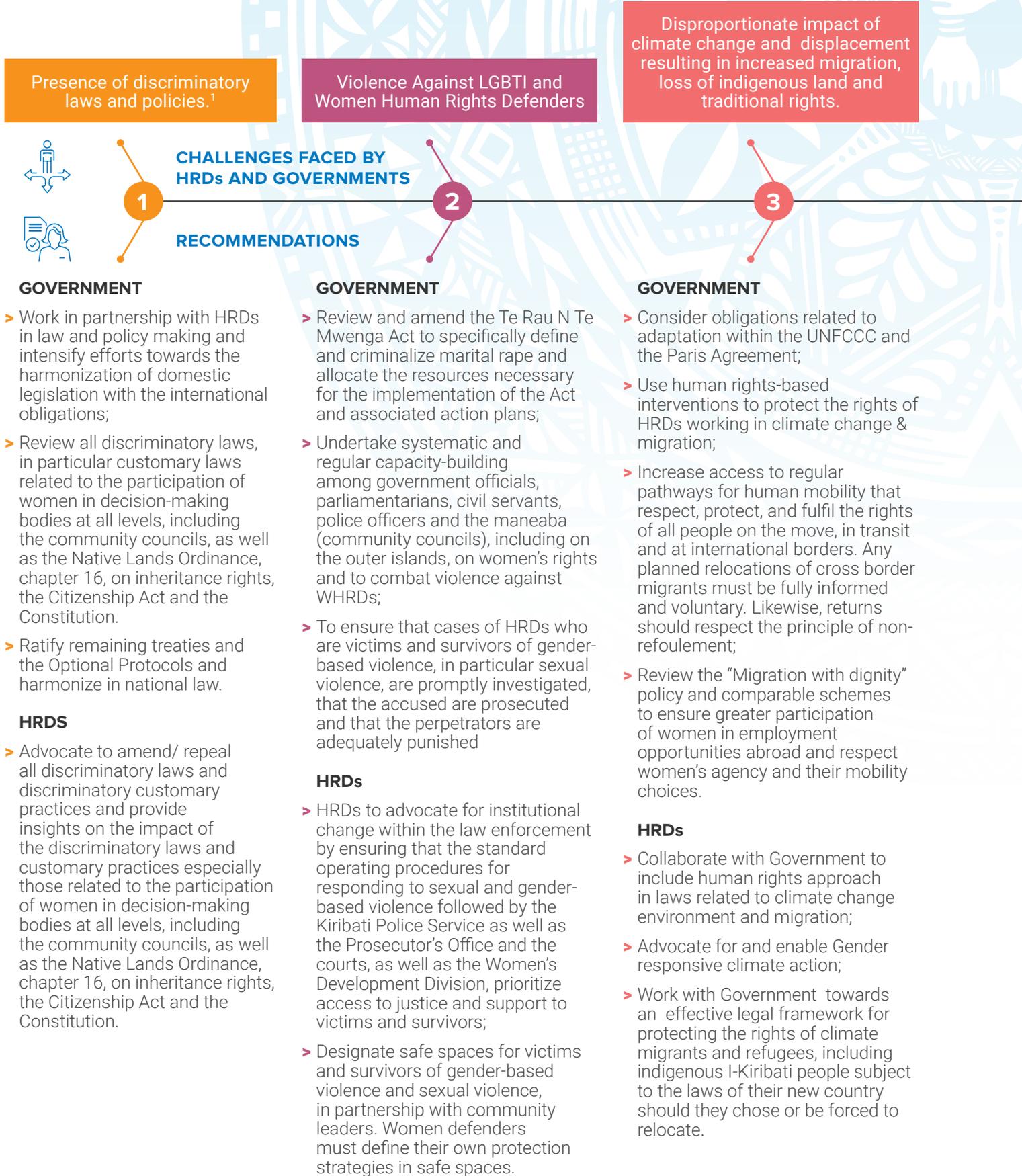
<sup>69</sup> Inga Stünzner, "Independent probe raises more questions over death of Kiribati fisheries observer", ABC Pacific Beat, 20 May 2021, <https://www.abc.net.au/radio-australia/programs/pacificbeat/questions-raised-over-fisheries-observer-death/13351860>. The full report by Human Rights at Sea (20 May 2021) is accessible at [https://www.humanrightsatsea.org/2021/05/19/death-at-sea-independent-case-review-of-kiribati-fisheries-observer-eritara-aati-kaierua/?fbclid=IwAR1LGSYTJ0R9s0vQk9X76uyWiMTi2vNAXi0\\_-J77qZRnUbFLzKoFwnXb7ho](https://www.humanrightsatsea.org/2021/05/19/death-at-sea-independent-case-review-of-kiribati-fisheries-observer-eritara-aati-kaierua/?fbclid=IwAR1LGSYTJ0R9s0vQk9X76uyWiMTi2vNAXi0_-J77qZRnUbFLzKoFwnXb7ho).

<sup>70</sup> <https://www.abc.net.au/cm/lb/9268132/data/kiribati%3A-state-of-the-media-report-data.pdf> see also <https://www.rnz.co.nz/international/pacific-news/355173/kiribati-govt-s-media-control-stifling-transparency-says-mp> and

<sup>71</sup> Report of the Office of the United Nations High Commissioner for Human Rights, Compilation on Kiribati to Human Rights Council Working Group to the Universal Periodic Review, 11 November 2019 Available at: <https://undocs.org/A/HRC/WG.6/35/KIR/2>

<sup>72</sup> Report of the Special Rapporteur on the rights of indigenous peoples (regarding the impacts of climate change and climate finance on indigenous peoples' rights) to the Human Rights Council's Thirty-sixth session (A/HRC/36/46), pp.13-14.

# KIRIBATI'S CHALLENGES AND RECOMMENDATIONS





Lack of access to justice to HRDs who operate from and in the outer islands.<sup>2</sup>

4

**GOVERNMENT**

- Strengthen the formal justice system: Support justice providers and institutions to establish a gender-responsive justice system and to address long-standing institutionalized gender discrimination;
- Address issues pertaining to physical and communications accessibility in courts of law, including the unavailability of procedural accommodations in court proceedings, and deprivation of legal capacity on the ground of disability;
- Ensure that the judiciary, including lay judges, receives systematic training on women's rights.

**HRDs**

- Bringing together human rights defenders to create a joint movement for a holistic approach on access to Justice for those who operate from and in outer islands;
- Strengthen the capacity of women's grassroots organizations to facilitate an accepted community-based model for gender justice.

Intimidation of HRDs and attacks against reputation and stigmatization of HRDs especially of WHRDS both online and offline.

5

**GOVERNMENT**

- Publicly acknowledge the important work of HRDs;
- Invite the mandate holders of UN Special Rapporteur on the situation of HRDs and other special procedures to visit and understand the challenges of Government and HRDs in an informed manner, and implement recommendations made in their report;
- Adopt a comprehensive strategy, including awareness-raising programmes, aimed HRDs, including religious and traditional leaders, to eliminate discriminatory gender stereotypes regarding the roles and responsibilities of women and men in the family and society, and regularly monitor and review measures taken in this regard.

**HRDs**

- Translate the various international instruments and Declaration on HRDs into the indigenous languages of its people and make these widely available to create more awareness and an enabling environment;
- Demand inquiries into defamation of HRDs, threats and attacks against them, and criminal prosecution of the perpetrators;
- Training for human rights defenders to include professionalizing their work, accurate reporting on human rights violations, accessing funding as well as on relevant protection measures needed.

Lack of investigation by the law enforcement agencies into complaints brought by HRDs

6

**GOVERNMENT**

- Ensure that the security forces are adequately trained in human rights and the Declaration on HRDs;
- Ensure that the standard operating procedures for responding to sexual and gender-based violence followed by the Kiribati Police Service, the Prosecutor's Office and the courts prioritize access to justice and support to victims and survivors.

**HRDs**

- Encourage State authorities to investigate human rights violations and urge an end to impunity.

Lack of access to funding

7

**GOVERNMENT**

- Increase Flexible Programming and Funding Initiative should be created for HRDs, especially WHRDS to develop tailored programmes to ensure meaningful participation in decision making and legislative changes to counter and raise awareness against discriminatory practices;
- Adequate financial support be provided to WHRDS offering services to women and girls that are not yet provided by the State and strengthen its collaboration with those organizations in the implementation of plans and activities for the advancement of women's rights.

**HRDs**

- Engage with UN and international organisations with a view to secure technical support and funding for advancing human rights work;
- Build capacity on writing funding proposals.

<sup>1</sup> Kiribati's Constitutional definition of discrimination is narrow; Kiribati continues to criminalize homosexuality and consensual same-sex relations between adults; Fault-based divorce is practised, and property division following matrimonial breakdown does not take into account non-financial contributions of women to the marriage; Unmarried mothers automatically lose custody of their children once the child turns two (providing the father acknowledges paternity and wishes to retain custody); Land inheritance laws are patrilineal, and sons often inherit more, or better, land than daughters. The citizenship law contains discriminatory provisions, for example, a foreign wife of a male citizen acquires citizenship automatically through marriage, but the foreign husband of a female citizen does not. Fathers, and not mothers, confer citizenship on their children.

<sup>2</sup> Legal assistance is not readily available on the outer islands unless a formal request is received. It is often difficult for those residing in outer islands to request support due to communication, transport and accessibility barriers.

# REPUBLIC OF MARSHALL ISLANDS



## MARSHALL ISLANDS



## OVERVIEW

The Republic of the Marshall Islands (RMI) is an independent Pacific Island nation made up of 29 coral atolls and five islands. RMI is a self-governing constitutional republic in a Compact of Free Association with the United States of America. Formerly a US-administered UN trusteeship, RMI achieved independence in 1986. The RMI government operates under a mixed parliamentary presidential system, and elections are held every four years for all citizens above 18 years of age.<sup>73</sup> The US manages the security and defence of the islands and provides millions of dollars in aid every year. The US rents the Kwajalein atoll as a base and missile test range.<sup>74</sup>

In 2019, the Government of RMI was elected to the UN Human Rights Council (UNHRC) and officially took up the position in January 2020, until the end of 2022. The United Nations High Commissioner for Human Rights has noted the engagement of the Marshall Islands in leading the global call for climate action and climate justice and called upon the international community to increase the provision of resources and technical support to South Pacific countries, and all small island States, for mitigation, adaptation and prevention.<sup>75</sup>

<sup>73</sup> OHCHR & SPC-HRSD. Human Rights Situational Analysis Report 2020

<sup>74</sup> BBCWorld. Marshall Islands Country Profile. Available at: <https://www.bbc.com/news/world-asia-15595431> (Accessed on: 17.06.2021)

<sup>75</sup> See [www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24956&LangID=E](http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24956&LangID=E). See also [www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25408&LangID=E](http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25408&LangID=E).



Many atolls lie barely a metre above sea level and are at risk of being engulfed by rising waters. Climate change and disease outbreaks remain the most significant threat to the RMI. The effects of the nuclear testing programme from 1946 to 1958 continue to pose severe environmental and health problems in the Marshall Islands. The Government has made progress in addressing the adverse impact of climate change and disasters, such as the establishment of a green climate fund. There still is, however, disproportionate impact of climate change, drought, rising sea levels and other weather-related disasters on women and girls in RMI. The challenges to implementing strategies for disaster risk reduction and climate change mitigation and adaptation are compounded by the effects of the nuclear testing programme conducted by the United States, which has caused severe environmental damage, mainly in four atolls, including Bikini Atoll, a World Heritage Site of the United Nations Educational, Scientific and Cultural Organization.

The CEDAW Committee recommended that international cooperation and assistance, including climate change financing, be sought from other countries, in particular the United States, whose extraterritorial nuclear testing activities have exacerbated the adverse effects of climate change and natural disasters in RMI and ensure the participation of women in the preparation, adoption and implementation of national policies and programmes on climate change, disaster response and disaster risk reduction and include an explicit gender perspective in such policies and programmes.<sup>76</sup>

The Government has sought to make a direct approach to the United States, which is responsible for the nuclear testing programme, through the Pacific Islands Forum, as well as to the Secretary-General to seek action to implement the recommendations made in 2012 by the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes.<sup>77</sup> The CEDAW Committee has recommended the Government to develop a comprehensive engagement strategy on the effects of the nuclear testing programme for seeking technical and financial assistance from the international community and the United Nations system, in particular from the United States, to address the continuing effects on the environment, health and livelihood of the Marshallese people, in particular women and girls.<sup>78</sup>

### Human rights defenders and civil society

OHCHR ROP conducted the scoping mission to RMI from 20 – 24 January 2020, focusing on engagements through personal interviews with HRDs in the capital, Majuro.

HRDs have a healthy and longstanding working relationship with the Government, with the government supporting networks and coalitions of HRDs with funding streams. Domestic and international human rights groups reportedly operated without government restriction in a range of areas including youth rights, disability rights, health, education, women's rights and environmental rights, sometimes investigating and publishing findings on human rights cases. Although there are challenges, government officials are generally cooperative and responsive to their views.<sup>79</sup>

In its National Report in its third Universal periodic review, the Government of RMI stated that it will continue to engage, participate and constructively contribute to international deliberations in international human rights forums, including co-sponsorship of resolutions of the UNHRC and the

<sup>76</sup> Committee on the Elimination of Discrimination against women, Concluding observations on the combined initial to third periodic reports of the Marshall Islands, 14 March 2018 Available at: [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=CEDAW/C/MHL/CO/1-3&Lang=En](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CEDAW/C/MHL/CO/1-3&Lang=En)

<sup>77</sup> A/HRC/21/48/Add.1

<sup>78</sup> Committee on the Elimination of Discrimination against women, Concluding observations on the combined initial to third periodic reports of the Marshall Islands, 14 March 2018 Available at: [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=CEDAW/C/MHL/CO/1-3&Lang=En](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CEDAW/C/MHL/CO/1-3&Lang=En)

<sup>79</sup> OHCHR & SPC-HRSD. Human Rights Situational Analysis Report 2020

General Assembly on key issues such as: (a) HRDs; (b) civil society space; (c) reprisals against HRDs; (d) the renewal of the mandate of the Special Rapporteur on the situation of HRDs at the Council; (e) strengthening Council membership and standards; (f) applying objective, rights-based criteria in addressing situations of concern; and (g) constructive engagement at the Council generally, including with subsidiary bodies and special procedures mandate holders.<sup>80</sup>

HRDs in RMI are generally centrally located and work in the capital of Majuro with operations that spread across RMI with satellite offices and partners located across the jurisdiction. The Marshall Islands Council of Non-Governmental Organizations or MICNGO is the coalition of non-governmental organizations since 2003 and serves as the umbrella association for human rights defenders. Women United Together Marshall Islands (WUTMI) supports women human rights defenders.

### Enabling environment for human rights defenders

The National Human Rights Committee Act 2015 establishes an intergovernmental committee, with CSO participation, that has wide and broad powers that ensure the promotion, protection and implementation of human rights nationally. The Ministry of Culture and Internal Affairs (MOCIA) continues to work with its national, regional and international partners to lead treaty implementation in country. There is no independent national human rights institution (NHRI) that is compliant with the Paris Principles.

OHCHR acts as a partner for capacity building and report tracking on treaty and UPR reporting; UNICEF is offering Technical Assistance on Child Protection and Early Childhood Development initiatives; and SPC is continuing work to assist RMI in treaty reporting and capacity development within the Community Development Division.

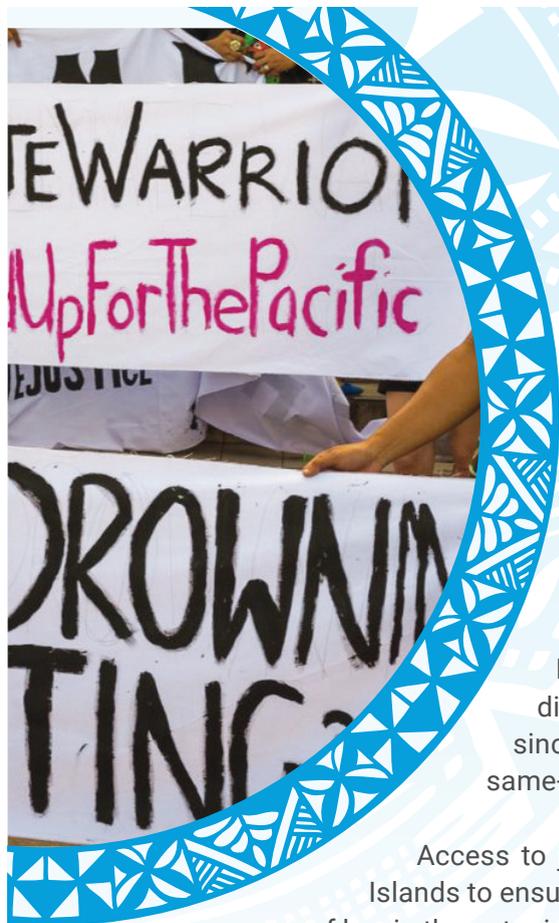
RMI has a pluralistic legal system where both customary and statutory law are applicable. Under the Constitution, Marshallese custom (manit) has primacy over the Bill of Rights. There are entrenched patriarchal attitudes and the persistence of discriminatory stereotypes concerning the roles and responsibilities of women and men in the family and in society, in particular in the outer islands. The parallel legal system and those attitudes and stereotypes perpetuate the subordination of women in the family and in society. Discriminatory stereotypes are among the root causes of gender-based violence against women and harmful practices such as child marriage.<sup>81</sup> Customary marriages are exempted from the minimum legal marriageable age requirement. Some women and girls are forced to enter into customary marriages, especially when they are pregnant, and there are negative stereotypes and social perceptions which discourage women from seeking child support.<sup>82</sup> The high prevalence of gender-based violence against women, in particular domestic and sexual violence, remains culturally accepted and underreported.

<sup>80</sup> Marshall Islands National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21. Available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G20/030/22/PDF/G2003022.pdf?OpenElement> (Accessed on: 27.06.2021)

<sup>81</sup> Committee on the Elimination of Discrimination against women, Concluding observations on the combined initial to third periodic reports of the Marshall Islands, 14 March 2018 Available at: [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=CEDAW/C/MHL/CO/1-3&Lang=En](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CEDAW/C/MHL/CO/1-3&Lang=En)

<sup>82</sup> Committee on the Elimination of Discrimination against women, Concluding observations on the combined initial to third periodic reports of the Marshall Islands, 14 March 2018 Available at: [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=CEDAW/C/MHL/CO/1-3&Lang=En](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CEDAW/C/MHL/CO/1-3&Lang=En)





Although customary land rights are based on a matrilineal system, decisions regarding land use are generally taken by men. Women in rural areas are disadvantaged owing to the physical inaccessibility of the outer islands and their limited access to health care, sanitation, electricity, income-generating opportunities and agricultural credit.

The lack of shelters and support services for women who are victims of gender-based violence, and the fact that the only services available are provided under the *Weto in Mour programme*<sup>83</sup> (meaning “A Place of life”) and by WUTMI is an area of concern raised by the HRDs.

Neither the constitution nor law provides specific protection against discrimination for LGBTI persons. Same-sex sexual activity has been legal since 2005. The law prohibits same-sex couples or individuals involved in a same-sex relationship from adopting Marshallese children.

Access to justice has improved over the years with some efforts of the Marshall Islands to ensure access to justice for women and girls through the use of mobile courts of law in the outer islands. The judiciary has made a number of reforms to increase access to justice, including a decrease in fees, shortening the average time taken to deal with cases from the time of filing until the court’s decision, with domestic violence cases given priority. However, according to some HRDs, concerns remain that women continue to face physical barriers in gaining access to courts owing to the topography of the Marshall Islands. They noted that there continues to be limited awareness among women and girls of their rights.

<sup>83</sup> WUTMI Opens Weto in Mour (A Place of Life), 17 March 2016 Available at: <https://pacificwomen.org/news/wutmi-opens-weto-in-mour-a-place-of-life/>

# REPUBLIC OF MARSHALL ISLANDS

## CHALLENGES AND RECOMMENDATIONS





Harassment, Violence and Threats made against the HRDs and their families.

General lack of statistical data which were necessary for accurately assessing the situation of HRDs, determining the magnitude and nature of discrimination, making informed and targeted policies and systematically monitoring and evaluating progress achieved towards the realization of substantive equality.

Disproportionate impact of climate change, drought, rising sea levels and other weather-related disasters on HRDs in the Marshall Islands



#### GOVERNMENT

- > Establish an independent national human rights institution, in accordance with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles) which can seek dialogue with HRDs in the form of regular institutionalised consultations;
- > Draw up national **protection programmes** with HRDs and abide by them at all times with high priority to the implementation of the Domestic Violence Prevention and Protection Act and the amended Criminal Code to ensure that perpetrators of gender-based violence were prosecuted and adequately punished;
- > Ensure that WHRDs who were victims of violence, including domestic violence, had access to shelters and adequate support services;
- > Ensure a comprehensive strategy to eliminate discriminatory stereotypes concerning the roles and responsibilities of women and men in the family and in society;
- > **Publicly denounce** human rights violations and abuses against HRDs and ensure investigation and prosecution of offenders and compensation to victims and end impunity;

#### HRDs

- > Take an active role in advocating for **protection programmes** for HRDs, in consultation with the Government;
- > To promote the implementation of the UN Declaration on HRDs at national level;
- > Demand inquiries into defamation of HRDs, threats and attacks against them, and criminal prosecution of the perpetrators;
- > Work in partnership with the Government to train security personnel, on human rights and comply with them at all times;
- > Join network of HRDs for solidarity and protection.

#### GOVERNMENT

- > Improve its data-collection system, ensuring that data were disaggregated, were shared among relevant ministries and take into account the conceptual and methodological framework set out in the guidelines of the Office of the United Nations High Commissioner for Human Rights (OHCHR) entitled Human Rights Indicators: A Guide to Measurement and Implementation;

#### HRDs

- > Work hand in hand with Governments to develop an indicator system on gender-related issues to improve the collection of data and in this regard to seek technical assistance from the relevant United Nations agencies where necessary.

#### GOVERNMENT

- > Seek international cooperation and assistance to develop a comprehensive plan of action with set targets and benchmarks to implement the recommendations made in 2012 by the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes;
- > Develop a comprehensive engagement strategy in consultation with HRDs for seeking technical and financial assistance from the international community to address the continuing effects of the nuclear testing programme on the environment, health and livelihood of the Marshallese people.

#### HRDs

- > Effectively implement the joint national action plan for climate change adaptation and disaster risk management in consultation with Government as well as the national climate change policy framework;
- > Work in partnership with Government to develop a comprehensive disaster-sensitive social protection system;
- > Advocate for and enable Gender responsive climate action;
- > Collaborate with Government to include human rights approach in laws related to climate change, environment and migration.

# PAPUA NEW GUINEA



## OVERVIEW

Papua New Guinea (PNG) gained political independence from Australia on 16 September 1975. Under a Westminster system of government, PNG is a constitutional monarchy. The head of state is the British monarch, represented by the Governor-General. There are three levels of government: national, provincial and local. The National Parliament comprises 111 members. Members of Parliament are elected by universal suffrage for five-year terms.

On 23 November 2019, the Autonomous Region of Bougainville held a referendum on independence from Papua New Guinea in accordance with the Bougainville Peace Agreement 2001 which was signed after a ten-year civil war with the PNG mainland ended in 1998 and voted in favour of independence.<sup>84</sup> Most settlements are small, isolated and scattered throughout a vast landscape, and more than 800 distinct languages are spoken in the country. Access to justice remains a problem. Barriers include limited pro bono legal services, limited human resources, high costs associated with court action, low

<sup>84</sup> OHCHR & SPC-HRSD, Human Rights Situational Analysis Report.

rates of formal education, little awareness of either human rights or national laws,<sup>85</sup> and widespread corruption and impunity within the Royal Papua New Guinea Constabulary.<sup>86</sup>

In February 2018, the OHCHR facilitated the first ever visit of a UN High Commissioner for Human Rights to the country, advancing dialogue on critical issues including the establishment of a National Human Rights Commission, abolishing the death penalty, and strengthening rule of law.<sup>87</sup>

### Human rights defenders and civil society

OHCHR ROP conducted the scoping mission to Papua New Guinea from 2 – 6 December 2019, focusing on engagements through personal interviews with HRDs in the capital, Port Moresby and in Mount Hagen (highlands).

It was found that there is no single umbrella body coordinating CSOs and HRDs in PNG. Civil society in PNG includes a range of church-run and secular organizations, as well as a variety of local and indigenous organizations. There are also many branches of international NGOs, such as Save the Children and Transparency International. HRDs are more vocal in urban areas than in rural areas. While broader coalitions and allegiances appear to be emerging, clan-based politics still dominate, focusing attention on local needs, and thereby inhibiting the development of a unified human rights voice. WHRDs interviewed worked in diverse thematic areas including the right to adequate housing, children's rights, indigenous rights, women's rights and gender, business and human rights with a special focus on extractive industries, education, health and the right to food, violation of human rights regarding the asylum seekers and refugees that had been kept on Manus Island.

### Enabling environment for human rights defenders

There is a strong call among HRDs for a national human rights institution and an independent commission against corruption. Although PNG accepted the recommendations to establish an NHRI<sup>88</sup>, it has yet to establish an NHRI due to a lack of political or financial support to do so. While visiting PNG in 2018, the UN High Commissioner for Human Rights noted the important role of NHRIs and strongly encouraged the Government to fulfil its commitments to establish a Paris Principles compliant commission.<sup>89</sup> In 2011, Mandates of the Special Rapporteur on extrajudicial, summary or arbitrary executions, and of the Special Rapporteur on the situation of human rights defenders received allegations concerning the alleged lack of progress in the investigation into the attempted assassination of the Chief Ombudsman in Papua New Guinea who had been in that role since 3 July 2008.<sup>90</sup>

<sup>85</sup> A/HRC/WG.6/11/PNG/1. [https://lib.ohchr.org/HRBodies/UPR/Documents/session11/PG/A\\_HRC\\_WG.6\\_11\\_PNG\\_1\\_E.pdf](https://lib.ohchr.org/HRBodies/UPR/Documents/session11/PG/A_HRC_WG.6_11_PNG_1_E.pdf)

<sup>86</sup> A/HRC/16/52/Add.5. <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G11/106/08/PDF/G1110608.pdf?OpenElement>

<sup>87</sup> OHCHR, OHCHR in Papua New Guinea. Available at: <https://www.ohchr.org/EN/Countries/AsiaRegion/Pages/PGSummary.aspx> (Accessed on: 28.06.2021)

<sup>88</sup> A/HRC/33/10/Add.1, 104.35-104.47

<sup>89</sup> Visit of the High Commissioner for Human Rights to Papua New Guinea Mission Report (8 February 2018)

<sup>90</sup> Communication by Mandates of the Special Rapporteur on extrajudicial, summary or arbitrary executions, and of the Special Rapporteur on the situation of human rights defenders, 5 October 2011, PNG 4/2011 <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=17327>



There are laws and policies in place to protect human rights, but they are reportedly often not enforced.<sup>91</sup> UNESCO recommended during PNG's UPR third cycle that the Government decriminalize online defamation and place it within a civil code that is in accordance with international standards and that it introduce legislation on access to information that is in accordance with international standards.<sup>92</sup>

Media outlets are limited and access to communication tools, including the Internet, is lacking. The Cybercrime Code Act 2016, which allows for the prosecution of people who publish defamatory material or incite to violence on social media, has raised concerns. In 2017 and 2019, a women's rights and environmental activist experienced repeated incidents of sexual violence which she believes is in retaliation to her vocal advocacy on women's rights and her complaints about the negative impact of mining operations.<sup>93</sup> She informed that because of the weakness of local government in Papua New Guinea, and the entrenched culture of impunity, she had little hope of seeing justice. Furthermore, she explains, to press for justice would result in her being socially ostracized and demoted from leadership roles, which would prevent her from carrying out her crucial advocacy work on behalf of women and girls.



Environmental activists have cited media censorship, as the media declines to broadcast stories on peaceful protests and the impact of the exploration licences on communities.<sup>94</sup> In 2018, an activist for environmental rights and the rights of LGBTI persons faced threats and violence by government and mining company officials following his efforts to raise awareness about the dangers of mining exploration and the tailings in the Sepik River. In 2020, the Special Rapporteur for Human Rights Defenders sent a joint communication to PNG raising concerns about serious risks posed to the enjoyment of human rights of affected populations, due to the impact of toxic waste, risk of failure of tailings dam and destruction of lives and other issues arising from the Sepik Development Project in Papua New Guinea.<sup>95</sup> Since they raised concerns, the human rights defenders who are the subject of the communication have been facing death threats, intimidation and reported gun shots fired at them from unidentified persons.<sup>96</sup>

Despite Papua New Guinea ratifying the Convention on the Elimination of All Forms of Discrimination against Women in 1995, Papua New Guinea still remains one of the most dangerous places in the world to be a woman or girl.<sup>97</sup> More than two-thirds of the women in PNG are victims of domestic violence.<sup>98</sup> A 2020 academic study found that over a 19-month period, a specialist police unit set up to receive complaints of sexual violence in Boroko, Port Moresby, averaged 27 complainants per month, 90 percent of whom were female, and 74 percent of whom were under age 18.<sup>99</sup> As such, WHRDs encounter gender-related risks in addition to risks linked to their activism.<sup>100</sup>

<sup>91</sup> OHCHR, UN human rights chief urges Papua New Guinea to combat corruption and strengthen rule of law. Available at: <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22644&LangID=E> (Accessed on: 30.01.2021)

<sup>92</sup> OHCHR, Compilation of UN Information to PNG Universal Periodic Review Third Cycle, 4 November 2021 <https://www.ohchr.org/EN/HRBodies/UPR/Pages/PGindex.aspx>

<sup>93</sup> Amnesty International, Portrait of an activist, Available at: <https://www.amnesty.org/en/latest/news/2019/05/portrait-of-an-activist-ressida-kuala/>

<sup>94</sup> Amnesty International, Portrait of an Activist: Emmanuel Peni (30 May 2019) <https://www.amnesty.org/en/latest/news/2019/05/portrait-of-an-activist-emmanuel-peni/> (accessed 16 March 2021)

<sup>95</sup> Open Joint Communication by Mandates of the Special Rapporteur on Human Rights Defenders and others, 20 July 2020 Communication No. AL 1/2020 Available at: <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gld=25423>

<sup>96</sup> Ibid.

<sup>97</sup> Ben Zand, "Port Moresby: The World's Most Dangerous City to be a Woman?" BBC, September 26, 2018, (accessed March 4, 2021), <https://www.bbc.com/news/av/stories-45654549>.

<sup>98</sup> Human Rights Watch World Report 2021, Available at: <https://www.hrw.org/world-report/2021/country-chapters/papua-new-guinea>

<sup>99</sup> Ibid

<sup>100</sup> Human Rights Watch. Papua New Guinea Available at: <https://www.hrw.org/world-report/2020/country-chapters/papua-new-guinea> (Accessed 16 June 2020)



Different forms of gender-based violence, including sexual violence experienced by women and girls continued, with inadequate resources dedicated to addressing the issue. Women and children were at risk of physical and sexual violence from intimate partners, family members and their communities, including as a result of accusations of sorcery. Women and girls had limited access to sexual and reproductive health care services, and abortion remained criminalized.<sup>101</sup>

Allegations of sorcery and witchcraft rank high among the concerns and risks faced not only by WHRDs but by women generally in PNG. The belief in sorcery and witchcraft is widespread across the country, with 90 per cent of the population believing in its existence so the interrogation, torture, exile and even killing of people accused of sorcery as a means of punishment is accepted by some communities.<sup>102</sup> Papua New Guinea has repealed its controversial Sorcery Act in 2013 but has expanded its use of the death penalty.<sup>103</sup> The death penalty now applies to a longer list of crimes, including sorcery-related murder, rape and robbery, and provides for new methods of execution, including by lethal injection, hanging, electrocution, firing squad, and “medical death by deprivation of oxygen”.<sup>104</sup> Despite the repeal of the Sorcery Act, Sorcery related violence is still rampant in Papua New Guinea and usually targets women, and often goes unreported.<sup>105</sup>

In 2011, a communication by the Special Rapporteur and other mandate holders brought to the attention of the Government human rights concerns about sorcery-related violence.<sup>106</sup> These cases involve not only violence against women, but also serious threats and intimidation faced by the WHRDs providing support and assistance to the victims. There were allegations of serious violence on the basis of witchcraft accusations and reported lack of response by authorities.<sup>107</sup> The police had reportedly not taken any action, as no formal investigation had taken place, and the perpetrators had not been prosecuted<sup>108</sup>.

Sorcery-related violence continues to endanger the lives of women and girls. Because sorcery accusations often arise in response to an unexpected death or illness in a community, the increase in such violence is related to a surge in confirmed cases of Covid-19 in Papua New Guinea in 2021. In March, in Goroka, Eastern Highlands, a 45-year-old woman and her 19-year-old daughter were accused of causing the woman’s husband’s death, believed to be from Covid-19. They were held captive by the husband’s relatives and attacked with hot iron rods. On April 25, 2021 police rescued two women after a group of about 20 men attacked them in Port Moresby. The men accused the women of practicing

<sup>101</sup> Amnesty International. Papua New Guinea 2020. Available at: <https://www.amnesty.org/en/countries/asia-and-the-pacific/papua-new-guinea/report-papua-new-guinea/> (Accessed 16 June 2020)

<sup>102</sup> Report of the Special Rapporteur on violence against women, its causes and consequences, on her mission to Papua New Guinea (18–26 March 2012) Available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G13/121/19/PDF/G1312119.pdf?OpenElement>

<sup>103</sup> PNG repeals sorcery law and expands death penalty, 29 May 2013, Available at: <https://www.bbc.com/news/world-asia-22698668>

<sup>104</sup> Papua New Guinea repeals Sorcery Act while moving closer to executions, 28 May 2013, Available at: <https://www.amnesty.org/en/latest/news/2013/05/papua-new-guinea-repeals-sorcery-act-while-moving-closer-executions/>

<sup>105</sup> Rebecca Kuku, “They Just Slaughter Them”: How Sorcery Violence Spreads Fear Across Papua New Guinea,” The Guardian, November 14, 2020, Available at: [https://www.theguardian.com/world/2020/nov/14/they-just-slaughter-them-how-sorcery-violence-spreads-fear-across-papua-new-guinea?CMP=share\\_btn\\_tw](https://www.theguardian.com/world/2020/nov/14/they-just-slaughter-them-how-sorcery-violence-spreads-fear-across-papua-new-guinea?CMP=share_btn_tw). (accessed March 4, 2021),

<sup>106</sup> See A/HRC/19/44. See also [https://spdb.ohchr.org/hrdb/19th/UA\\_PNG\\_27.09.2011\\_\(3.2011\).pdf](https://spdb.ohchr.org/hrdb/19th/UA_PNG_27.09.2011_(3.2011).pdf), and [https://spdb.ohchr.org/hrdb/19th/AL\\_PNG\\_15.09.2011\\_\(2.2011\).pdf](https://spdb.ohchr.org/hrdb/19th/AL_PNG_15.09.2011_(2.2011).pdf)

<sup>107</sup> Report of the Special Rapporteur on violence against women, its causes and consequences; Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; and Special Rapporteur on the situation of human rights defenders, 27 September 2011, Available at: <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gld=21692>

<sup>108</sup> According to the information received, following a death in their community, HRDs were accused of sorcery and witchcraft by several community members. Between 22 and 24 July, 2011 they were allegedly kept captive and brutally tortured. It is also reported that another woman, Ms. X, was accused by the community of causing death through sorcery. On 1 September 2011, Ms. X and her four daughters were allegedly attacked and raped. Their house was burnt down and they lost all their belongings. Further reports indicate that the victims and human rights defenders have been threatened by the perpetrators. The community has allegedly attempted to pressure the victims to drop the cases and not take them through the formal judicial system.

sorcery and killing a woman who had recently died. The women were treated for severe burns and knife wounds. In November 2020 in East Sepik province, according to the Guardian, five people were killed after being accused of sorcery. Police charged three people with the willful murders of a woman, a teenage student and a 13-year-old-boy, all accused of sorcery.<sup>109</sup>

In 2017, the Special Rapporteur on the environment received information concerning the alleged intimidation, police harassment and reprisal against human rights defender X and his family in connection with his work defending the rights of the Paga Hill Settlement community from illegal land grabbing and forced eviction.<sup>110</sup> In 2015, the Special Rapporteur received allegations of undue restrictions, harassment, intimidation and retaliation against human rights defenders<sup>111</sup> and journalists documenting, and reporting on the situation of asylum seekers held at immigration detention facilities at Manus Island.<sup>112</sup> In 2014, the Special Rapporteur received allegations of acts of intimidation and ill-treatment of two asylum-seekers,<sup>113</sup> one a human rights defender of asylum seekers' rights and the other a witness to the violent incidents that took place between 16 and 18 February 2014 in Manus Regional Processing Centre, Papua New Guinea.<sup>114</sup>

The country ranked as the 137th corrupt nation of 180 countries and was rated as highly corrupt in the global 2019 Corruption Perceptions Index.<sup>115</sup> There are allegations of corruption amongst the police force.

<sup>109</sup> Human Rights Watch. Violence Against Women Accused of Sorcery (Available at: <https://www.hrw.org/news/2021/06/11/papua-new-guinea-violence-against-women-accused-sorcery>) (Accessed 11 June 2021)

<sup>110</sup> Open Communication by Mandates of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on the situation of human rights defenders, 19 September 2017 Communication No AL 1/2017 Available at: <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gld=23310>

<sup>111</sup> According to the information received, these human rights defenders and journalists were documenting and reporting on the conditions of detention and allegations of ill-treatment in these centres, which was alleged to amount to torture.

<sup>112</sup> Communication by Mandates of the Working Group on the use of mercenaries; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the situation of human rights defenders; the Special Rapporteur on the human rights of migrants; and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, 12 November 2015, PNG 1/2015 Available at: <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gld=17510>

<sup>113</sup> According to the information received, two asylum-seekers were held incommunicado in the Manus Regional Processing Centre, an immigration detention centre whose security is operated by a private company contracted by the Australian Government, for three and four days respectively, tied to chairs and threatened with physical violence, rape and criminal prosecution if they refused to retract the statements they had made regarding the violent incidents of February 2014.

<sup>114</sup> Communication by Mandates of the Special Rapporteur on the freedom of opinion and expression, human rights defenders, migrants, torture, mercenaries, 17 November 2014, PNG 4/2014 The violence surrounding the protests in February 2014 and the situation of asylum-seekers in the Manus Regional Processing Centre were the subject of two previous communications dated 27 March 2014, see A/HRC/27/72, case nos. PNG 2/2014 and AUS 1/2014. Available at: <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gld=17682>

<sup>115</sup> <https://www.transparency.org/country/PNG>



Photo Credit: OHCHR, Regional Office for the Pacific.

# PAPUA NEW GUINEA'S CHALLENGES AND RECOMMENDATIONS



## 1 CHALLENGES FACED BY HRDs AND GOVERNMENTS



## RECOMMENDATIONS

### GOVERNMENT

- > Ratify the remaining core human rights treaties, and expedite ratification of the Convention against Torture and Other Cruel;
- > Inhuman or Degrading Treatment and Punishment, the Second Optional Protocol to the International Covenant on Civil and Political Rights aiming to the abolition of the death penalty;
- > Decriminalize online defamation and place it within a civil code that is in accordance with international standards;
- > Review the Criminal Code as a step towards repealing provisions that criminalize same-sex sexual relations, and to support the work of HRDs advocating the rights of LGBTI;
- > Establish a legislative framework to ensure the legal accountability of business enterprises and their subsidiaries operating in or managed from its territory and establish mechanisms for the investigation and redress of violations of rights;
- > Review existing laws that limit rights to freedom of expression and freedom of association and provisions that undermine the work of HRDs and introduce legislation protecting HRDs.

### HRDs

- > Advocate for legislation that supports the work of HRDs and protects HRDs, in line with international human rights treaties;
- > Review discriminatory legislation, highlight gaps and work with Government to ensure that all legislation conform to international standards;
- > Develop and support community campaigns and programmes to address discrimination and stigma against HRDs especially those with disabilities and give priority to measures that facilitated their full inclusion to all public buildings and public spaces and all service delivery and transportation in all areas.

### GOVERNMENT

- > Establish a National Human Rights Institution and/or Strengthen the Ombudsman Commission's ability to investigate complaints, including with impartiality and independence, made by HRDs and provide support to HRDs to push the human rights agenda and that can dialogue with HRDs spread across PNG in the form of regular institutionalised coordinated consultations.
- > Ensure that the Independent Commission against Corruption is sufficiently well-funded and well-staffed as to enable investigations under the Whistleblower Act 2020 and the Organic Law on the Independent Commission against Corruption Law 2019.

### GOVERNMENT

- > Introduce legislation that ensures that the detention of asylum seekers or refugees is only applied as a measure of last resort, that establishes statutory time limits for detention and that ensures access to an effective judicial remedy to review the necessity of detention; and that it allow independent bodies such as OHCHR to access to monitor the conditions of asylum seekers and refugees who are detained in Papua New Guinea.

### HRDs

- > To ensure that all persons seeking asylum enjoy procedural guarantees and that refugee status determination decisions can be appealed on the merits.



## Harassment, and Threats made against HRDs including Gender Based Violence and Sorcery Accusation Related Violence

## Lack of access to justice

4

### GOVERNMENT

- Strengthen legislation to criminalize all forms of GBV including sexual harassment and introduce measures that limit the use of contentious factors in the sentencing of GBV cases including de facto provocation, reconciliation, and other gender stereotypes and victim-blaming.
- Publicly denounce human rights violations and abuses against HRDs and ensure investigation and prosecution of offenders and compensation to victims and end impunity.
- Strengthen the capacity of the police and eliminate abuse, corruption and the excessive use of force,
- Investigate and promptly prosecute police officers and people who commit criminal offences such as torture, and sexual violence and prohibited forms of ill-treatment as well as Sorcery Accusation Related Violence (SARV).
- Intensify awareness and education campaigns about SARV so that the general public is encouraged to report incidents.
- Provide support and work in partnership with HRDs to ensure protection of HRDs who work to put an end to the SARV.

### HRDs

- To lead and take an active role in advocating for and daring up protection programmes for HRDs, in consultation with the Government.
- Create awareness on the UN Declaration on HRDs at national level in the indigenous language.
- Demand inquiries into defamation of HRDs, threats and attacks against them, and criminal prosecution of the perpetrators.
- To join network of HRDs for solidarity and protection in particular to intensify its efforts to take immediate action to put an end to Sorcery Accusation Related Violence (SARV).

5

### GOVERNMENT

- Intensify efforts to address the physical and economic barriers that impeded access for HRDs to justice, in particular with regard to WHRDs strengthen the judicial system, including through the allocation of sufficient human, technical and financial resources;
- Support a gender-responsive justice system so that survivors have equal access to justice;
- Develop and strengthen codes of conduct and induction training for law enforcement personnel while instituting complaints and feedback mechanisms for victims of abuse, corruption and excessive use of force, including a toll-free hotline, and create strong accountability processes to respond to misconduct.

### HRDs

- Provide capacity building to stakeholders in the formal and informal justice sector especially the judges, community leaders, lawyers, police officers and other law enforcement officials;
- Translate the various international instruments and Declaration on HRDs into the indigenous languages of its people and make these widely available to create more awareness and an enabling environment.

# SOLOMON ISLANDS



## OVERVIEW

Solomon Islands is a Small Islands Developing State (SIDS) with Least Developed Country (LDC) status.<sup>116</sup> Solomon Islands is one of the most culturally diverse countries with more than 120 indigenous languages. Nation building is a work in progress with its populations scattered across more than a thousand islands. More than 80% of Solomon Islands populations are located in the rural areas of the country.<sup>117</sup> Between 1998 and 2003, Solomon Islands went through a period of internal unrest referred to as “the tensions”, which resulted in violent clashes, including killings, torture, internal displacement and other human rights violations.

Due to climate change, sea levels in the Solomon Islands are rising at unprecedented rates and are “amongst the highest globally.”<sup>118</sup> In 2016, five of the Solomon Islands were lost due to rising sea levels and large swathes of land in six inhabited islands had been inundated.<sup>119</sup> Two islands lost entire villages, which resulted in forced ad hoc relocations not planned or funded by the government but rather by the communities themselves. Because Indigenous communities largely rely on the land for subsistence, forced relocation also threatens their right to food and their economy as well as loss of culturally significant sites and indigenous lands. Timber overexploitation increased the risk of flooding for local communities and exposed cleared land and villages to stronger winds, endangering agriculture and putting settled areas at greater risk during storms. Communities residing on low-lying atolls continued to be under threat of sinking from rising sea levels.

<sup>116</sup> List of SIDS, Office of the High Representative for the Least Developed Countries, Landlocked Developing Countries and Small Island Developing States, United Nations. <https://www.un.org/ohrrls/content/list-sids> (Accessed: 19 June 2021)

<sup>117</sup> Solomon Islands National Submission on Climate Change and Possible Security Implications towards the United Nations’ Secretary General’s Report to the United Nations’ General Assembly 64th Session, Permanent Mission of the Solomon Islands to the United Nations [https://sustainabledevelopment.un.org/content/dsd/resources/res\\_pdfs/ga-64/cc-inputs/Solomon\\_Island\\_CCIS.pdf](https://sustainabledevelopment.un.org/content/dsd/resources/res_pdfs/ga-64/cc-inputs/Solomon_Island_CCIS.pdf)

<sup>118</sup> Simon Albert et al 2016 Environment Research Letters, 11 <https://iopscience.iop.org/article/10.1088/1748-9326/11/5/054011/pdf> (Accessed: 19 June 2021)

<sup>119</sup> The Guardian (10 May 2016) <https://www.theguardian.com/environment/2016/may/10/five-pacific-islands-lost-rising-seas-climate-change>

## Human rights defenders and civil society

The virtual scoping mission to Solomon Islands was carried out from 12 January 2021 to 5 February 2021. HRDs in the Solomon Islands encompass those working with church groups, customary landowning groups, civic groups, women's organizations, disability groups, agricultural or farmers associations, environmental groups, community and youth organizations, sports clubs, trade unions, and advocacy and governance groups. Many HRDs and civil society organisations are not registered. Those organizations that do register generally do so either under the Cooperative Societies Act (1953) or the Charitable Trusts Act (1964) in Solomon Islands.

General consensus amongst CSOs is that the legal and regulatory environment in Solomon Islands is relatively unoppressive. It is not difficult to establish and operate as a CSO in the country. However, once set up, there is little support by government for their operation. The government does partner with civil society on a range of initiatives, notably the Coral Triangle Initiative, involving various ministries plus NGOs such as The Nature Conservancy, World Wide Fund for Nature, the World Fish Center, and the Foundation for Peoples in the South Pacific as well as SafeNet, a network to provide services to victims of domestic violence and abuse, for which the government has signed an MOU with civil society.

Women's organizations proliferate in Solomon Islands, both at the national and village level. It has been estimated that there are 3,000 provincial and community women's organizations, many of these church-based.<sup>120</sup> The church is a large and important component of civil society in Solomon Islands. With 98% of the population identifying as Christian, there is a wide variety of denominations and faiths, with Christians belonging to one of five main churches: the Anglican Church of Melanesia, the Catholic Church, the South Seas Evangelical Church, the Seventh Day Adventist Church, and the United Church.<sup>121</sup>

Development Services Exchange was formed in 1984 and is the umbrella coordinating body for civil society in Solomon Islands. The Development Services Exchange (DSE) plays an important coordination, facilitation, and networking role, building collaborations and cooperation between HRDs, the government, and donors in Solomon Islands. DSE has 75 actively registered members throughout Solomon Islands. The Solomon Island Council of Women is the umbrella women's NGO. Other organisations that conduct work in Solomon Islands and interact with human rights defenders include UN agencies such as OHCHR, UNWomen, UNICEF and stakeholders include Pacific Women, OXFAM, SPC – HRSA, World Vision, AVI/Plan International, Development Service Exchange, YWCA, Women's Right Movement – WRAM and Solomon Island Planned Parenthood Association.

There are several important and intersecting concepts for understanding the perception of the work of HRDs in Solomon Islands. Wantok, or "one talk," describes the ties that bind communities and the expectation of reciprocity and mutual obligation of relations bound by social or geographical associations. Wantokism, in addition to serving as an informal form of social welfare and support, also has been argued to have the potential to be a check against corrupt behavior. Another important concept is the focus on the local over national, translating to a lack of "sense of nation" and a lack of broad community understanding on the role that a national government should play, partly in response to the fact that the state reach does not extend far outside Honiara.

<sup>120</sup> The Asian Development Bank, 2017 Civil Society Brief: Solomon Islands, Available at: <https://www.adb.org/sites/default/files/publication/228836/csb-sol.pdf>

<sup>121</sup> Ibid.

Much of the focus of HRDs is at the local or community level, rather than at the national level.

### Enabling environment for human rights defenders

There is no independent human rights institution although progress was made through scoping missions to assess the feasibility of an independent NHRI in 2012 and again in 2019.<sup>122</sup> While Government continued to strengthen the work of its established integrity institutions, including the Office of the Ombudsman, the Leadership Code Commission and the Anti-Corruption Commission, there exists lack of information about the mandate of the Ombudsman of Solomon Islands or national mechanisms that are in place in Solomon Islands to protect HRDs.

The Constitution, being the supreme law of the country does not contain a guarantee of substantive equality between women and men and provides for exceptions for discrimination that is based on customary law in areas such as adoption, marriage, divorce, burial, devolution of property upon death, tenure, resumption and acquisition of land. Solomon Islands still criminalizes same-sex relations.<sup>123</sup> Discriminatory provisions in the Penal Code and the Criminal Procedure Code, the Islanders' Divorce Act, the Affiliation, Separation and Maintenance Act, the Labour Act and the Citizenship Act still exist with delays in its review.<sup>124</sup>

The Solomon Islands Constitution recognises the customary law and common law and equity as sources of laws of Solomon Islands.<sup>125</sup> The Committee on the Elimination of Discrimination against Women noted an existence of a plural legal system, namely the coexistence of customary law and the formal justice system. With regard to the sexual exploitation of children, child trafficking and child marriage, the Penal Code (Amendment) (Sexual Offences) Act 2016 criminalized all forms of sexual violence, including forced marriage and child prostitution. However women and girls are subjected to bride-selling under customary laws and corporal punishment of children is a continuing practice that affects girls. While customs on "bride price" vary according to provinces and language groups, WHRDs agreed that the practice encourages an attitude in husbands to treat wives like property. Almost two thirds (64%) of women aged 15 to 49 having experienced physical and/or sexual violence in an intimate relationship.<sup>126</sup>

It is the HRDs that run organizations providing counselling and shelter services for women victims of violence but they operate with insufficient resources. There is no funding provided by the Government. In the last UPR cycle, Solomon Islands welcomed all recommendations<sup>127</sup> addressing gender based violence, in particular its implementation. It expressed commitment to providing access to justice for survivors of gender based violence and a safe avenue for them to access assistance and recovery.<sup>128</sup>

<sup>122</sup> Scoping mission of 2012 was conducted by OHCHR and APF. Another Scoping Mission study was conducted in 2019, under the Ministry of Women, Youth, Children and Family Affairs. The scoping study highlighted options for the Government to consider which includes, drafting a National Human Rights Action Plan that would sit alongside the National Development Strategy (2016 – 2035), expanding the mandate of the existing Office of the Ombudsman to include the promotion and protection of human rights or to establish an independent National Human Rights Institution.

<sup>123</sup> Penal Code [Solomon Islands]; sections 160, 161 & 162 of Chapter 26, available at [http://www.paclii.org/sb/legis/consol\\_act/pc66/](http://www.paclii.org/sb/legis/consol_act/pc66/)

<sup>124</sup> Concluding observations on the combined initial to third periodic reports of Solomon Islands, 14 November 2014, CEDAW/ C/ SLB/CO/ 1-3

<sup>125</sup> Chapter VII, Articles 75 and 76 of the Constitution of Solomon Islands 1978 <http://www.parliament.gov.sb/files/business&procedure/constitution.htm>

<sup>126</sup> Secretariat of the Pacific Community. 2009. Solomon Island Family Health and Support Study: A Study on Violence Against Woman and Children. Noumea: Secretariat of the Pacific Community

<sup>127</sup> Accepts 46, 95, 96, 118, 119, 120, 121, 122, 123, 125, 126, 127, 128, 129

<sup>128</sup> Report of the Working Group on the Universal Periodic Review to Human Rights Council, Solomon Islands UPR, 18 September–1 October 2021 Available at: <https://undocs.org/en/A/HRC/48/13/Add.1>





There is an absence of specific anti-discrimination legislation aimed at recognizing all forms of discrimination against women, including multiple and intersecting discrimination, establishing mechanisms to promote equality and ensuring remedies to victims of discrimination.<sup>129</sup>

There is a disconnect between the capital and the rest of the country with regard to access to justice. This is reflected in the lack of infrastructure, and human and financial resources, and the lack of sufficient judges, magistrates and lawyers in the provinces outside Honiara. HRDs informed that there is a need to expand services beyond the capital and to reactivate the circuit courts in order to facilitate access to judicial services for victims of violence living outside the capital. There is lack of access to the formal court systems in provinces outside Honiara. There is lack of effective remedies and redress available to women in both the traditional justice and formal justice systems.<sup>130</sup>

HRDs are subjected to stigmatization and ostracism by community leaders, faith-based groups, families and communities who consider them to be threatening religion, honour or culture through their work. This is common with respect to defenders of LGBTI rights and defenders of gender equality and sexual and reproductive rights. Such harassment reportedly occurred online as well as offline, at times involving direct threats to their personal safety. Religious conservative groups frequently express opposition to the underlying claims for recognition advocated for by defenders of LGBTI rights and by defenders of sexual reproductive rights.

Journalists, particularly those working to expose corruption or corporate malpractice, reportedly faced harassment and abuse, particularly through social media, seeking to delegitimize their work. Corruption was a pervasive problem in the government, especially in the forestry and fishing sectors. While the law provides criminal penalties for corruption by officials, its implementation is inconsistent, and officials sometimes engaged in corrupt practices with impunity. There were reports of government corruption.<sup>131</sup>

Land and environmental rights defenders are particularly affected by this harassment and threats and are often publicly described as “anti-development” and “radical anti-mining groups”, and accused of pursuing selfish or corrupt interests since they entail preventing the exploitation of economic resources, diverting parts of the revenue from such exploitation to affected communities or changing the method by which resources are extracted. The country’s main labor union, the Solomon Islands National Union of Workers, was disbanded by court order in 2013 after lengthy litigation over an illegal strike by plantation workers.<sup>132</sup> However, labor activists registered a new entity, the Workers Union of Solomon Islands (WUSI), in 2014.<sup>133</sup>

There is failure on the part of authorities to register some complaints of threats and harassment of HRDs brought to their attention. Intervention by law enforcement officials in situations of risk or attacks varied markedly between regions and areas. There is limited capacity of the police to deal with complaints especially from women about violations of their rights in a gender-sensitive manner.

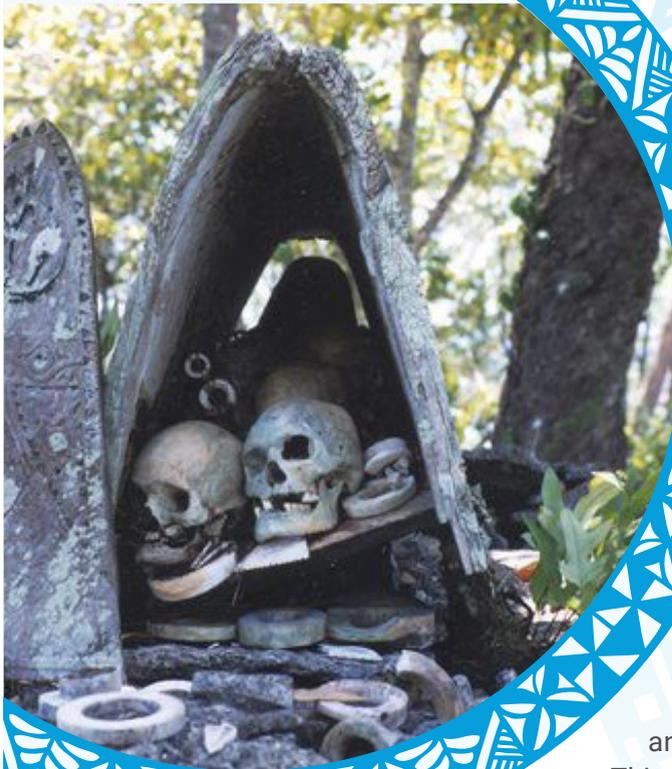
<sup>129</sup> Concluding observations on the combined initial to third periodic reports of Solomon Islands, 14 November 2014, CEDAW/ C/ SLB/CO/ 1-3

<sup>130</sup> Concluding observations on the combined initial to third periodic reports of Solomon Islands, 14 November 2014, CEDAW/ C/ SLB/CO/ 1-3

<sup>131</sup> Solomon Islands 2020 Human Rights Report <https://www.state.gov/wp-content/uploads/2021/03/SOLOMON-ISLANDS-2020-HUMAN-RIGHTS-REPORT.pdf>

<sup>132</sup> Freedom House, 2020 Report <https://freedomhouse.org/country/solomon-islands/freedom-world/2020>

<sup>133</sup> Solomons, New Union Formed For Public And Private Workers, 30 July 2014, Pacific Islands Report <http://www.pireport.org/articles/2014/07/30/solomons-new-union-formed-public-and-private-workers>



Politicians and elites sometimes use legal and extralegal means to intimidate journalists.<sup>134</sup> There has been recent attempts to ban social media platforms such as facebook and regulate freedom of expression and speech by certain politicians due to criticisms made online and “abusive language against ministers and the prime minister” and alleged “defamation of character”.<sup>135</sup> In late April 2019, demonstrators in Honiara rallied against the prime minister; police used tear gas to disperse protesters after a local hotel was damaged, and arrested at least 30 people.<sup>136</sup>

There is lack of access to funding available for WHRDs based in rural and remote areas of the country. The country provides ample opportunities to do high-visibility ‘good’ works, and thus there is a strong presence of foreign NGOs in the country. This scenario impacts national CSOs and human rights defenders. Human rights defenders cannot compete with external NGOs which have more funds and greater levels of capacity. International agencies, including bi-lateral agencies recruit staff directly from the local CSO ranks, depleting their manpower. There are few domestic sources of funding. Apart from a few which have a solid platform of donor support, CSOs and human rights defenders are constantly on the lookout for new funding sources. CSOs working with human rights defenders in particular are also consistently confronted with uncertainty in the tenure of staff positions due to the uncertainty of funding sources.

<sup>134</sup> Freedom House, 2020 Report <https://freedomhouse.org/country/solomon-islands/freedom-world/2020>

<sup>135</sup> Amnesty International, Solomon Islands: Total Facebook ban over criticism of government is brazen attack on freedom of expression, November 2020, <https://www.amnesty.org/en/latest/news/2020/11/solomon-islands-facebook-ban-due-to-criticism-of-government-is-brazen-attack-on-freedom-of-expression/>

<sup>136</sup> Pacific Beat news, by Stephen Dziedzic and Evan Wasuka 24 April 2019 <https://www.abc.net.au/news/2019-04-24/manasseh-sogavare-becomes-soloman-islands-prime-minister-again/11043578>



Photo Credit: OHCHR, Regional Office for the Pacific.

# SOLOMON ISLAND'S CHALLENGES AND RECOMMENDATIONS

Review all discriminatory legislation

Lack of effective policies, legislation and regulations to prevent, investigate, punish and redress human rights violations caused by business activities on environment.

Harassment, and Threats made against HRDs including Gender Based Violence



## CHALLENGES FACED BY HRDs AND GOVERNMENTS

1

## RECOMMENDATIONS

2

3

### GOVERNMENT

- > Ratify the remaining core human rights treaties;
- > Legislative review of existing laws in the Penal Code and the Criminal Procedure Code, the Islanders' Divorce Act, the Affiliation, Separation and Maintenance Act, the Labour Act and the Citizenship Act to bring it in conformity to international standards;
- > Decriminalize defamation and place it within a civil code in accordance with international standards.

### HRDS

- > Advocate for legislation that supports the work of HRDs and protects HRDs, in line with international human rights treaties;
- > Review discriminatory legislation, highlight gaps and work with Government to ensure that all legislation conform to international standards;
- > Develop and support community campaigns and programmes to address discrimination and stigma against HRDs especially those working on LGBTI rights;
- > To advocate to be part of a national mechanism to coordinate and track national follow-up and implementation of the treaty obligations, and recommendations.

### GOVERNMENT

- > Take urgent steps to ensure that a comprehensive and independent environmental and human rights impact assessment was undertaken and that communities were consulted prior to any business operations, particularly in the forest and mining industries; and ensure that the Guiding Principles on Business and Human Rights were fully respected in practice;
- > Implementing measures to ensure that complaints by HRDs to the authorities are registered without exception;
- > Ensure effective protection against violence against women and children, including sexual abuse and exploitation and domestic violence, with a focus on communities affected by logging activities.

### HRDs

- > Continue monitoring, investigating and documenting specific cases on the use of exploitation of natural resources and how it infringes the rights of local communities to dispose freely of their lands, territory, and natural resources as well as discriminatory customary practices and make findings available and shared with the wider international community to define the most important and effective entry points for strategic interventions;
- > To collaborate with Government to include human rights approach in laws related to, environment and business.

### GOVERNMENT

- > To establish a national human rights institution in accordance with the Paris Principles, which can seek dialogue with HRDs in the form of regular institutionalised consultations without further delay, and seek technical assistance from the United Nations;
- > To strengthen legislation to criminalize all forms of GBV including sexual harassment and introduce measures that limit the use of contentious factors in the sentencing of GBV cases including de facto provocation, reconciliation, and other gender stereotypes and victim-blaming;
- > To issue an open invitation to UN Special Rapporteur on the situation of HRDs to provide credible information on the HRDs that can inform policy and legislation;
- > Publicly denounce human rights violations and abuses against HRDs and ensure investigation and prosecution of offenders and compensation to victims and end impunity;
- > Ensure continuous training for police officers; and provide financial resources and expand crisis centres to all provinces of Solomon Islands to respond to survivors of violence;

### HRDs

- > To lead and take an active role in advocating for a national mechanism and strategy for HRDs to coordinate and implement protection as well as empowerment measures for HRDs who are at risk;
- > To promote the implementation of the UN Declaration on HRDs at national level;
- > Demand inquiries into defamation of HRDs, threats and attacks against them, and criminal prosecution of the perpetrators;
- > Work in partnership with the Government to train security personnel, on human rights and comply with them at all times and sensitize them on issues and challenges faced by HRDs, including women HRDs;
- > Form a network of HRDs for solidarity and protection.



General lack of statistical data which were necessary for accurately assessing the situation of HRDs, determining the magnitude and nature of discrimination, making informed and targeted policies and systematically monitoring and evaluating progress achieved towards the realization of substantive equality.

Disproportionate impact of climate change, drought, rising sea levels and other weather-related disasters on HRDs

Lack of access to justice

4

#### GOVERNMENT

- Intensify efforts to address the physical and economic barriers that impeded access for HRDs to justice, in particular with regard to WHRDs strengthen the judicial system, including through the allocation of sufficient human, technical and financial resources;
- To support a gender-responsive justice system so that survivors have equal access to justice, including by providing training and capacity-building for court personnel, strengthening the issuing, monitoring and enforcement of protection and interim protection orders, institutionalizing and resourcing gender-responsive legal aid;
- Implement measures to decentralize justice administration to people living in remote areas in the provinces; implement a plan on legal information and outreach within the justice sector, including a referral network linked to existing initiatives, such as the SAFENET expansion and community policing committees.

#### HRDs

- Provide capacity building to stakeholders in the formal and informal justice sector especially the judges, community leaders, lawyers, police officers and other law enforcement officials;
- Translate the various international instruments and Declaration on HRDs into the indigenous languages of its people and make these widely available to create more awareness and an enabling environment.

5

#### GOVERNMENT

- To improve its data-collection system, ensuring that data were disaggregated by relevant factors, ensure that data and indicators were shared among relevant ministries and take into account the conceptual and methodological framework set out in the guidelines of the Office of the United Nations High Commissioner for Human Rights (OHCHR) entitled Human Rights Indicators: A Guide to Measurement and Implementation.

#### HRDs

- To work hand in hand with Government to develop an indicator system on gender-related issues to improve the collection of data and in this regard to seek technical assistance from the relevant United Nations agencies where necessary.

6

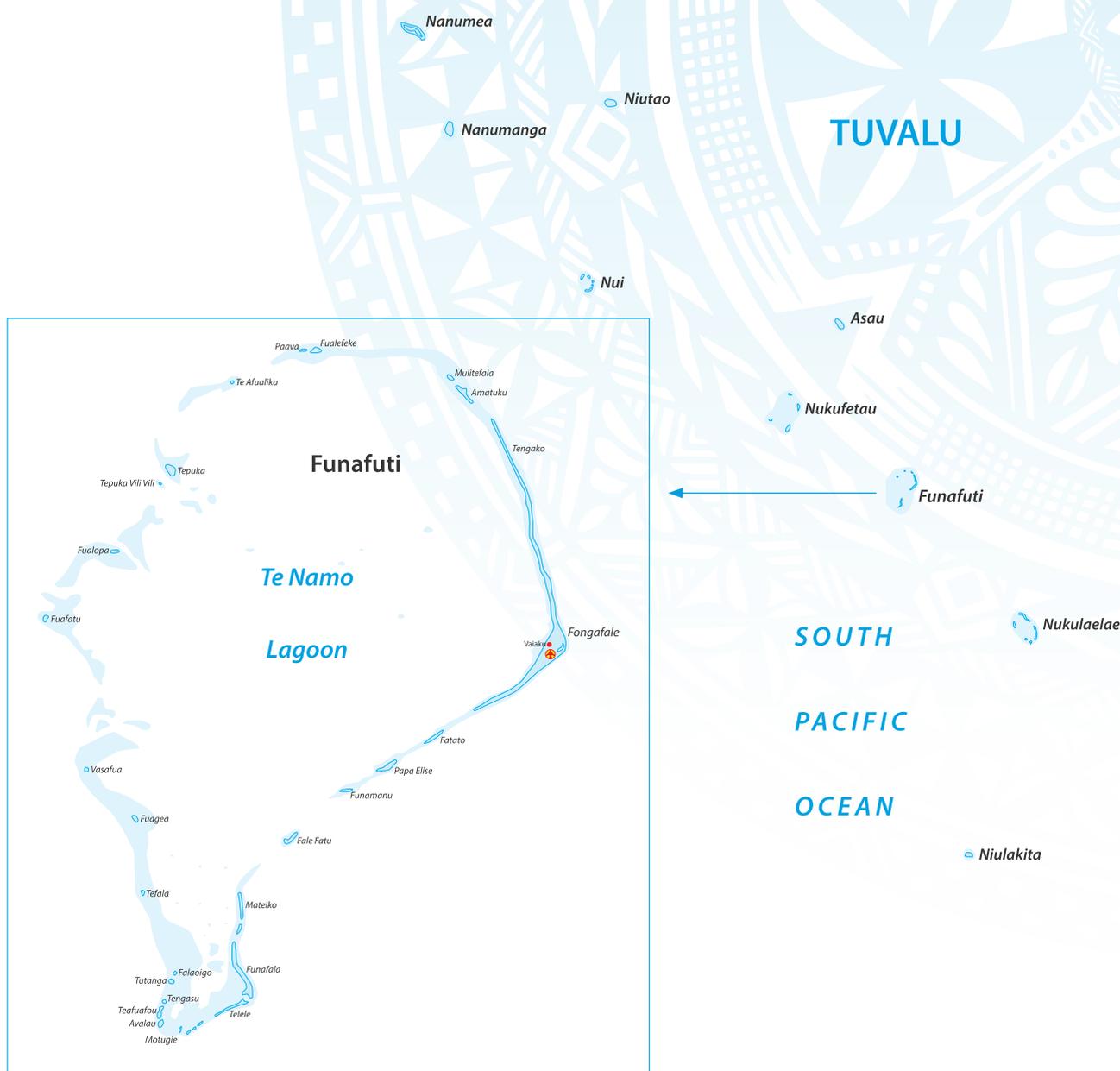
#### GOVERNMENT

- Develop a comprehensive disaster-sensitive social protection system and ensure that the special vulnerabilities and needs, were taken into account.
- To draw up national protection programmes for HRDs and abide by them at all times with high priority to ensure human rights defenders, indigenous communities and the right to freedom of expression are protected in raising climate change and environmental issues, including in relation to extractive industries;
- Ensure HRDs participation, in the development of climate and environmental policies.

#### HRDs

- Collaborate with Government to include human rights approach in laws related to climate change, environment and migration
- Strengthen its Environmental Human Rights Defenders Network for solidarity and coordinated advocacy and protection.
- Advocate for a review of the Government Commitment to address logging and mining issues and to ensure adherence to the UN Guiding Principles on Business and Human Rights.

# TUVALU



## OVERVIEW

Tuvalu is a group of nine islands in the Pacific which became independent from the United Kingdom in 1978. The islands are coral atolls or consist of land rising from the seabed. Formerly known as the Ellice Islands, all are low-lying, with no point on Tuvalu being higher than 4.5m above sea level. Tuvalu's outer islands are largely isolated, hindering communication and making it difficult to provide essential supplies in the face of or following weather-related destruction.<sup>137</sup>

Tuvalu is a constitutional monarchy with a parliamentary democracy. The head of state is Her Majesty Queen Elizabeth II, represented by the Governor-General who must be a citizen of Tuvalu. The head of government is the Prime Minister, who is elected by members of parliament. The cabinet is appointed

<sup>137</sup> COP23, Tuvalu. Available at: <https://cop23.com.fj/tuvalu/> (Accessed: 23.06.2021)

by the Governor-General on the recommendation of the Prime Minister. The unicameral Parliament or Fale I Fono has 15 seats and members are elected by a popular vote for a term of four years. The national police service, under the Office of the Prime Minister, maintains internal security. The country has no military force.

Traditional leaders play a role in the informal political leadership of Tuvalu. Traditional leaders include chiefs (aliki), elders (toeaina) and the falekaupule system, which is the traditional assembly in each island composed in accordance with the Aganu (local customs and usages of an island).<sup>138</sup>

Local politicians have campaigned against climate change, arguing that it could see the islands swamped by rising sea levels.<sup>139</sup> Creeping tides routinely engulf the island group, degrading its shoreline, eroding its natural ecosystems and threatening the nation's very existence.

### Human rights defenders and civil society

OHCHR conducted the scoping mission to Tuvalu from 17 – 21 January 2020, focusing on engagements through personal face to face interviews and group discussions with HRDs in Tuvalu's capital, Funafuti.

Tuvalu's Association of NGOs (TANGO) is an umbrella organisation for 48 member NGOs and CSOs and is Tuvalu's representative on Pacific Islands Association of NGOs (PIANGO).<sup>140</sup> TANGO assists HRDs in their human rights and developmental work through capacity-building and networking. HRDs are mostly employed or associated with civil society organisation based in Funafuti.

The Tuvalu Family Health Association raises awareness for sexual and reproductive health and rights. The Tuvalu Red Cross Society, although not an NGO, is active in climate change and disaster management, amongst other areas. Recent campaigns focused on the impacts of climate change, particularly the right to health and life. Several CSOs and NGOs are working in education, including the National Preschool Council, the Preschool Teachers Association and Education for All. Tuvalu National Council of Women (TNCW) also continues to assist women by conducting awareness sessions on their rights and encouraging economic empowerment. Fusi Alofa Association is the only organisation advocating for persons with disabilities (PWDs); however, many NGOs include disability components in their work. There are also faith-based communities active in the civil society space.<sup>141</sup> Tuvalu only has one registered trade union: the Tuvalu Overseas Seamen's Union (TOSU) which represents workers on foreign ships. In 2019, the Tuvalu Women in Maritime Association was launched, focusing on achieving gender equality and empowering all women and girls in the maritime sector. Live and Learn Environmental Education Society was registered with the purpose of promoting greater understanding of human and environmental sustainability through education and communication. There are also faith-based communities active in the civil society space.

One of the main roles of the Tuvaluan civil society is to mobilise environment and health awareness. Tuvalu is the first nation in the world threatened to be submerged due to the adverse effects of climate change. The environmental civil society organisation, Alofa Tuvalu was formed to devise coping and mitigating mechanisms to deal with the threat of Tuvalu submerging. The NGO has several hundreds of members and receives support from the governmental agencies and corporate bodies.<sup>142</sup>

<sup>138</sup> United Nations Office on Drugs and Crime. Country review report of Tuvalu, 21 February 2017. Available at: [https://www.unodc.org/documents/treaties/UNCAC/CountryVisitFinalReports/2017\\_02\\_28\\_Tuvalu\\_Final\\_Country\\_Report.pdf](https://www.unodc.org/documents/treaties/UNCAC/CountryVisitFinalReports/2017_02_28_Tuvalu_Final_Country_Report.pdf)

<sup>139</sup> <https://www.bbc.com/news/world-asia-pacific-16340072>

<sup>140</sup> <http://www.piango.org/our-members/member-countries/tuvalu/>

<sup>141</sup> OHCHR & SPC-HRSD. Human Rights Situational Analysis Report 2020

<sup>142</sup> Amnesty International, National NGO expertise in Tuvalu. Available at: [https://www.commonwealthofnations.org/sectors-tuvalu/civil\\_society/national\\_ngos\\_civil\\_society/](https://www.commonwealthofnations.org/sectors-tuvalu/civil_society/national_ngos_civil_society/) (Accessed on: 23.06.2021)

Other prominent civil society organisations in Tuvalu include the Tuvalu National Council of Women and the Tuvalu National Youth Council. The Tuvalu National Council of Women is working to empower women; whilst the Tuvalu National Youth Council is encouraging developmental youth projects and is advocating the government and donors to provide resources for youth development projects.<sup>143</sup>

HRDs reportedly operate without interference from government. Many civil society organisations receive support in the form of an annual small grant from the government to support their core costs. Given the small size and closeness of Tuvaluan society, close community ties aid CSOs in mobilising resources, particularly labour, in times of need. CSOs in Tuvalu have strong local networks through which they obtain financial assistance. Overall, the infrastructure and space where WHRDs operate are often in their homes save for the well-established faith-based organisations that have provided Office spaces and meeting spaces. There is a lack of facilities to support office work and administration in terms of proper lighting, internet and digital access, and office products. The large CSOs in Tuvalu also have networks with organizations abroad, largely enabled by ICT infrastructure.<sup>144</sup> CSOs with regional networks receive funding support for office spaces and staffing.



### Enabling environment for human rights defenders

Tuvalu has been undergoing a constitutional review process since 2016, which was halted after parliament was dissolved in July 2019. Elections took place in September 2019 and it is a matter for the parliament to make a decision on the review.<sup>145</sup> The current constitution does not recognise the need for gender equality and the inclusion of marginalised populations such as persons with disabilities. In relation to equality and non-discrimination, Tuvalu noted in its first report to the CRPD Committee that changes resulting from the constitutional review and the new NHRI Act 2017 were expected to address areas of concern identified in the UPR and other UN Committee recommendations.<sup>146</sup>

The Committee on the Rights of the Child, while welcoming the ongoing constitutional review process, raised concern over the insufficient steps taken to harmonize its legislative framework with that of international conventions.<sup>147</sup>

In October 2017, the National Human Rights Institution Act (NHRI) Act was passed. The Act establishes an NHRI to advocate and promote respect for human rights in Tuvalu and to encourage the maintenance and development of harmonious relations between individuals and among diverse groups in Tuvaluan society. The Act gives the Ombudsman additional powers to promote and protect human rights.

<sup>143</sup> Amnesty International, National NGO expertise in Tuvalu. Available at: [https://www.commonwealthofnations.org/sectors-tuvalu/civil\\_society/national\\_ngos\\_civil\\_society/](https://www.commonwealthofnations.org/sectors-tuvalu/civil_society/national_ngos_civil_society/) (Accessed on: 23.06.2021)

<sup>144</sup> UNDP, A Capacity Assessment of CSOs in the Pacific: Six Country Profiles, Available at: [file:///C:/Users/RELESH~1/AppData/Local/Temp/UNDP\\_PC\\_DG\\_A\\_Capacity\\_Assessment\\_of\\_CSOs\\_in\\_the\\_Pacific\\_Six\\_Country\\_Profiles.pdf](file:///C:/Users/RELESH~1/AppData/Local/Temp/UNDP_PC_DG_A_Capacity_Assessment_of_CSOs_in_the_Pacific_Six_Country_Profiles.pdf)

<sup>145</sup> Tuvalu constitutional review project report, January – July 2018. Available at: <https://www.undp.org/content/dam/fiji/docs/TuvaluCRProjectUpdateReport.pdf>

<sup>146</sup> OHCHR & SPC-HRSD. Human Rights Situational Analysis Report 2020

<sup>147</sup> Committee on the Rights of the Child, Concluding observations (2020) CRC/C/TUV/CO/2-5



The NHRI can receive complaints and initiate inquiries into pressing human rights issues as well as undertake activities to promote awareness of fundamental human rights.<sup>148</sup> An amendment to the Leadership Code 2008 gives the Ombudsman a mandate over the NHRI including recruiting another commissioner for the NHRI and staff.<sup>149</sup>

In 2015, the CEDAW Committee expressed concern about women's limited access to justice, in particular on the outer islands, and the difficulties that they face in obtaining effective remedies and redress in the courts, owing to, among other things, customary laws and practices, local and geographical barriers, a lack of information about their rights and limited access to legal assistance.<sup>150</sup>

Persons living on the outer islands did not have rapid access to legal services because the people's lawyer, based on the main island of Funafuti, travelled infrequently to the outer islands. The country had only one attorney in private practice. The Committee noted that there had been an increase in the number of women gaining access to the Office of the People's Lawyer since the appointment of a woman to that office but remained concerned about the lack of financial and human resources of the office. Recommendations were made to address these issues and to collect comprehensive disaggregated data on complaints filed by women and their outcomes.<sup>151</sup>

Sex-related discrimination remains in the Penal Code of 1978, the Marriage Act (Cap. 29), the Falekaupule Act of 1997, Tuvalu Lands Code 1962, the Native Lands Act 1956 and the Labour and Employment Act of 2017.<sup>152</sup> In 2015, the CEDAW Committee raised concerns on the persistence of violence against women, including domestic violence, and the insufficient information about its extent and prevalence; the fact that such violence would appear to be socially legitimized and accompanied by a culture of silence and impunity, owing to women's reluctance to report such cases out of fear of reprisals, stigmatization and inadequate response by the police; the lack of a comprehensive framework for addressing all forms of violence against women, including domestic and sexual violence; the absence of provisions criminalizing marital rape in the Penal Code; and the absence of shelters and the limited availability of medical care, psychosocial counselling and legal assistance for victims.<sup>153</sup>

The law recognizes domestic violence as a criminal offense. Police have a Domestic Violence Unit, a "no-drop," evidence-based prosecution policy in cases of violence against women, and operate a 24-hour emergency line for victims of domestic violence. Police may also issue orders for a person who has committed an act of domestic violence to vacate property, whether or not that individual has rights to that property, if a person at risk of further violence occupies it. The government has a memorandum of understanding with the Tuvalu National Council of Women for handling domestic violence cases. The Women's Crisis Center, operated by the women's council, provided counselling services, but there were no shelters for abused women. Cases of rape and domestic violence often went unreported due to lack of awareness of women's rights and traditional and cultural pressures on victims.<sup>154</sup>

<sup>148</sup> APF 2017. <https://www.asiapacificforum.net/news/tuvalu-passes-bill-establish-nhri/>

<sup>149</sup> OHCHR & SPC-HRSD. Human Rights Situational Analysis Report 2020

<sup>150</sup> Committee on the Elimination of Discrimination against women, Concluding observations on the combined third and fourth periodic reports of Tuvalu (Available at: [file:///C:/Users/Jo%20Nacola/Downloads/N1506678%20\(4\).pdf](file:///C:/Users/Jo%20Nacola/Downloads/N1506678%20(4).pdf)) (Accessed: 20.06.2021)

<sup>151</sup> OHCHR & SPC-HRSD. Human Rights Situational Analysis Report 2020

<sup>152</sup> Report of the Office of the United Nations High Commissioner for Human Rights, Compilation of UN Information to Human Rights Council, Universal Periodic Review, 7–18 May 2018 Available at: <https://documents-ddsny.un.org/doc/UNDOC/GEN/G18/054/98/PDF/G1805498.pdf?OpenElement>

<sup>153</sup> CEDAW Committee, Concluding observations on the combined third and fourth periodic reports of Tuvalu (Available at: [file:///C:/Users/Jo%20Nacola/Downloads/N1506678%20\(4\).pdf](file:///C:/Users/Jo%20Nacola/Downloads/N1506678%20(4).pdf)) (Accessed: 20.06.2021)

<sup>154</sup> Ref World, Country Reports on Human Rights Practices. Available at:

The constitution provides for freedom of expression and information in Article 24. The Committee on the Rights of the Child urged Tuvalu to take measures to ensure freedom of thought, conscience and religion is guaranteed in the constitution and all other relevant laws, including the Religious Organisations Restriction Act 2010,<sup>155</sup> which places the registration of religious organisations at the discretion of island Falekaupule (traditional assembly of elders) and may result in restrictions on public assembly of minority religions. The 2018 UPR recommendations include measures to guarantee freedom of religion or belief, including by addressing concerns from minority religious groups over limitations on their activities in the outer islands.<sup>156</sup>

The law prohibits traditional assemblies of local hereditary elders from imposing physical punishment. In 2015, the CEDAW Committee urged Tuvalu to enhance women's awareness of their rights and the means to enforce them, including by strengthening cooperation with civil society organizations, in particular community-based women's associations.<sup>157</sup> Although under current legislation, women and men had equal rights to kaitasi land, the titleholder was nearly always a man. In practice, the titleholder could transfer or mortgage the land without anyone else's consent. Land inheritance was patrilineal and hindered women's opportunities to be titleholders and legislation in this regard needs amendment to remove discrimination.

Civil society operating in Tuvalu are financially supported by the Government of Tuvalu in part with further support and technical cooperation from regional and international organisations. Funding remains a significant gap for human rights defenders working in Tuvalu in terms of effectively implementing activities and exploring new areas of engagement and workstreams noting that State funding while needed has the potential to affect the autonomy and independence of civil society organisations in holding the State accountable. Mixed feelings were expressed amongst civil society and HRDs about their close relationship with the State.

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<sup>155</sup> CRC/C/TUV/CO/1. Note. 2168

<sup>156</sup> A/HRC/39/8. Available at: <https://documents-ddsny.un.org/doc/UNDOC/GEN/G18/209/66/PDF/G1820966.pdf?OpenElement>

<sup>157</sup> UN CEDAW Committee, Concluding observations on the combined third and fourth periodic reports of Tuvalu (Available at: [file:///C:/Users/Jo%20Nacola/Downloads/N1506678%20\(4\).pdf](file:///C:/Users/Jo%20Nacola/Downloads/N1506678%20(4).pdf)) (Accessed: 20.06.2021)



Photo Credit: Fiji Women's Rights Movement.

# TUVALU'S CHALLENGES AND RECOMMENDATIONS

Presence of discriminatory laws and policies.<sup>1</sup>

Violence Against LGBTI and Women Human Rights Defenders

Disproportionate impact of climate change and environmental disasters causing displacement and increased migration and loss of indigenous land and traditional rights.



## CHALLENGES FACED BY HRDs AND GOVERNMENTS

1



## RECOMMENDATIONS

2

3

### GOVERNMENT

- > Work in partnership with HRDs in law and policy making and intensify efforts towards the harmonization of domestic legislation with the international obligations paying special attention to ensure there is no discrimination in particular review the Tuvalu Lands Code 1962, the Native Lands Act 1956, Penal Code of 1978, the Marriage Act (Cap. 29), the Falekaupule Act of 1997 and the Labour and Employment Act of 2017;
- > In collaboration with relevant partners, including HRDs and faith-based organizations, use the constitutional review process to ensure that the Constitution provides protection from discrimination on all prohibited grounds;
- > Introduce freedom of information legislation in accordance with international standards.

### HRDS

- > Advocate to amend/ repeal all discriminatory laws and discriminatory customary practices and provide insights on the impact of the discriminatory laws and customary practices especially those that undermine the work of human rights defenders.

### GOVERNMENT

- > Develop policies and awareness-raising measures to address the root causes of de facto discrimination, including against girls, children with disabilities and children living in the outer islands;
- > Ensure that cases of HRDs who are victims and survivors of GBV, in particular sexual violence, are promptly investigated, that the accused are prosecuted and that the perpetrators are adequately punished;
- > Ensure that HRDs who are victims and survivors of violence have timely access to remedies, including legal, medical and psychosocial support and financial compensation.

### HRDs

- > Advocate for institutional change within the law enforcement through capacity building of law enforcement and working in partnership with them in responding to sexual and gender-based violence, to prioritize access to justice and support to victims and survivors;
- > Designate safe spaces for victims and survivors of gender-based violence, including sexual violence, throughout the State party's territory. Women defenders must define their own protection strategies in safe spaces. Women-only spaces should cut across age groups and the rural-urban divide, enabling women to raise common concerns, define collective action and, over time, develop strong networks for greater influence and self-protection.

### GOVERNMENT

- > Use human rights-based interventions to protect the human rights of those who are most vulnerable to the slow onset effects of climate change and ensure their meaningful participation in actions to address climate change;
- > Increase access to regular pathways for human mobility that respect, protect, and fulfil the rights of all people on the move, in transit and at international borders;
- > Periodically assess the impact of climate change and natural disasters, particularly on the enjoyment of human rights by the poor and low-income population and other social groups, and support them to be more resilient towards such disasters; and develop sector-based plans and programmes that fully integrated climate resilience.

### HRDs

- > Collaborate with Government to include human rights approach in laws related to climate change environment and migration;
- > Advocate for and enable Gender responsive climate action;
- > Work with Government towards an effective legal framework for protecting the rights of climate migrants and refugees, including indigenous peoples and ensuring that other target groups, were consulted when designing interventions.



There is lack of access to justice for HRDs who operate from and in the outer islands.<sup>2</sup>

Intimidation of HRDs and attacks against reputation and stigmatization of HRDs especially of WHRDs both online and offline.

Lack of access to funding  
There are few domestic sources of funding. CSOs working with HRDs in particular are also consistently confronted with uncertainty in the tenure of staff positions due to the uncertainty of funding sources.

4

5

6

#### GOVERNMENT

- Strengthen the formal justice system: Supporting justice providers and institutions to establish a gender-responsive justice system;
- Strengthen the justice system, including the Office of the People's Lawyer, by enhancing its human, financial and technical resources, deploying judges and legal practitioners to the outer islands, ensuring the provision of free legal aid to women without sufficient means to claim their rights, and continuing to provide adequate funding to the judiciary, including building its resources to allow the judiciary to expand its outreach and services especially on the outer islands.

#### HRDs

- Strengthen linkages with human rights defenders to create a joint movement to lobby for a holistic approach on access to Justice for those who operate from and in outer islands;
- Strengthen the capacity of women's grassroots organizations to facilitate community-based model for gender justice.

#### GOVERNMENT

- Invite the mandate holders of UN special procedures and regional mechanisms, namely the Special Rapporteur on the situation of HRDs to understand the challenges of the HRDs in an informed manner, and implement recommendations made;
- Commit to supporting WHRDs and all who actively promote the rights of women, indigenous people, migrants, LGBTI community and land rights activists;
- Adopt a comprehensive strategy, including awareness-raising programmes, including religious and traditional leaders, to eliminate discriminatory gender stereotypes regarding the roles and responsibilities of women and men in the family and society, and regularly monitor and review measures taken in this regard.

#### HRDs

- Translate the various international instruments and Declaration on HRDs into the indigenous languages of its people and make these widely available to create more awareness and an enabling environment;
- Demand inquiries into defamation of HRDs, threats and attacks against them, and criminal prosecution of the perpetrators;
- Training for human rights defenders should include training on professionalizing their work, accurate reporting on human rights violations, accessing funding as well as on relevant protection measures needed.

#### GOVERNMENT

- Increased and Flexible Programming and Funding Initiative should be created for HRDs, especially WHRDs to develop tailored programmes to ensure meaningful participation in decision making and legislative changes to counter and raise awareness against discriminatory practices;
- Such programmes should consider diversity among women, including their age, geographical location, ethnicity, disabilities, religious beliefs, sexual orientation, gender identity and gender expression.

#### HRDs

- Engage with UN and international organisations with a view to secure technical support and funding for advancing human rights work.

<sup>1</sup> Kiribati's Constitutional definition of discrimination is narrow; Kiribati continues to criminalize homosexuality and consensual same-sex relations between adults; Fault-based divorce is practised, and property division following matrimonial breakdown does not take into account non-financial contributions of women to the marriage; Unmarried mothers automatically lose custody of their children once the child turns two (providing the father acknowledges paternity and wishes to retain custody); Land inheritance laws are patrilineal, and sons often inherit more, or better, land than daughters. The citizenship law contains discriminatory provisions, for example, a foreign wife of a male citizen acquires citizenship automatically through marriage, but the foreign husband of a female citizen does not. Fathers, and not mothers, confer citizenship on their children.

<sup>2</sup> Legal assistance is not readily available on the outer islands unless a formal request is received. It is often difficult for those residing in outer islands to request support due to communication, transport and accessibility barriers.

# VANUATU



## OVERVIEW

The Republic of Vanuatu (Vanuatu) comprises over 80 islands with two largest islands, Espiritu Santo and Malekula comprising almost 50% of the total land mass. Travel and communications between and within islands are difficult and expensive. Within islands the rugged terrain and tropical forest isolate villages from each other. Vanuatu is also highly vulnerable to other extreme climate events, with impacts felt right across the nation’s economic, social and environmental systems.

The Republic of Vanuatu is a parliamentary democracy headed by a President as head of state and a Prime Minister as the head of government.<sup>158</sup> The single-chamber Parliament has 52 members, with no incumbent women at this time,<sup>159</sup> and are directly elected every four years by universal suffrage with an element of proportional representation. The Prime Minister appoints a Council of Ministers

<sup>158</sup> Republic of Vanuatu Parliament. <http://parliament.gov.vu/index.php/about-us> (accessed 23 August 2019)

<sup>159</sup> PACLII. [http://www.pacii.org/vu/legis/consol\\_act/cotrov406/](http://www.pacii.org/vu/legis/consol_act/cotrov406/) (accessed 27 August 2019).

from among the Members of Parliament.<sup>160</sup> There have been frequent no-confidence votes and no government since 1995 has completed a full four-year term. The current government, elected in 2016, is the longest-serving since 2008.

Important concepts for understanding civil society in Vanuatu are wantok, “big man,” and kastom “customs”. Wantok are the ties that bind kinship, language, and clan groups, and these ties can cut across organizational and political groups, including civil society.<sup>161</sup> Wantok ensures a high level of community participation and social protection, but it also creates reciprocity and obligations between kin. The related concept of “big men” is also important in Vanuatu, which ties in with the chiefly system and those who can earn power and status by working for the community.<sup>162</sup> Chiefly systems are informed by kastom, which is often understood as “tradition,” “custom” or “customary law” and in some cases is often used as a metonym for the “chiefly system.”<sup>163</sup> Outside the urban centers, the state reach is limited and power is vested in the churches and kastom chiefly system. The concept of a nation state is limited, as most identify with their clans and land-based groups.

At the rural level, the churches and customary institutions are seen as having legitimacy and relevance to the community, while the state structures outside the capital are perceived as ineffective and artificial. The only contact that most ni-Vanuatu has with the state outside of the capital is health clinics and schools. The churches, as the most effective grassroots organizations in Vanuatu, are active at the community or household level but less so at a national level.

### Human rights defenders and civil society

OHCHR conducted its scoping mission in Vanuatu from 9 – 13 December 2019 focusing on engagement of HRDs in Vanuatu’s capital, Port Vila. The interviews focused on WHRDs working in Port Vila as the central business of administration. These HRDs work through partners in other parts of Vanuatu.

Some CSOs are registered under the Charitable Associations Act but can also be unincorporated associations or registered as a company limited by guarantee. The more structured or formalized groups include churches, trade unions, or foreign organizations given approval to operate in Vanuatu. CSOs are required to register with the Vanuatu Financial Service Commission under one of the service areas of charitable associations. There are HRDs working with faith-based organisations, women’s rights organisations, indigenous rights organisation and climate change and environment organisations working in many areas, including health, education, gender inequality and eliminating violence against women and children.

Vanuatu’s National Council for Women, a leading voice in civil society, is working with government in research, policy and professional development and in many other programmes on gender equity. Another civil society organisation, the Foundation for the Peoples of the South Pacific Vanuatu is focusing on sustainable development, particularly in health, youth, good governance, small business and community capacity building. Faith-based organisations are formally recognised as a pillar of Vanuatu society with Christianity embedded under the Constitution. The umbrella organisation for trade unions is the Vanuatu Council of Trade Unions (VCTU) and accommodates the country’s two trade unions: the Vanuatu Teacher’s Union and the Vanuatu National Worker’s Union.

<sup>160</sup> The Commonwealth. [http://thecommonwealth.org/sites/default/files/inline/VanuatuCOGReport\\_2016.pdf](http://thecommonwealth.org/sites/default/files/inline/VanuatuCOGReport_2016.pdf) (accessed 29 August 2019).

<sup>161</sup> M. Cox et al. 2007. *The Unfinished State: Drivers of Change in Vanuatu*. Australian Agency for International Development: Canberra.2

<sup>162</sup> ADB. 2015. *Understanding the Political Economy of Vanuatu*. Manila.3

<sup>163</sup> B. Douglas. 2007. *Christian custom and the church as structure in ‘weak states’ in Melanesia*. In H. James. *Civil Society, Religion and Global Governance: Paradigms of Power and Persuasion*. Routledge: London and New York.

The Disability Promotion and Advocacy Association advocates for the rights and acceptance of persons with disabilities. The Vanuatu Association of NGOs in Port Vila maintains a database of members working in the different service areas<sup>164</sup>, and several international NGOs are also active. NGOs contribute to national reporting to UN treaty bodies, including the UPR, through alternative reports.

HRDs work in the area of women's rights and gender justice, climate change and the environments, natural disaster, access to justice, indigenous rights, social justice and human rights. Several NGO networks, including the Vanuatu Humanitarian Team and the Vanuatu Climate Action Network work closely with government on disaster response and preparedness and climate change. The issues dealt with by HRDs in Vanuatu are broad and diverse from access to justice and to capacity building on human rights and international human rights mechanisms.

### Enabling environment for human rights defenders

Vanuatu has an Ombudsman's Office that was established by Articles 61-65 of the Constitution. The constitution and the Ombudsman Act allow the Ombudsman to look into the conduct of government, related bodies and leaders. In February 2013, Vanuatu established an overarching National Human Rights Committee to transition into or create a new NHRI.<sup>165</sup> Vanuatu does not have an NHRI at present.

The Vanuatu constitution protects the right to life, liberty and security of person.<sup>166</sup> Constitution recognizes customary law as part of the State party's law, and hence customary law and the formal justice system exist side by side.

Due process rights are guaranteed by law; however, police do not always uphold legal safeguards against arbitrary arrest and detention. Long periods of pre-trial detention are common, largely due to case backlogs in the courts.<sup>167</sup> HRDs relayed that international days have been used as key moments for mobilisation of the community with community events and marches and they usually are able to do this peacefully with no interference from the police.

The enactment of the Right to Information Act in 2017 enabled HRDs to exercise their right to information. Freedom of expression is provided for by the constitution, including for the press, and the government generally respects this right, although elected officials have sometimes been accused of threatening journalists for critical reporting.<sup>168</sup> In November 2019, the Vanuatu Trading Post Director's work permit was rejected by the government, for reasons he says were due to his "negative reporting."<sup>169</sup> Publicly and privately owned newspapers publish in English and French. There are a small number of private broadcasters but the state-owned broadcaster has a dominant position in the sector. Foreign news services are also available and about a quarter of the population has access to the internet, mostly in urban areas.

<sup>164</sup> Development Aid, Vanuatu Disability Promotion and Advocacy Association. Available at: <https://www.developmentaid.org/#/organizations/view/142184/dpa-disability-promotion-and-advocacy-association> (Accessed: 23.06.2021)

<sup>165</sup> A/HRC/WG.6/18/VUT/2. Available at: <https://documents-ddsny.un.org/doc/UNDOC/GEN/G13/183/75/PDF/G1318375.pdf?OpenElement>

<sup>166</sup> PACLII. . [http://www.pacii.org/vu/legis/consol\\_act/cotrov406/](http://www.pacii.org/vu/legis/consol_act/cotrov406/) (accessed 28 Aug 2019).

<sup>167</sup> Freedom House. Freedom in the World 2018. Note. 2317.

<sup>168</sup> Office of the High Commissioner for Human Rights and the Pacific Community (SPC), 2020, Human Rights in the Pacific: A situational Analysis, Available at: [https://spccfpstore1.blob.core.windows.net/digitalibrary-docs/files/d7/d7971c6266aa416a94f62b68a704ca97.pdf?sv=2015-12-11&sr=b&sig=TJMVuZ8B%2FpT353BHQNGY85Sg8UbpPfnYkGURH4Yi58U%3D&se=2022-05-12T10%3A21%3A07Z&sp=r&rsc=public%2C%20max-age%3D864000%2C%20max-stale%3D86400&rsct=application%2Fpdf&rscd=inline%3B%20filename%3D%22Human\\_rights\\_in\\_the\\_Pacific\\_a\\_situational\\_analysis\\_2020.pdf%22](https://spccfpstore1.blob.core.windows.net/digitalibrary-docs/files/d7/d7971c6266aa416a94f62b68a704ca97.pdf?sv=2015-12-11&sr=b&sig=TJMVuZ8B%2FpT353BHQNGY85Sg8UbpPfnYkGURH4Yi58U%3D&se=2022-05-12T10%3A21%3A07Z&sp=r&rsc=public%2C%20max-age%3D864000%2C%20max-stale%3D86400&rsct=application%2Fpdf&rscd=inline%3B%20filename%3D%22Human_rights_in_the_Pacific_a_situational_analysis_2020.pdf%22)

<sup>169</sup> Asia Pacific Report 2019. <https://asiapacificreport.nz/2019/11/09/vanuatu-daily-posts-dan-mcgarry-gutted-by-vanuatu-governments-action-to-reject-his-work-permit>

Radio is the prime form of media in Vanuatu. The churches own several media outlets including Radio 90 LAEF FM. Facebook and social media is emerging in Vanuatu; the Yumi Tok Tok Stret is a Facebook site that has developed as a forum where ni-Vanuatu can discuss pressing social, political, and economic issues, sometimes with direct interaction between politicians and the constituency.

In November 2019, Vanuatu's Daily Post reported that the Minister for Home Affairs stressed that the government will not tolerate foreign NGO's interfering with political issues of the country.<sup>170</sup>

Vanuatu has alarmingly high rates of violence against women by husbands/partners.<sup>171</sup> A 2016 UN Women report stated that 98% of women and children experiencing violence in Vanuatu do not access the formal justice system due to poverty, the absence of financial assistance, considerable administrative delays, or the lack of coordination from the formal justice system.<sup>172</sup> During the interview, HRDs informed that some WHRDs provide temporary accommodation for survivors in their houses, until survivors are transferred to proper Safe Houses.

The persistence of harmful customary practices such as bride price and accusations of witchcraft against women human rights defenders lead to them being subjected to violence or murdered.<sup>173</sup> Customary bride-price payments continued and contributed to the perception of male ownership of women. The Committee on the Elimination of Discrimination against women recommended to put an end to the application of customary law that provides for the payment of bride prices; to take immediate and effective measures to investigate incidents of violence and murder of women and girls based on accusations of witchcraft or sorcery, to prosecute and punish the perpetrators of such acts and to prevent their reoccurrence in the future. The Committee also expressed concern that polygamy is not prohibited in Vanuatu and that the registration of customary marriages is not mandatory, which prevents women from claiming their legal rights. The Committee recommended that state take measures to discourage polygamy with a view to prohibiting it and take measures to ensure that all customary marriages are registered by civil registry offices.<sup>174</sup>

Women are slowly emerging from a traditional culture characterized by male dominance, but continued to experience discrimination in access to employment, credit, and pay equity for substantially similar work. The Constitution provides women the same personal and religious rights as men. Laws regarding marriage, criminal procedures, and employment further enshrine women's rights as equal to those of men. Although the law does not prohibit women from owning or inheriting property or land, tradition generally bars women from land ownership or property inheritance. Women possess minimal agency in state-managed land decisions, which follow patriarchal systems.<sup>175</sup>

In 2016, the CEDAW Committee urged Vanuatu to put in place, without delay, a comprehensive strategy to eliminate patriarchal attitudes and stereotypes that discriminate against women, in conformity with the provisions of the Convention. The strategy should include education and awareness-raising campaigns targeting women and men at all levels of society, including council chiefs and community leaders, and focus particular attention on the recognition of the importance of women's contributions to society, their empowerment and their participation in decision-making processes, including at the community level. The strategy should engage civil society organizations and the mass media to combat

<sup>170</sup> Daily Post, Minister Warns NGOs. Available at: [https://dailypost.vu/news/minister-warns-ngos/article\\_6d8cb280-fc36-11e9-9d27-9fc6c21b3baa.html](https://dailypost.vu/news/minister-warns-ngos/article_6d8cb280-fc36-11e9-9d27-9fc6c21b3baa.html) (Accessed: 25.06.2021)

<sup>171</sup> UNWomen, Women and Children's Access to the Formal Justice in Vanuatu. Available at: [https://asiapacific.unwomen.org/-/media/field%20office%20eseasia/docs/publications/2016/07/women\\_childrens\\_access\\_formal\\_justice\\_vanuatu\\_web.pdf?la=en&vs=5212](https://asiapacific.unwomen.org/-/media/field%20office%20eseasia/docs/publications/2016/07/women_childrens_access_formal_justice_vanuatu_web.pdf?la=en&vs=5212) (Accessed: 25.06.2021)

<sup>172</sup> UN Women 2016. Women and children's access to the formal justice system in Vanuatu. Available at: [https://www2.unwomen.org/media/field%20office%20eseasia/docs/publications/2016/07/women\\_childrens\\_access\\_formal\\_justice\\_vanuatu\\_web.pdf?la=en&vs=5212](https://www2.unwomen.org/media/field%20office%20eseasia/docs/publications/2016/07/women_childrens_access_formal_justice_vanuatu_web.pdf?la=en&vs=5212)

<sup>173</sup> Committee on the Elimination of Discrimination against Women Concluding observations (2016) CEDAW/C/VUT/CO/4-5

<sup>174</sup> Committee on the Elimination of Discrimination against Women Concluding observations (2016) CEDAW/C/VUT/CO/4-5

<sup>175</sup> Ibid.

discriminatory stereotypes and negative social attitudes towards women and promote positive and non-stereotypical portrayals of women; to integrate the principles of non-discrimination and gender equality into mandatory and continuing education for teachers, health-care professionals and service providers; to set up system of monitoring and evaluation to assess the impact of the measures taken to eliminate stereotypes.<sup>176</sup>

In 2016, the CEDAW Committee highlighted Vanuatu's women's limited access to justice, in particular on the outer islands, due to their limited knowledge about their rights and limited access to legal assistance. It is also concerned about the difficulties that women face in obtaining effective remedies and redress in both the traditional and formal justice systems, and about the lack of study on this dual legal system. The Committee further concerned about the lack of procedural accommodation by the justice system for women and girls with disabilities, such as through accessible information, the provision of sign language interpreters and alternative forms of communication. It is within this context that WHRDs face challenges in terms of access to justice within the formal and informal justice system.

WHRDs informed that they found advocacy more effective when they integrated concepts from the cultural and indigenous values and beliefs in their work. Given WHRDs come from local communities, they are able to utilize existing relationships and local knowledge to engage with members of their communities on issues especially that related to gender equality and gender-based violence. This also creates community ownership of initiatives. WHRDs interviewed engaged in ways that work in their particular community and which take into account local power dynamics and community needs. Utilizing storytelling, dance and songs was also found to be an effective way to communicate difficult messages about hidden issues in the community such as violence and mental health. They found that sharing these messages through creative ways can make it easier for local communities to understand the values of gender equality and respectful relationships, especially for people who are illiterate, and live in remote communities

CEDAW noted that the impact of climate change, the rise in the sea level and other climate-related disasters affect rural women disproportionately, given that they rely heavily on access to natural resources for their daily survival. Women are not informed of or given opportunities to participate in policymaking and decision-making processes on climate change and disaster risk reduction initiatives.<sup>177</sup>

Most donor funds are external; WHRDs working across Vanuatu have been seeking flexible funding to support the effective implementation of activities and workplans across the country.

<sup>176</sup> UN CEDAW Committee, Concluding observations on the combined fourth and fifth periodic reports of Vanuatu Available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N16/064/87/PDF/N1606487.pdf?OpenElement> (Accessed: 23.06.2021)

<sup>177</sup> UN CEDAW Committee, Concluding observations on the combined fourth and fifth periodic reports of Vanuatu Available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N16/064/87/PDF/N1606487.pdf?OpenElement> (Accessed: 23.06.2021)



Photo Credit: Fiji Women's Rights Movement.

# VANUATU'S CHALLENGES AND RECOMMENDATIONS





Harassment, and Threats made against HRDs including Gender Based Violence.

Lack of access to justice

Disproportionate impact of climate change, drought, rising sea levels and other weather-related disasters on HRDs

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#### GOVERNMENT

- > Establish a national human rights institution in accordance with the Paris Principles, which can seek dialogue with HRDs in the form of regular institutionalised consultations;
- > Ensure a comprehensive strategy to eliminate those attitudes and stereotypes, engaging civil society organizations, HRDs and the mass media, and adopt specific and results-oriented measures in all areas in which women were underrepresented or disadvantaged;
- > Issue an open invitation to UN Special Rapporteur on the situation of HRDs to provide credible information on the HRDs that can inform policy and legislation;
- > Ensure continuous training for police officers on UNCAT, to investigate and promptly prosecute police officers who commit criminal offences such as torture, and sexual violence and prohibited forms of ill-treatment;
- > Provide financial resources and expand crisis centres to all provinces of Solomon Islands to respond to survivors of violence.

#### HRDs

- > To lead and take an active role in advocating for a national mechanism and strategy for HRDs to coordinate and implement protection as well as empowerment measures for HRDs who are at risk;
- > To promote the implementation of the UN Declaration on HRDs at national level;
- > Demand inquiries into defamation of HRDs, threats and attacks against them, and criminal prosecution of the perpetrators;
- > To form a network of HRDs for solidarity and protection.

#### GOVERNMENT

- > To support a gender-responsive justice system so that survivors have equal access to justice by ensuring that traditional justice mechanisms complied with human rights standards when addressing women's complaints;
- > To raise women's awareness of their rights and how to enforce them; establish effective remedies in both the formal and traditional justice systems to enable women to obtain redress; provide capacity-building to judges, lawyers and law enforcement officers on women's rights; and allocate resources to the formal justice system, especially on the outer islands.

#### HRDs

- > Provide capacity building to stakeholders in the formal and informal justice sector especially the judges, community leaders, lawyers, police officers and other law enforcement officials;
- > Translate the various international instruments and Declaration on HRDs into the indigenous languages of its people and make these widely available to create more awareness and an enabling environment.

#### GOVERNMENT

- > Women, including those living on the outer islands, be included and actively participate in planning, decision-making and implementation processes concerning climate change related law and policies;
- > To draw up **national protection** programmes for HRDs and abide by them at all times with high priority to ensure human rights defenders, indigenous communities and the right to freedom of expression are protected in raising climate change and environmental issues, including in relation to extractive industries, and ensure civic society participation, equality and diversity (including on gender) in the development of climate and environmental policies.

#### HRDs

- > To collaborate with Government to include human rights approach in laws related to climate change, environment and migration;
- > To strengthen its Environmental Human Rights Defenders Network for solidarity and coordinated advocacy and protection;
- > To advocate for a review of the Government Commitment to address logging and mining issues and to ensure adherence to the UN Guiding Principles on Business and Human Rights.

# CONCLUSIONS

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The findings of this report based on the scoping missions to Fiji, Kiribati, the Republic of Marshall Islands, Papua New Guinea, Solomon Islands, Tuvalu and Vanuatu demonstrate the structural, institutional and existential challenges HRDs face in terms of their protection and in their action towards the effective advancement and implementation of human rights.

The scoping missions, surveys and dialogues with the defenders also provided direct testimonies of resilience and spoke to the key contributions that HRDs, notably WHRDs make in supporting the rights of people at risk of marginalization and discrimination in the Pacific. Their direct engagement with social and economic rights is as vital as their work for the further development of democratic governance processes and institutions, speaking out against violations and impunity, and flagging significant trends in the scoped countries, regionally and globally.

The situation of HRDs is often precarious in countries where there are legal restrictions on the work they do; when an enabling environment with institutional protections and guarantees of human rights is not fully assured; and in case of crisis, including conflict, disasters and the pandemic. HRDs are most commonly directly affected by violations of their rights, or alternatively, the organizations and mechanisms through which they work are at risk. Occasionally, family members are targeted as a means of applying indirect pressure. Some HRDs are at greater risk because of the nature of the rights they seek to protect, such as LGBTI or environmental rights.

The areas in which HRD protection is particularly challenging are transitional justice and the fight against impunity; women's rights; the rights of LGBTI people; minorities and refugees; economic, social and cultural rights in relation to large-scale development projects that involve environment and natural resources, such as the extractive industry. They may face harassment and defamation, arbitrary arrest and detention, as well as restrictions on their freedom of movement, expression, association and assembly in violation of both international and national law. Some countries scoped have adopted restrictive domestic legislation that hinders the work of HRDs, and legislation is sometimes used to criminalize their activity.

Women HRDs can confront risks that are gender-specific and are, therefore, more exposed than other HRDs. WHRDs in the Pacific face challenges working within a region where structural discrimination, patriarchy, religious fundamentalism as well as socio-economic inequalities are constant barriers. In the early months of the pandemic, an increased demand for domestic violence support services indicated that this situation was deteriorating further.<sup>178</sup>

Impunity for violence against women was highlighted by WHRDs as a prevalent issue in Pacific society and contributes to an overwhelming sense of fear and injustice. Impunity in the context of a serious manifestation of human rights challenges increases the impact of constraints faced by HRDs. It conveys a lack of recognition for their role in society and constitutes an invitation to continue violating their rights.<sup>179</sup>

The COVID-19 pandemic has had a significant impact on the lives and livelihoods of HRDs and in many cases redirected their attention to focus on socio-economic/humanitarian support to grassroots communities rather than broader policy and strategic engagement. Recovery should also tackle the underlying factors of marginalization which have worsened the situation of significant parts of society.

<sup>178</sup> OHCHR & SPC-HRSD, Human Rights Situational Analysis Report 2020.

<sup>179</sup> See also UN Special Rapporteur on the situation of HRDs. Available at: <https://undocs.org/en/A/74/159> (Accessed on: 30.06.2021)

In responding to COVID-19, a careful balancing act and attention to the need for proportionality, legality and non-discrimination and is required to ensure that measures continue to achieve desired public health protection outcomes without adversely impacting human rights.

In this complex web of multiple vulnerabilities and discrimination, and despite public policy focus on the sustainable development-related principle of 'leaving no one behind' institutionally and structurally, it can be challenging for HRDs, especially women and non-binary, to raise their voices and advocate for a human rights based (rather than needs based) approach, complete with arguments for using the maximum amount of available resources as stipulated by international human rights law, and for funding of the response to also be directed to longer-term participatory approaches and engagements that strengthen civil society forces, including HRDs.<sup>180</sup> In some countries, there is a hostile public discourse and negative images in the media that depict HRDs as stupid, anti-development, trouble makers, traitors or witches.

Digitalization of the Pacific remains a gap in a region that covers one-third of the surface of the globe and where countries and islands are far and wide apart; this gap impedes network for effective and meaningful human rights work and the work of HRDs. Technology has a positive transformative potential. It can be an enabler for human rights, empowers defenders of all genders and ages and facilitates their interconnectedness. However, harnessing web-based technologies and digital platforms by WHRDs requires efforts to bridge the gender digital divide, including equal access to digital devices, digital literacy, gender responsive platforms and addressing prejudices, discrimination and exclusion. Online spaces have become an increasingly hostile environment for WHRDs leading to grave rights violations offline in some cases. Attacks are often sexualized and discriminatory in nature with widespread impunity.<sup>181</sup>

In view of the variety and diversity of challenges as well as opportunities and entry points to enhance the enabling environment for HRDs, protection mechanisms should be adopted by all PICs scoped. Different actors can play complementary roles strengthening each other's efforts to increase effective HRD protection all over the Pacific.

After consultations with the HRDs, the following recommendations are made:

### **Dissemination of the Declaration**

Given the diversity of languages in the Pacific, Governments should work in partnership with HRDs and translate the various international instruments, including the Human Rights Defenders Declaration, into indigenous languages and make these widely available to create more awareness and an enabling environment;

### **Providing legitimacy to the work of defenders**

Recognition of the status and role of HRDs and the legitimacy of their activities in public statements is the first step to preventing or at least reducing threats and risks against them. States, businesses, communities, religious groupings and media as well as other societal forces should refrain from stigmatizing the work of HRDs.

Regional organisations such as the Pacific Islands Forum at political and secretariat level may wish to recognize the status of HRDs in the region and take steps to incorporate the protection and promotion of HRDs in their work. They can join forces with OHCHR and the wider UN as well as the Pacific Community (SPC) in supporting women HRDs.

<sup>180</sup> Human Rights Council (HRC), Inputs from the President of the Human Rights Council to the 2016 HLPF: the work of the Human Rights Council in relation to the 2030 Agenda for Sustainable Development. Available at: <https://sustainabledevelopment.un.org/index.php?page=view&type=30022&nr=225&menu=3170> (Accessed on 7.07.2021)

<sup>181</sup> OHCHR, Human Rights and Civic Space In The Un System Supporting Women HRDs. Available at: [https://www.ohchr.org/Documents/Issues/Women/WRGS/Supporting\\_WHRDs\\_UN\\_System.pdf](https://www.ohchr.org/Documents/Issues/Women/WRGS/Supporting_WHRDs_UN_System.pdf) (Accessed on 30.06.2021)

### **Enacting legislation, policies and mechanisms on the protection of defenders and reviewing discriminatory legislation**

The overall protection and promotion of the rights of WHRDs globally and in the Pacific requires a holistic and multi-stakeholder approach to ensure an enabling environment through political and legal institutions and legislative reform based on the international normative framework.

States should adopt policies or laws on the protection of HRDs, with a specific reference to the work of women HRDs. These instruments should be developed in consultation with civil society and on the basis of technical advice from relevant international agencies.

States should review their legal frameworks to ensure that national legislation is in conformity with their national commitments and international standards relating to the right to public freedoms of assembly, association, expression, information and participation, including in accordance with the Declaration. States should consider establishing focal points for HRDs within the office of the Head of State or Government, or other key institutions of government.

### **Training of public officials and law enforcement officers**

States should take measures to ensure that public officials and law enforcement officers in charge of the prevention, investigation and prosecution of violations against HRDs receive adequate training on the Declaration and on the specific needs of protection of HRDs.

States should ensure that law enforcement officials in particular are trained in international human rights standards and international standards for the policing of peaceful assemblies, including the Declaration on HRDs, the Code of Conduct for Law Enforcement Officials, the Basic Principles on the Use of Declaration on HRDs, prohibition of torture and use of excessive Force and other relevant treaties, declarations and guidelines;

### **Ensure investigation, prosecution and compensation and end impunity**

States should ensure prompt and independent investigations of all violations of the rights of defenders, the prosecution of alleged perpetrators regardless of their status and the imposition of adequate penalties taking into account the specific nature of the offences. States should also provide victims of violations with access to justice and just and effective remedies, including appropriate compensation

States should ensure prompt and effective accountability of those who have committed human rights violations, especially against HRDs, through appropriate disciplinary, civil and criminal proceedings, thereby ending impunity for attacks against HRDs. They should also consider the application of legal penalties for false prosecution of defenders and any other actions against those acting in violation of its principles

### **Prevention, protection and promotion role of national human rights institutions**

States are encouraged to create national human rights institutions where they do not yet exist, to strengthen prevention, protection and promotion of HRDs at the national level. NHRIs are encouraged to prioritize the protection of HRDs on their agenda and establish focal points for HRDs, to play an important role not only in fostering awareness raising (e.g. dissemination of the Declaration) but also to investigate complaints made by HRDs and their representatives;

### **Accountability of non-State actors**

Non-State actors and private entities should abide by the Declaration on HRDs and refrain from endangering the safety of defenders and/or impeding their work. The State should work in partnership with HRDs to create the necessary policies and mechanisms to prevent private actors from causing harm to HRDs and to create awareness on rights and obligations under the UN Declaration and other international standards.

### **Increased and Flexible Programming and Funding Initiatives**

Dedicated programming support should be created for HRDs, especially women HRDs and their organizations in case they act collectively or are part of a CSO or alliance.

### **Collaboration with the UN Special Procedures, notably the Special Rapporteur on HRDs**

Pacific Governments that have not yet done so should issue an open invitation to all UN Human Rights Council's Special Procedures including the Special Rapporteur on the situation of HRDs and/or respond to the communications sent by the mandate holders in a timely and comprehensive manner. A good practice for replies is to provide information not only on the measures taken to redress the individual situation reported but also on the initiatives undertaken to prevent the recurrence of similar situations in the future.<sup>182</sup>

### **The role of the United Nations, the Office of the UN High Commissioner for Human Rights and development partners**

United Nations Country Teams and agencies are encouraged to develop and obtain funding for a comprehensive protection strategy, with Pacific HRD networks including the PHRDN, including against threats and reprisals by State and non-State actors in the different countries in which they work.

The UN and other partners should strengthen the Pacific HRD Network through which defenders' work can be more effectively used as an early warning mechanism to alert the Human Rights Council of deteriorating human rights situations and its independent Special Procedures of common and country-specific trends as well as individual cases.

With support from the Office of the High Commissioner for Human Rights Regional Office for the Pacific, the UN in the Pacific should consider ways in which it can respond more effectively to the reports of alleged violations against HRDs.

### **Strengthening Pacific Human Rights Defenders Network**

The PHRDN and similar alliances of defenders where they exist should strengthen their work, with support from partners, to be able to in turn provide stronger support and to create linkages to safety nets and safe space for HRDs and so that they can effectively monitor and report on States' cooperation with UN human rights mechanisms and provide protection and support to its member HRDs in an effective and timely manner.

The PHRDN and its partners should seek support with connections to the UN Secretary-General's reprisals mechanism led by the ASG for OHCHR.

<sup>182</sup> In some cases, by reporting individual situations, communications point in fact to structural and systematic problems of which individual situations are a consequence. Governments should see the communications procedure as an opportunity to be alerted to situations that, if addressed properly and thoroughly, can improve not only the situation of individual defenders but the overall environment of HRDs, which is a fundamental indicator of the general situation of human rights in a country.

- Discriminatory laws and limitation of rights
- Lack of media freedom;
- Existence of legislation providing for harsh penalties including death penalty, imprisonment and excessive fines;
- Use of excessive force and lack of accountability by law enforcement officials.

**Suppression of criticisms by HRDs against Governments and persons in power**

- Gender based violence,
- High rate of cyberbullying,
- Structural discrimination, religious fundamentalism, patriarchy and toxic masculinity as well as socio-economic inequalities are barriers to lives;
- Sorcery against HRDs,
- Impunity,
- Stigmatization and ostracism by community leaders, faith-based groups, families;
- Harmful discriminatory practices and customary practices and entrenched inequality.

**Harassment, Violence and threats made against HRDs and their families**

- Lack of access to legal representation,
- Lack of access to judicial process and formal court,
- Existence of customary courts/informal justice systems that do not meet human rights standards,
- Lack of accountability and effective institutions;
- Lack of human rights framework, existence of discriminatory laws.

**Lack of Access to Justice**

## CHALLENGES FACED BY HRDS

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## RECOMMENDATIONS

**Accountability towards HRDs to Operate Freely**

- Enacting legislation or enabling policies on the protection of HRDs;
- Reviewing discriminatory legislation and regulatory framework in consultation with HRDs,
- Capacity building and HR training for key stakeholders promoting media freedom,
- Free access to information, data, reports, initiatives to enable CSAs to become aware and informed about issues, articulate concerns, engage constructively, and contribute to solutions;
- Increasing accountability by the State and law enforcement agencies.

**Enabling Environment with Protection of HRDs against Threats and Violence**

- Providing legitimacy to the work of HRDs;
- Ensure investigation, prosecution, compensation and end impunity,
- Human rights training of public officials and law enforcement officers,
- Strengthening NHRI/Ombudsmans and enhancing protection mechanisms of existing national institutions,
- Capacity building of politicians, media houses and community leaders.

**Increase Access to Justice**

- Human rights to be embedded in the Constitutions to provide basic framework for compliance;
- National legislation to be compliant with international standards prioritizing marginalised groups,
- Harmonizing domestic mechanisms with the UN Declaration on Human Rights Defenders,
- Capacity building to stakeholders in the formal and informal justice systems,
- Capacity building to NHRI, Law enforcement agencies and parliamentarians.

- Heavy reliance on foreign aid to carry out substantial work,
- Most HRD work is not paid and done voluntarily,
- Lack of government support,
- Lack of safe space for advocacy and support systems,
- Lack of access to victim support, advocacy, health, education, welfare;
- Barriers to NGO Registration.

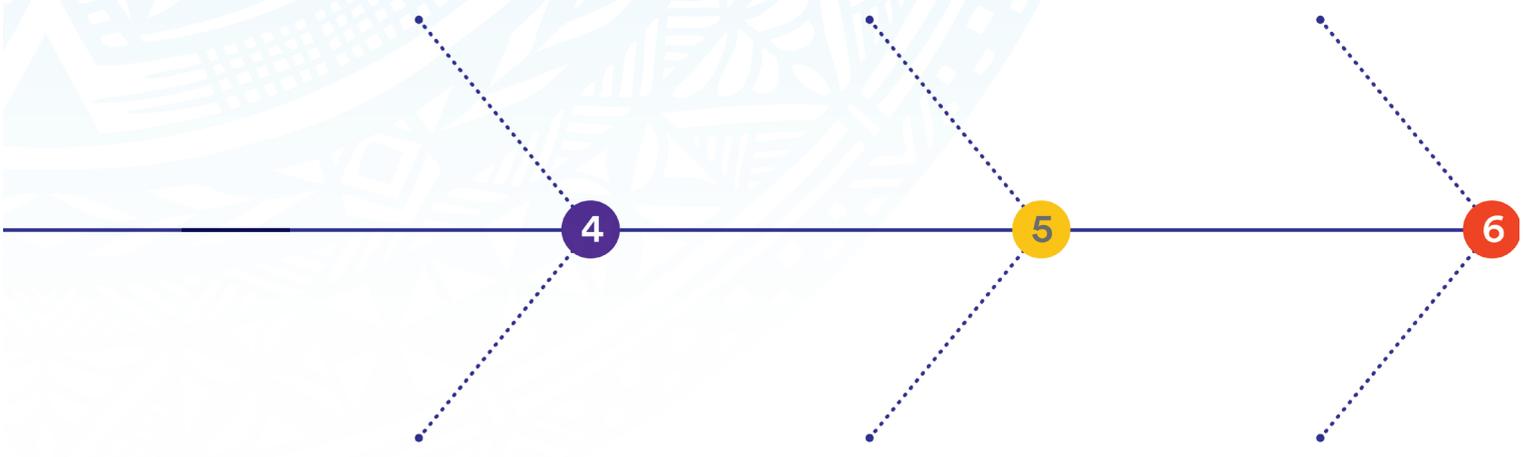
**Lack of funding and resources**

- Intensified natural disasters causing destruction to ecosystems and health risks;
- Increased migration and displacement,
- Loss of indigenous land and traditional rights,
- Threats to food and water security,
- Lack of legislation protecting environmental rights,
- Lack of business accountability for human rights violations,
- Disproportionate impacts on women and girls, including increased unpaid care and domestic work of women, higher prevalence of GBV.

**Disproportionate impacts of climate change and environmental disasters**

- Ignorance of HRDs regarding their own role and responsibilities;
- Lack of safe space for advocacy and, lack of solidarity and HRD Networks and support systems;
- Capacity of the HRDs to observe and investigate alleged violations has been considerably diminished due to COVID 19.

**UN Declaration on human rights defenders is not sufficiently known**



**Need for Flexible Programming and Funding Initiatives**

- Changes in funding models making it easier to access with flexible process suited to Pacific context;
- Need for technical assistance in accessing funding, including writing funding proposals and financial management training;
- Measures to build capacity for marginalized voices, and ensure access to resources, safe meeting places for HRDs.

**Support HRDs work on Climate Change and Environmental Disasters**

- Government to collaborate with HRDs to integrate human rights in environmental laws and policies;
- Inclusion of HRDS and women in decision-making processes, access to information and effective remedies for victims;
- Assisting human rights mechanisms to address environmental issues, including climate change;
- Research and advocacy to address human rights harms caused by environmental degradation, particularly to groups in vulnerable situations;
- Gender responsive climate action.

**Dissemination of UN Declaration of Human Rights**

- Awareness on the UN Declaration of Human Rights needed;
- Translation of the UN Declaration into the indigenous languages;
- National legislation to be in conformity with UN Declaration;
- Capacity building and Human Rights Training of HRDs.







UNITED NATIONS  
**HUMAN RIGHTS**  
OFFICE OF THE HIGH COMMISSIONER

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