



Law Council  
OF AUSTRALIA

# Inquiry into the human rights of women and girls in the Pacific

Joint Standing Committee on Foreign Affairs, Defence and Trade  
Human Rights Sub-Committee

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## About the Law Council of Australia

The Law Council of Australia exists to represent the legal profession at the national level, to speak on behalf of its Constituent Bodies on national issues, and to promote the administration of justice, access to justice and general improvement of the law.

The Law Council advises governments, courts and federal agencies on ways in which the law and the justice system can be improved for the benefit of the community. The Law Council also represents the Australian legal profession overseas, and maintains close relationships with legal professional bodies throughout the world.

The Law Council was established in 1933, and represents 16 Australian State and Territory law societies and bar associations and the Law Firms Australia, which are known collectively as the Council's Constituent Bodies. The Law Council's Constituent Bodies are:

- Australian Capital Territory Bar Association
- Australian Capital Territory Law Society
- Bar Association of Queensland Inc
- Law Institute of Victoria
- Law Society of New South Wales
- Law Society of South Australia
- Law Society of Tasmania
- Law Society Northern Territory
- Law Society of Western Australia
- New South Wales Bar Association
- Northern Territory Bar Association
- Queensland Law Society
- South Australian Bar Association
- Tasmanian Bar
- Law Firms Australia
- The Victorian Bar Inc
- Western Australian Bar Association

Through this representation, the Law Council effectively acts on behalf of more than 60,000 lawyers across Australia.

The Law Council is governed by a board of 23 Directors – one from each of the constituent bodies and six elected Executive members. The Directors meet quarterly to set objectives, policy and priorities for the Law Council. Between the meetings of Directors, policies and governance responsibility for the Law Council is exercised by the elected Executive members, led by the President who normally serves a 12 month term. The Council's six Executive members are nominated and elected by the board of Directors.

Members of the 2020 Executive as at 1 January 2020 are:

- Ms Pauline Wright, President
- Dr Jacoba Brasch QC, President-elect
- Mr Tass Liveris, Treasurer
- Mr Ross Drinnan, Executive Member
- Mr Greg McIntyre SC, Executive Member
- Ms Caroline Counsel, Executive Member

The Secretariat serves the Law Council nationally and is based in Canberra.

## Acknowledgement

The Law Council is grateful to the International Human Rights Committee of its International Law Section, and the Law Society of New South Wales, Queensland Law Society and the Bar Association of Queensland for assisting with the preparation of this submission.

## Executive Summary

1. The Law Council of Australia (**Law Council**) appreciates the opportunity to provide a submission to the Joint Standing Committee on Foreign Affairs, Defence and Trade – Human Rights Sub-Committee (**the Committee**) in relation to its inquiry into the human rights of women and girls in the Pacific (**the Inquiry**).
2. This submission focuses on the first term of reference (i.e. the role of civil society groups in advancing the human rights of women and girls in the Pacific and gender equality). It also considers the impacts of COVID-19 on gender equality and the human rights of women and girls in the Pacific under the fifth term of reference.
3. The Law Council does not express a view on the contributions of specific figures and groups advancing the human rights of women and girls in the Pacific context, their engagement with Australia’s Pacific Step-Up, nor the effectiveness of Australia’s overseas development assistance programs. This submission does make general comments about activities and initiatives that ought to be supported within Australia’s aid spending in the Pacific.
4. In responding to the Inquiry, the Law Council draws upon several longstanding policy positions, including its *Policy Statement on Human Rights and the Legal Profession*, as well as its recent submissions to the Australian Border Force (**ABF**) regarding the Public Consultation Paper on the proposed new *National Action Plan to Combat Modern Slavery 2020-24*, which it submitted on 21 February 2020,<sup>1</sup> and the Department of Foreign Affairs and Trade (**DFAT**) regarding the Consultation Paper on the proposed new *International Strategy on Human Trafficking and Modern Slavery*, which it submitted on 11 May 2020.<sup>2</sup>
5. The Law Council is pleased to make the following recommendations that the Australian Government:
  - i. Provide additional financial and in-kind support to civil society groups who work to prevent and respond to domestic, family and sexual violence in the Pacific, placing particular emphasis on capacity-building work and improving coordination between services.
  - ii. Continue to work in collaboration with Pacific police forces to provide gender-sensitisation training and resources with a view to improving frontline responses to gender-based violence.
  - iii. Direct greater financial and human resource assistance towards strengthening legal institutions in the Pacific and easing strained judicial and legal assistance resources, with a view to improving access to justice to women and girls in the region.
  - iv. Place greater emphasis on the prevention of modern slavery in the Pacific region, including through awareness-raising and access to targeted, gender-sensitive sources of advice and support for victims.

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<sup>1</sup> Law Council of Australia, Submission to the Human Trafficking and Slavery Branch of the Australian Border Force, *Public Consultation Paper on the National Action Plan to Combat Modern Slavery 2020-24* (21 February 2020) <<https://www.lawcouncil.asn.au/resources/submissions/national-action-plan-to-combat-modern-slavery-2020-24-public-consultation-paper>>.

<sup>2</sup> Law Council of Australia, Submission to the Department of Foreign Affairs and Trade, *International Strategy on Human Trafficking and Modern Slavery: Consultation Paper* (11 May 2020) <<https://www.lawcouncil.asn.au/resources/submissions/international-strategy-on-human-trafficking-and-modern-slavery-consultation-paper>>.

- v. Support civil society groups and development assistance programs with the objective of addressing key vulnerability factors driving modern slavery in the Pacific region, and improving awareness of existing laws and obligations regarding modern slavery and human trafficking.
- vi. Continue to provide financial and in-kind support to evidence-based initiatives with the aim of advancing women's economic participation in the region, enhance financial literacy and improve awareness of employment rights.
- vii. Identify opportunities to encourage the adoption of legislative amendments and government policies that:
  - (a) Guarantee equal rights of women with respect to land, employment and assets; and
  - (b) Better protect the rights and interests of women in the workforce, including through sexual harassment and non-discrimination protections.
- viii. Continue to support initiatives such as the Pacific Leadership Program and the Pacific Parliamentary Partnership program to increase the participation of women in social and economic decision-making at all levels.
- ix. Increase support for initiatives directed at facilitating leadership of women at the community level, and undertake analysis to measure the success and enhance the efficacy of these initiatives.
- x. Support and encourage the formation of coalitions by civil society groups to advance gender equality and promote women's leadership.
- xi. In partnership with civil society groups, continue to support projects directed at building leadership skills among Pacific women, and boost women's participation in local, national and multilateral dialogues and decision-making on issues relating to climate change and the environment.
- xii. Facilitate opportunities for civil society organisations (**CSOs**) to engage in dialogue with their own government institutions, especially in support of programs funded by Australian Foreign Aid.
- xiii. Continue to support the establishment and strengthening of independent and effective National Human Rights Institutions in the Pacific to monitor human rights protection and promote respect for human rights.
- xiv. Continue to support local civil society groups (**CSGs**) in providing culturally-responsive human rights education and training programs that promote gender equality and enhance awareness of the rights of women and girls.
- xv. That Australia's Pacific Step-Up initiatives:
  - (a) are developed with reference to a comprehensive gender analysis, and respond to the gendered impacts of the COVID-19 pandemic; and
  - (b) facilitate the full participation and visible leadership of Pacific women and girls at all levels of decision-making with respect to national and regional COVID-19 responses.

# Introduction and Background Information

## International human rights framework

6. The international human rights framework explicitly guarantees equality between men and women in the enjoyment of all human rights.<sup>3</sup> In addition, there are treaties, bodies and initiatives specifically dedicated to the realisation of the human rights of women and girls, which recognise that women and girls around the world still experience additional human rights abuses and barriers to the enjoyment of human rights based on their sex.
  - (a) The Convention on the Elimination of all forms of Discrimination Against Women (**CEDAW**) provides a comprehensive agenda for national action to end discrimination against women.
  - (b) The Beijing Declaration and Platform for Action is the key global policy document on gender equality, providing internationally-agreed benchmarks on advancing the status of women.
  - (c) The United Nations Declaration on the Elimination of Violence Against Women summarises the responsibilities of states to eliminate violence against women.
  - (d) The Sustainable Development Goals (**SDGs**), unanimously adopted by UN Member States in September 2015, include a standalone gender equality goal. Goal 5 aims to ‘achieve gender equality and empower all women and girls,’ and contains nine targets.<sup>4</sup> These include to:
    - (i) ensure women’s full and effective participation and equal opportunities for leadership at all levels of decision-making in political, economic and public life;
    - (ii) undertake reforms to give women equal rights to economic resources, as well as access to ownership and control over land and other forms of property, financial services, inheritance and natural resources, in accordance with national laws; and
    - (iii) adopt and strengthen sound policies and enforceable legislation for the promotion of gender equality and the empowerment of all women and girls at all levels.
7. The Law Council notes concerns that the human rights of girls are slipping through the cracks between the dominant frameworks of the human rights of women and the human rights of children.<sup>5</sup> This has led to increased focus in recent years on protecting and promoting the human rights of the girl child.

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<sup>3</sup> The *Universal Declaration of Human Rights* GA Res 217A (III) UN GAOR, UN Doc A/810 (10 December 1948) art 2; *International Covenant on Civil and Political Rights (ICCPR)*, opened for signature 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976) art 3; and *International Covenant on Economic, Social and Cultural Rights (ICESCR)*, opened for signature 16 December 1966, 993 UNTS 3 (entered into force 3 January 1976) art 3 explicitly provide for equality between men and women in the enjoyment of all human rights contained in the covenants.

<sup>4</sup> *Transforming our world: the 2030 Agenda for Sustainable Development*, GA Res 70/1, UN Doc A/RES/70/1 (21 October 2015) 18.

<sup>5</sup> Anne-Claire Blok and Hannah Pehle, ‘Girls’ Rights are Human Rights: An In-Depth Study of the Status of Girls in the International Human Rights Framework’ (Plan International, 2017) 6.

<[https://www.girlsrightsplatform.org/sites/default/files/2018-02/Report\\_GirlsRightsAreHumanRights\\_EN\\_0.pdf](https://www.girlsrightsplatform.org/sites/default/files/2018-02/Report_GirlsRightsAreHumanRights_EN_0.pdf)>.

8. Additionally, there are other human rights issues, such as modern slavery, that are known to disproportionately affect women. Therefore, while their terms may make no explicit distinction between men and women, certain instruments and initiatives may have greater application to women and girls.<sup>6</sup>
9. Taken together, these instruments and standards provide an international framework through which the domestic laws and policies can be assessed in relation to the human rights of women and girls.
10. The Law Council notes that all Pacific Island Countries and Territories (**PICT**) have ratified the Convention on the Rights of the Child (**CRC**), and all except Tonga and Palau are signatories to CEDAW.<sup>7</sup> The Law Council also notes that most countries in the Pacific have constitutionally-enshrined bills of rights which protect certain fundamental human rights of women and children.<sup>8</sup> It understands, however, from the experience of members of its constituent bodies, that there is a significant gap in implementation and enforcement, and too often women and girls are denied full enjoyment of their rights due to a lack of funding, understanding or, occasionally, political will.
11. In 2012, the Pacific Islands Forum adopted the 'Pacific Leaders Gender Equality Declaration' (the **Rarotonga Declaration**) to demonstrate the commitment of Pacific leaders to advancing gender equality in the areas of government policy, decision-making, economic empowerment, health and education, and ending violence against women.<sup>9</sup>

## Australia's aid and development framework

12. The Law Council notes that the Pacific Step-Up initiative is one of Australia's highest foreign policy priorities, and embodies the Government's vision and agenda for increasing Australia's presence and engagement in the Pacific.
13. With respect to women and girls in the region, the Pacific Step-Up involves the Pacific Women Shaping Pacific Development program (**Pacific Women**). The program aims to realise the goals of the Rarotonga Declaration and improve the political, economic and social opportunities of Pacific women through four priorities:
  - (a) increase the effective and visible representation of women, and women's interests, through leadership at all levels of decision-making
  - (b) expand women's economic opportunities to earn an income and accumulate economic assets;

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<sup>6</sup> See, eg, *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children*, opened for signature 15 November 2000, 2237 UNTS 319 (entered into force 25 December 2003); *Declaration on the Basic Principles of Justice for Victims of Crime and Abuse of Power* GA Res 40/34 UN GAOR, UN Doc A/RES/40/34 (29 November 1989), and *Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography*, opened for signature 25 May 2000, 2171 UNTS 227 (entered into force 18 January 2002).

<sup>7</sup> United Nations Treaty Depository (Status of Treaties), Convention on the Elimination of All Forms of Discrimination Against Women (**CEDAW**), opened for signature 18 December 1979, 1249 UNTS 13 (entered into force 3 September 1981) <[https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-8&chapter=4&lang=en](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-8&chapter=4&lang=en)>.

<sup>8</sup> See *Constitution of the Cook Islands* art 64; *Constitution of the Republic of Fiji* ch 2; *Constitution of the Federated States of Micronesia* art 4; *Constitution of Kiribati* art 3; *Constitution of the Republic of the Marshall Islands* art 2; *Constitution of Nauru* art 3; *Constitution of the Independent State of Papua New Guinea* art 5; *Constitution of Samoa* art 15; *Constitution of the Solomon Islands* s 3; *Constitution of Tuvalu* art 11; *Constitution of Vanuatu* art 5.

<sup>9</sup> Pacific Islands Forum, *Pacific Leaders Gender Equality Declaration*, 43<sup>rd</sup> ord sess, 27, 31 August 2012, <<https://www.forumsec.org/2012/08/30/pacific-leaders-gender-equality-declaration/>>.

- (c) reduce violence against women and increase access to support services and justice for survivors of violence; and
  - (d) cultivate among Pacific women a stronger sense of their own agency, supported by a changing legal and social environment and through increased access to the services they need.<sup>10</sup>
14. Pacific Women commits \$320 million to support 14 Pacific Islands Forum member countries in meeting, through individual country plans, the commitments in the Rarotonga Declaration. Since its launch in August 2012, the program has spent approximately \$175 million on projects related to leadership and decision-making; women's economic empowerment; ending violence against women; and enhancing women's agency.
  15. The Law Council commends the Gender Equality and Women's Empowerment Strategy underpinning DFAT's work, which integrates and prioritises gender equality outcomes across Australia's foreign policy, economic diplomacy and development efforts.

## Civil society groups in the South Pacific context

16. The Law Council notes that the term 'civil society organisation' has a broad application, and may encompass many different groups including non-governmental organisations (**NGOs**), religious or faith-based organisations, charities, trusts, foundations, cultural institutions, professional associations, trade unions, think-tanks, research organisations, and other advocacy groups. The essential criterion of a CSO is its autonomy, at least in principle, from both government and business (organisations primarily concerned with profit). The practical role of a CSO will depend, among other things, upon the stage of development of the country in which it is operating. They may provide particularly important interventions for minority populations who may be marginalised, discriminated against or, in the most severe instances, persecuted by the state. CSOs may also provide services normally the responsibility of the executive branch, such as healthcare and education, and bridge the gap between civilians and authorities. Where countries are unstable and legal frameworks are weak or nascent, as the Australian Council for International Development notes, 'a strong and effective civil society is a development outcome in its own right.'<sup>11</sup>
17. This submission adopts the use of the term 'civil society group' to be inclusive of groups that may not adopt any formal organisational structure.
18. Community and faith-based groups have long been a distinctive feature of civil society in the Pacific. The non-governmental organisations are spread across a spectrum of PICT society, and represent a critical constituency and development partner for advancing towards the SDGs. There are currently more than 1,000 CSGs operating in the region at different levels and covering issues ranging from disabilities, youth, gender, trade, health, environment, culture and governance.
19. CSGs represent a potentially powerful force for creating positive change in the region. The Law Council understands, however, that this potential is being constrained by the numerous challenges that face civil society organisations,

<sup>10</sup> Department of Foreign Affairs and Trade, 'Pacific Women Shaping Pacific Development Design Document' (Australian Government, April 2014) <[https://pacificwomen.org/wp-content/uploads/2017/09/Pacific-Women-Design-Document\\_final.pdf](https://pacificwomen.org/wp-content/uploads/2017/09/Pacific-Women-Design-Document_final.pdf)>.

<sup>11</sup> 'Strong and Effective Civil Society', *Australian Council for International Development* (online, 2015) <<https://acfid.asn.au/our-focus/strong-effective-civil-society>>.

including the fact that many governments question their legitimacy, viewing them with scepticism and distrust (a position often reciprocated by CSGs themselves).

20. Dialogue between CSGs and governments is often ad hoc and unsupported by any institutional legal framework. CSGs commonly lack stable funding and instead rely on unpredictable donor-driven sources for particular projects. Chronic limitations in human resources, difficulties to recruit and retain high quality staff, and high staff turnover are other challenges for which CSGs require urgent capacity building.

## Responses to the Terms of Reference

### 1. The role of civil society groups in advancing the human rights of women and girls in the Pacific and gender equality

21. In general terms, local and international CSGs play a variety of roles to advance the human rights of women and girls in PICT , including:
  - (a) providing services to meet immediate needs of women and girls who have experienced domestic, family and sexual violence (including counselling, crisis services and legal aid);
  - (b) advocating for social and legislative change to address discrimination and advance the human rights of women and girls;
  - (c) building awareness of changes in the law and creating support and public acceptance of initiatives which promote the rights of women and children;
  - (d) advocating for women to be visibly and effectively represented through leadership at all levels of decision-making; and
  - (e) providing human rights training to government officials, law enforcement and members of the public, as well as other public education and outreach programs.
22. The following section is divided into thematic areas in which CSGs work to advance gender equality and the human rights of women and girls in the Pacific.

#### Addressing gender-based violence

23. Statistics demonstrate that Pacific women and girls continue to experience gender-based violence (**GBV**), including domestic, family and sexual violence, in unacceptably high numbers.<sup>12</sup> The likelihood of a woman experiencing intimate partner physical and/or sexual violence during her lifetime in six individual PICTs – the Solomon Islands, Vanuatu, Fiji, Kiribati, Samoa and Tonga – ranges from 40% to 68%, compared to the global average of 30%.<sup>13</sup> A 2011 survey by Fiji Women’s Crisis Centre (**FWCC**) found that 72% of women in Fiji who had ever been partnered had experienced physical, sexual or emotional violence from their husband or partner and 64% had experienced physical or sexual violence, while 57% of women reported that their husband or partner had to know their

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<sup>12</sup> Asian Development Bank, ‘Gender Statistics: The Pacific and Timor Leste’ (Asian Development Bank, 2016) 4 <<https://www.adb.org/sites/default/files/publication/181270/gender-statistics-pacific-tim.pdf>>. See also Lisa Comish, ‘DFAT’s decade tackling gender-based violence’ *Devex* (online, 5 March 2020), <<https://www.devex.com/news/dfat-s-decade-tackling-gender-based-violence-96469>>.

<sup>13</sup> Fiji Women’s Crisis Centre, ‘Somebody’s Life, Everybody’s Business! National Research on Women’s Health and Life Experiences in Fiji’ (Fiji Women’s Crisis Centre, 2011) 10.

whereabouts at all times.<sup>14</sup> In 2015, the FWCC reported that 43 women in Fiji were injured in domestic violence incidents every day, and, of those, ten would lose consciousness and one would become permanently disabled.<sup>15</sup>

24. The Law Council understands that factors contributing to the high incidence of GBV in PICT include deeply entrenched gender roles in traditionally patriarchal societies and moral policing at the village level.<sup>16</sup>
25. The United Nations Declaration on the Elimination of Violence Against Women summarises the responsibilities of states to eliminate violence, including to:
  - (a) exercise due diligence to prevent, investigate and punish acts of violence against women;
  - (b) develop sanctions to punish violence against women and provide access to justice and effective remedies for victims;
  - (c) consider the possibility of developing national action plans and guidelines;
  - (d) develop comprehensive violence prevention measures;
  - (e) provide specialised and appropriate support to women subjected to violence and their children;
  - (f) allocate adequate budgetary resources towards eliminating violence against women;
  - (g) provide gender sensitisation training to law enforcement officers and public officials;
  - (h) promote research, collect data and compile statistics, relating to prevalence of different forms of violence against women and encourage research on the causes, nature, seriousness and consequences of violence against women and on the effectiveness of measures implemented;
  - (i) adopt specific measures directed towards eliminating violence against women who are particularly vulnerable to violence; and
  - (j) recognise the role of, facilitate and cooperate with the women's movement and NGOs in raising awareness and alleviating [GBV].<sup>17</sup>
26. The UN Commission on the Status of Women has requested that governments, in partnership with 'key stakeholders'<sup>18</sup> strengthen implementation of legal and policy frameworks and accountability; address structural and underlying causes and risk

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<sup>14</sup> Ibid.

<sup>15</sup> Stewart Firth, 'Instability in the Pacific Islands: A Status Report' (Lowy Institute, 4 June 2018), <<https://www.lowyinstitute.org/publications/instability-pacific-islands-status-report>>.

<sup>16</sup> Fiji Women's Rights Movement et al, *Joint Submission to the UN Universal Periodic Review*, Human Rights Council Working Group on the Universal Periodic Review, 34th sess (March 2019) 6 <<https://uprdoc.ohchr.org/uprweb/downloadfile.aspx?filename=6883&file=EnglishTranslation>>. See also Aletta Biersack, Margaret Jolly and Martha Macintyre (eds) *Gender Violence & Human Rights: Seeking Justice in Fiji, Papua New Guinea & Vanuatu* (Australian National University Press, 2016) 71, 318 <<https://press-files.anu.edu.au/downloads/press/n2168/pdf/book.pdf>>.

<sup>17</sup> *Declaration on the Elimination of Violence Against Women*, GA Res 48/104, UN Doc A/RES/48/104 (20 December 1993) art 4.

<sup>18</sup> 'Key stakeholders' are listed as relevant entities of the United Nations system, international and regional organizations, national human rights institutions, NGOs and civil society, the private sector, employer organizations, trade unions, media and other relevant actors.

factors to prevent GBV; strengthen multi-sectoral services, programs and responses; and improve the evidence-base.<sup>19</sup>

27. Since 2008, most Pacific states have implemented standalone domestic violence legislation,<sup>20</sup> and either removed exemptions or explicitly criminalised marital rape<sup>21</sup> – both of which represent an important step in criminalising domestic violence and creating a framework to protect victims and secure justice. For the most part, the legislation adopted is consistent with international standards, however the Law Council notes that some legislative frameworks explicitly limit the legal protection and justice available to victims. For example, the definition of domestic violence under Tonga's *Family Protection Act 2013* requires an act or omission as being 'beyond the reasonable expectations and acceptances of family and domestic life.'<sup>22</sup>
28. Despite the passage of legislative reform with respect to domestic violence, there remains a significant 'implementation gap' in many jurisdictions, which is linked to a lack of capacity in government and judicial institutions, and shortcomings in the standards adhered to by prosecutors and law enforcement officials.<sup>23</sup>
- (a) In Vanuatu, very few family protection orders are issued relative to national domestic violence prevalence data, and it has been documented that women in rural areas are not aware of the legislation or the protection that it offers.<sup>24</sup>
  - (b) In Fiji, domestic violence continues to be considered a private matter, and police are reportedly reluctant to adhere to the 'no drop' policy or issue restraining orders, or otherwise encourage women to resort to traditional apology and cultural reconciliation procedures.<sup>25</sup>
  - (c) In the Solomon Islands, the current implementation budget of the *Family Protection Act* is only 5% of the necessary budget estimated when the Act was passed in 2014.<sup>26</sup> There is also a lack of coordination between relevant government organs (the Ministry of Women, the Ministry of Justice and the Ministry of Police), and the Government defers implementation activities and awareness raising to NGOs.<sup>27</sup>
29. While public awareness of GBV is generally improving in the region, the barriers to justice for GBV survivors are only beginning to be understood. These barriers

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<sup>19</sup> Commission on the Status of Women, *Report on the fifty-seventh session (4-15 March 2013)*, UN ESCOR, 57<sup>th</sup> sess, Supp No 3, UN Doc E/2013/27 (2 April 2013) 1.

<sup>20</sup> See, eg, *Family Protection Act 2008* (Vanuatu), *Domestic Violence Act 2009* (Fiji), *Domestic Violence Prevention and Protection Act 2011* (Marshall Islands), *Family Protection Act 2012* (Palau), *Family Protection Act 2013* (Papua New Guinea), *Family Safety Act 2013* (Samoa), *Family Protection Act 2014* (Solomon Islands), *Lao ki he Malu'i 'o e Famili [Family Protection Act] 2014* (Tonga), *Family Protection and Domestic Violence Act 2014* (Tuvalu), *Te Rau N Te Mwenga [Family Peace] Act 2014* (Kiribati) and *Domestic Violence and Family Protection Act 2017* (Nauru).

<sup>21</sup> See, eg, *Penal Code (Amendment) (Sexual Offences) Act 2016* (Solomon Islands) s 5(136F)(2).

<sup>22</sup> *Lao ki he Malu'i 'o e Famili [Family Protection Act] 2014* (Tonga) s 4.

<sup>23</sup> Shamima Ali, UN Division for the Advancement of Women and UNICEF, *Violence Against the Girl Child in the Pacific Islands Region*, UN Doc EGM/DVGC/2006/EP.14 (2006) 6

<<https://www.un.org/womenwatch/daw/egm/elim-disc-viol-girlchild/ExpertPapers/EP.14%20%20Ali.pdf>>.

<sup>24</sup> Lindy Kanan, 'Vanuatu's Family Protection Act: Contextualisation, Resistance and Implementation' *Department of Pacific Affairs 'In Brief'* (Australian National University, July 2019), <[https://openresearch-repository.anu.edu.au/bitstream/1885/157048/1/ib\\_2019\\_7\\_kanan\\_final.pdf](https://openresearch-repository.anu.edu.au/bitstream/1885/157048/1/ib_2019_7_kanan_final.pdf)>.

<sup>25</sup> Human Rights Council Working Group on the Universal Periodic Review, *Report of the Office of the United Nations High Commissioner for Human Rights: Compilation on Fiji*, 34<sup>th</sup> sess, UN Doc A/HRC/WG.6/34/FJI/2 (22 August 2019) 9.

<sup>26</sup> Family Support Centre, Submission to the Universal Periodic Review of the Solomon Islands, Human Rights Council Working Group on the Universal Periodic Review, 24<sup>th</sup> sess (2016) 5

<<https://uprdoc.ohchr.org/uprweb/downloadfile.aspx?filename=2398&file=EnglishTranslation>>.

<sup>27</sup> Ibid.

include police ignoring domestic violence reports, difficulty accessing justice agencies from remote areas, a lack of awareness about available support services and justice sector processes, and the cost of filing fees and legal advice relative to income.<sup>28</sup> There are also considerable discrepancies between rural and urban women in terms of their knowledge of, and willingness to access, formal justice mechanisms, and people in vulnerable groups are more likely to have low legal awareness – which further compounds their disadvantage in terms of access to justice.<sup>29</sup>

30. Insufficient funding, coupled with an increased demand for services, hinders the capacity of courts and tribunals to resolve matters swiftly and fairly, to the detriment of women and children. Due to critical under-resourcing, federal courts and tribunals are under immense and chronic pressure and are struggling to meet demand. The Law Council notes that due to resourcing pressures, many of the members of the judiciary in PICT are expatriates from Australia, New Zealand and other Commonwealth nations. Public legal aid services are also under-resourced and under-funded, while demand for their services are increasing.<sup>30</sup> While increased use of formal justice processes is to be welcomed, it places greater strain on these institutions.
31. The Law Council recognises and commends the Pacific Peace Development Program, and the work of DFAT, the Australian Federal Police and the Attorney-General's Department to strengthen the rule of law and justice institutions in PICT. The Law Council welcomes efforts to provide gender-sensitisation training, promote women's leadership within these institutions and increase focus on domestic violence and the justice needs of women and girls.
32. Where legislative protections and Government support services are limited, CSGs have stepped in to provide emergency support services to meet physical and emotional needs of survivors, as well as ongoing psychological support.<sup>31</sup> There are also examples of CSGs providing mobile counselling services and legal referrals in rural communities, and meeting the court fees and travel expenses of victims and witnesses in order to assist survivors to obtain justice.<sup>32</sup> The Law Council notes that the role of CSGs to improve community understanding of domestic violence legislation and justice services is particularly critical, and these public outreach activities should be supported.
33. There are several examples of Pacific governments forging effective partnerships with CSGs to combat GBV. These include Fiji's Inter-Agency Violence Against

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<sup>28</sup> Joint Submission to the UPR of Fiji (n 16) 6. See also Pacific Judicial Development Program, '2014 Court Trend Report' (Report, June 2015) 41.

<[http://www.fedcourt.gov.au/\\_data/assets/pdf\\_file/0006/27978/Court\\_Trend\\_Report\\_web.pdf](http://www.fedcourt.gov.au/_data/assets/pdf_file/0006/27978/Court_Trend_Report_web.pdf)>.

<sup>29</sup> UNDP Pacific Office in Fiji, Hague Institute for Innovation of Law and European Union, 'Justice Needs and Satisfaction in Fiji' (Report, October 2019) <<https://www.pacific.undp.org/content/pacific/en/home/library/eg/justice-needs-and-satisfaction-in-fiji-report.html>>.

<sup>30</sup> Ibid.

<sup>31</sup> Jo Kaybryn and Vijaya Nidadavolu 'A mapping of faith-based responses to violence against women and girls in the Asia–Pacific region' (United Nations Population Fund and the Asia Pacific Women, Faith and Development Alliance, 2013) 13. <<https://www.unfpa.org/sites/default/files/resource-pdf/UNFPA-WVA-FBO-VAWG-AP-2012.pdf>>.

<sup>32</sup> Family Support Centre Submission to the UPR of the Solomon Islands (n 26) 6 <<https://uprdoc.ohchr.org/uprweb/downloadfile.aspx?filename=2398&file=EnglishTranslation>>.

Women Task Force<sup>33</sup> and the Solomon Islands' SafeNet initiative providing services to victims of domestic violence and sexual abuse.<sup>34</sup>

34. The Law Council recognises that activities aimed at combatting GBV and domestic violence require buy-in from local village leaders and faith leaders, who wield significant influence and credibility in PICT communities. Both international and local faith-based organisations play an important role in delegitimising domestic violence, and provide useful networks for community outreach and mobilisation.<sup>35</sup> While a significant number of local and international faith-based CSGs operate in PICT, these organisations experience chronic resourcing pressures.<sup>36</sup> The Law Council emphasises that the activities and initiatives of faith-based organisations should be rights-based and consistent with regional and international frameworks for gender equality (e.g. CEDAW, Beijing Declaration, SDGs and the Rarotonga Declaration).
35. A further gap in many PICT is that legal frameworks and services do not meet the specific needs of LGBTI+ women, including trans, non-binary and gender diverse women, despite the reality that these women are particularly vulnerable to domestic, family and sexual violence and other forms of harassment and discrimination.<sup>37</sup> A number of CSGs have been established to record and raise awareness regarding GBV experienced by LGBTI+ persons, and advocate for inclusive health and legal services.<sup>38</sup> The Law Council notes, however, that the few CSGs active in this area operate mostly in the capitals and more populous Pacific Islands, and LGBTI+ persons in more remote areas may not have access to services tailored to the LGBTI+ community.

#### **Recommendations:**

- **Provide additional financial and in-kind support to civil society groups who work to prevent and respond to domestic, family and sexual violence in the Pacific, placing particular emphasis on capacity-building work and improving coordination between services.**
- **Continue to work in collaboration with Pacific police forces to provide gender-sensitisation training and resources with a view to improving frontline responses to gender-based violence.**
- **Direct greater financial and human resource assistance towards strengthening legal institutions in the Pacific and easing strained judicial and legal assistance resources, with a view to improving access to justice to women and girls in the region.**

<sup>33</sup> Human Rights Council Working Group on the Universal Periodic Review, *National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21: Fiji*, UN Doc A/HRC/WG.6/34/FJI/1 (7 October 2019) 19.

<sup>34</sup> Human Rights Council Working Group on the Universal Periodic Review, *Summary prepared by the Office of the United Nations High Commissioner for Human Rights in accordance with paragraph 15 (c) of the annex to Human Rights Council resolution 5/1 and paragraph 5 of the annex to Council resolution 16/21: Solomon Islands*, 24<sup>th</sup> sess, UN Doc A/HRC/WG.6/24/SLB/3, (6 November 2015) 8.

<sup>35</sup> Jo Kaybryn and Vijaya Nidadavolu, (n 31), 12, 47.

<sup>36</sup> *Ibid.*

<sup>37</sup> Emily Dwyer and Lana Woolf, 'Down By The River: Addressing the rights, needs and strengths of Fijian sexual and gender minorities in disaster risk reduction and humanitarian response' (Oxfam Edge Effect and Rainbow Pride Foundation, 2018) <[https://www.gdnonline.org/resources/Down-By-TheRiver\\_Web.pdf](https://www.gdnonline.org/resources/Down-By-TheRiver_Web.pdf)>.

<sup>38</sup> See for example, the Haus of Khameleon and Rainbow Pride Foundation.

## Combatting Modern Slavery

36. Women and girls are particularly vulnerable to modern slavery, comprising 71% of global victims.<sup>39</sup> Factors that may exacerbate the vulnerability of women and girls to modern slavery victimisation include their overrepresentation in informal sector employment, socio-economic marginalisation and vulnerability to forced marriage and sexual exploitation.
37. There are currently no reliable estimates of the prevalence of modern slavery in PICT,<sup>40</sup> however a qualitative study published by anti-slavery organisation Walk Free in 2020 identified at least one, but often several forms of modern slavery in eight separate countries across the region.<sup>41</sup> The study found that ‘a permissive environment for violence against women and children creates an environment where modern slavery is able to occur,’ and discrimination against women and girls drives modern slavery ‘by limiting access to education, employment, and land ownership’.<sup>42</sup>
38. Unavailability and/or inaccessibility of education, financial hardship and lack of employment opportunities for children, young people and females are considered to be key drivers of modern slavery risks in the Pacific context. In Papua New Guinea, female children are at least twice as vulnerable as male children to be subject to trafficking, and children who did not attend school are at a greater risk.<sup>43</sup> Therefore, initiatives directed towards the economic empowerment of women and increasing their representation in formal sector employment has the potential to reduce modern slavery risks to women and girls in the Pacific.
39. The Law Council recognises that Australia is engaged in international efforts to address modern slavery, and through the Bali Process and the Pacific Step-Up Initiative, places particular emphasis on addressing modern slavery in the Asia-Pacific region. As highlighted in the Law Council’s submission to the DFAT regarding Australia’s International Strategy on Modern Slavery, the Pacific Step-Up could place greater emphasis on the prevention of modern slavery in the Pacific – both through stand-alone initiatives and in implementing all of its flagship priorities (e.g. the \$2 billion Australian Infrastructure Financing Facility for the Pacific and the Coral Sea Cable).<sup>44</sup> It also noted that Australia should lead by example in identifying and addressing slavery risks in its procurement processes, including its procurements from international suppliers and in the development context.<sup>45</sup>
40. The Australian Government’s 2017 Foreign Policy White Paper states that ‘Australia is committed to being a regional leader in combatting people smuggling, human trafficking, modern slavery and related crimes.’<sup>46</sup> The Australian Government could give effect to this commitment by supporting CSGs and overseas development assistance programs in addressing key vulnerability factors driving modern slavery in the Pacific region, improving awareness of existing laws relating to modern slavery and human trafficking and providing resource access to targeted, gender-sensitive sources of advice and support for victims.

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<sup>39</sup> International Labour Office (ILO) and Walk Free Foundation ‘2017 Global Estimates of Modern Slavery: Forced Labour and Forced Marriage’ (ILO, 19 September 2017) 5.  
<[https://www.ilo.org/wcmsp5/groups/public/@dgreports/@dcomm/documents/publication/wcms\\_575540.pdf](https://www.ilo.org/wcmsp5/groups/public/@dgreports/@dcomm/documents/publication/wcms_575540.pdf)>.

<sup>40</sup> Walk Free Foundation, ‘Murky Waters: A Qualitative Assessment of Modern Slavery in the Pacific Region’ (Minderoo Foundation, 2020) 17.

<sup>41</sup> Ibid 3.

<sup>42</sup> Ibid 39, 41.

<sup>43</sup> Ibid 39.

<sup>44</sup> Law Council of Australia (n 2) 8.

<sup>45</sup> Ibid 57.

<sup>46</sup> Australian Government, *Foreign Policy White Paper* (2017) 72.

41. The Law Council further notes that, due to the passage of Australia's *Modern Slavery Act 2018* (Cth) and similar legislation in other jurisdictions,<sup>47</sup> Australia and its development partners could play an important role in advising Pacific exporters to expect increased attention on their supply chains, how to fully (and in good faith) comply with these reporting requirements, and how to uphold best practices with respect to human rights in their business operations. Targeted training on the content of the United Nations Guiding Principles on Business and Human Rights would also be helpful in this regard.

**Recommendations:**

- **Place greater emphasis on the prevention of modern slavery in the Pacific region, including through awareness-raising and access to targeted, gender-sensitive sources of advice and support for victims.**
- **Support civil society groups and development assistance programs with the objective of addressing key vulnerability factors driving modern slavery in the Pacific region, and improving awareness of existing laws and obligations regarding modern slavery and human trafficking.**

**Women's employment and economic participation**

42. The economic empowerment of women is consistent with the rights to an adequate standard of living, to work and to just and favourable conditions of work,<sup>48</sup> and to enjoy economic rights without discrimination based on sex, and is critical to the advancement of gender equality in the South Pacific, enabling women to participate in, contribute to and benefit from economic opportunities and development.
43. The Secretariat of the Pacific Community, a regional organisation providing support and coordination to 22 PICT, has stated that:
- Women's labour-force participation rates remain low, with significant disparity recorded in Solomon Islands, Fiji, Papua New Guinea, Republic of the Marshall Islands and Samoa. Labour-force discrimination, lack of property rights and poor infrastructure significantly impact on women's workloads and their participation in the formal and informal sector.*<sup>49</sup>
44. The Secretariat of the Pacific Community attributed this gender disparity in labour force participation, in part, to a lack of legislative protections in key employment areas such as: non-discrimination provisions in recruitment and retrenchment; paid maternity leave; affirmative action policies; wage discrimination; and sexual harassment.<sup>50</sup>
45. The Law Council commends the initiatives of the Australian Government to address this gender imbalance in the Pacific labour market and facilitate economic empowerment of women. In particular, the Markets for Change program, funded by the Australian Government through Pacific Women, and implemented by UN

<sup>47</sup> *Modern Slavery Act 2018* (Cth). See also *Modern Slavery Act 2015* (UK) and *Loi n°2017-399 relative au devoir de vigilance des sociétés mères et entreprises donneuses d'ordre* [Law relating to the duty of vigilance of parent companies and instructing companies] (France) JO, 28 March 2017). Similar legislation has also been proposed in Canada, (see Bill S-211 'An Act to enact the Modern Slavery Act and to amend the Customs Tariff' <<https://www.parl.ca/DocumentViewer/en/43-1/bill/S-211/first-reading>>).

<sup>48</sup> ICESCR (n 3) arts 6, 7, 11 and 3.

<sup>49</sup> Secretariat of the Pacific Community, Submission No 24 to Joint Standing Committee on Foreign Affairs, Defence and Trade, *Inquiry into the human rights issues confronting women and girls in the Indian Ocean – Asia Pacific Region* (2014) 4.

<sup>50</sup> Ibid.

Women, works to ensure that marketplaces in Fiji, the Solomon Islands and Vanuatu are 'safe, inclusive and non-discriminatory, promoting gender equality and women's empowerment'.<sup>51</sup> A mid-term review of Markets for Change published in 2018 found that 'intended project results have been beneficial to women [market vendors] overall,' and vendors reported 'improved market organization, improved sense of safety and improved security of produce'.<sup>52</sup>

46. In many Pacific jurisdictions, cultural and legal barriers impede women from obtaining equal rights to economic resources and financial services.
47. Of significant note is the discriminatory land tenure system retained in Tonga under its *Land Act 2016*,<sup>53</sup> in which women's legal and economic rights continue to be informed by patriarchal expectations of sexual purity and morality. Women cannot hold a hereditary estate and title, and while a woman may inherit a right to occupy the land, the estate and title passes through her to the next male in succession.<sup>54</sup> A woman may inherit a life estate in two circumstances: first, an unmarried daughter may inherit the right to occupy an allotment when an allotment holder dies without leaving any male heir; and second, a widow inherits a life estate to an allotment owned by her husband.<sup>55</sup> These life estates will terminate if a woman (re-)marries or 'commits fornication or adultery'.<sup>56</sup> Moreover, only children born in wedlock may inherit land.<sup>57</sup>
48. Despite two Royal Land Commissions,<sup>58</sup> the most recent identifying widespread public support for women to be afforded equal land rights with men,<sup>59</sup> there has been no action on the recommendations contained in the reports. The Law Council considers that local CSGs in Tonga should be supported in advocating for legislative change to implement the Commission's recommendations.

**Recommendation:**

- **Continue to provide financial and in-kind support to evidence-based initiatives with the aim of advancing women's economic participation in the region, enhance financial literacy and improve awareness of employment rights.**
- **Identify opportunities to encourage the adoption of legislative amendments and government policies that:**
  - (a) **Guarantee equal rights of women with respect to land, employment and assets; and**
  - (b) **Better protect the rights and interests of women in the workforce, including sexual harassment and non-discrimination protections.**

<sup>51</sup> UN Women, *Women's Economic Empowerment Programme* (online, undated) <<https://asiapacific.unwomen.org/en/countries/fiji/womens-economic-empowerment>>.

<sup>52</sup> Farida Fleming and Marica Tabualevu, *UN Women Markets for Change Midterm Review Report* (Assai, 23 July 2018) 41-42 <<https://www.dfat.gov.au/sites/default/files/markets-for-change-independent-mid-term-review-2018.pdf>>.

<sup>53</sup> *Land Act* (Tonga) Ch 46.02 (2016 Revised Edition) <[https://ago.gov.to/cms/images/LEGISLATION/PRINCIPAL/1903/1903-0020/LandAct\\_2.pdf](https://ago.gov.to/cms/images/LEGISLATION/PRINCIPAL/1903/1903-0020/LandAct_2.pdf)>.

<sup>54</sup> Allens Linklaters, 'Disaster Law Housing, Land and Property Mapping Project: Tonga' (Allens Linklaters, 5 October 2017) <[https://reliefweb.int/sites/reliefweb.int/files/resources/2018\\_03\\_23\\_guidance\\_hlp\\_law\\_in\\_tonga.pdf](https://reliefweb.int/sites/reliefweb.int/files/resources/2018_03_23_guidance_hlp_law_in_tonga.pdf)>.

<sup>55</sup> *Land Act* (Tonga) (n 53) ss 80, 82(d).

<sup>56</sup> *Ibid* ss 80, 81, 82(d).

<sup>57</sup> *Ibid* s 82(b).

<sup>58</sup> 1983 and 2012.

<sup>59</sup> Royal Land Commission Final Report (Tonga) (2012) 28, 204 <[http://www.paclii.org/to/Royal\\_Land\\_Commission\\_Report/main.html](http://www.paclii.org/to/Royal_Land_Commission_Report/main.html)>.

## Empowering women in leadership and decision-making

49. The Law Council notes the critical importance of increasing the participation and leadership of Pacific women in decision-making in political, economic and social spheres, and at all levels of government. This is consistent with the Rarotonga Declaration of the Pacific Islands Forum, which emphasises the need to implement specific national policy actions to accelerate the full and equal participation and leadership of women at all levels of decision-making.<sup>60</sup>
50. The legislative representation of women in the PICT is among the lowest in the world, and remains a key developmental challenge in the region.<sup>61</sup> In 2014, of fourteen legislatures in the region, women represented on average 4.85% of MPs and a mean of 3.85%.<sup>62</sup> As of 2020, women represent an average of 10.06% of MPs, and a median of 9.35%.<sup>63</sup> At present, there are no women MPs in the Federated States of Micronesia, Papua New Guinea and Vanuatu. Barriers to the political representation of women include a pervasive masculine political culture, limited social mobility and economic independence, more difficulty funding political campaigns, and in some instances, intimidation and threats of violence.<sup>64</sup>
51. The Law Council notes that many leadership initiatives tend to focus on political representation at the national level, and little action is taken to facilitate women's leadership at the community level.<sup>65</sup> Without detracting from the need to increase the formal participation of women in parliamentary and public service roles, the Law Council recognises that CSGs provide an important opportunity for women to build valuable leadership skills and become visible and influential leaders in their communities, as well as more broadly within the Pacific region.
52. With appropriate support, some CSGs have taken the mantle of playing a coordinating role with other CSGs in the region. For example, the Fiji Women's Crisis Centre also serves as Secretariat of the Pacific Women's Network on Violence Against Women, and in this capacity, runs a four week regional training program twice per year. The FWCC also publishes the Beneath Paradise newsletter to share news relevant to the rights of women and promote community and government initiatives.<sup>66</sup>

### **Recommendations**

- **Continue to support initiatives such as the Pacific Leadership Program and the Pacific Parliamentary Partnership program to increase the participation of women in social and economic decision-making at all levels.**
- **Increase support for initiatives directed at facilitating leadership of women at the community level, and undertake analysis to measure the success and enhance the efficacy of these initiatives.**

<sup>60</sup> Pacific Leaders Gender Equality Declaration (n 9).

<sup>61</sup> Philippa Brant, 'Female political participation in the Pacific', *Lowy Institute* (online, 11 June 2014) <<https://www.lowyinstitute.org/the-interpretor/female-political-participation-pacific>>.

<sup>62</sup> *Ibid.*

<sup>63</sup> Calculated from data published by Pacific Women in Politics. See 'Country Profiles' *Pacific Women in Politics* (online, 2020) <<https://www.pacwip.org/>>.

<sup>64</sup> Gillian Fletcher, Tait Brimacombe and Chris Roche, 'Power, Politics and Coalitions in the Pacific: Lessons from Collective Action on Gender and Power' (Research Paper, December 2016) 1.

<sup>65</sup> Nicole Haley and Kerry Zubrinich, 'Women's political and administrative leadership in the Pacific' in *State, Society and Governance in Melanesia* (January 2016) <<https://pacificwomen.org/research/womens-political-and-administrative-leadership-in-the-pacific/>>.

<sup>66</sup> See <<https://www.fijiwomen.com/publications/regional/>>.

- **Support and encourage the formation of coalitions by civil society groups to advance gender equality and promote women’s leadership.**

### A gender-sensitive approach to climate change and natural disaster responses

53. The Law Council recognises and endorses increasing international attention to human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment,<sup>67</sup> as well as the profound adverse impact of climate change on the rights to life;<sup>68</sup> to protection of the family as the fundamental unit of society;<sup>69</sup> to an adequate standard of living including adequate food, clothing and housing;<sup>70</sup> to the highest attainable standard of physical and mental health;<sup>71</sup> the rights of children;<sup>72</sup> and cultural rights.<sup>73</sup>
54. The Law Council’s recently agreed Sustainable Development Policy recognises the interdependence of environmental protection and human rights.<sup>74</sup> It states that decision-making about development that affects the environment or involves the exploitation of natural resources should respect, protect and fulfil human rights.<sup>75</sup>
55. Women are affected differently by natural disasters and climate change, which can in turn exacerbate existing gender disparities.<sup>76</sup> There is also increasing recognition that governments must ensure that climate change responses fully realise their international obligations to respect, protect and fulfil human rights, including recognising, and responding to, the gendered impacts of climate change.<sup>77</sup>
56. PICT, which include many low-lying atolls and archipelagos, and are particularly vulnerable to the impacts of climate change – especially rising sea levels and degradation of coral reefs and marine biodiversity. Climate change may also exacerbate the frequency and severity of natural disasters in a region that is already one of the most natural disaster-prone regions on earth.<sup>78</sup>
57. The Law Council notes that women and girls in the Pacific are likely to disproportionately affected, as well as differently affected, by climate change. Natural disasters have been linked to an increase in domestic violence in Pacific

<sup>67</sup> The main human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment have been identified in framework principles which ‘should be accepted as a reflection of actual or emerging international human rights law’ John H. Knox, UN Special Rapporteur on Human Rights and the Environment ‘Human rights and the Environment: Framework Principles on Human Rights and the Environment’ (2018), 3.

<sup>68</sup> ICCPR (n 3) art 6.

<sup>69</sup> ICESCR (n 3) art 10.

<sup>70</sup> Ibid art 11.

<sup>71</sup> Ibid art 12.

<sup>72</sup> Paris Agreement, adopted on 12 December 2015, UN Doc FCCC/CP/2015/L.9/Rev/1 (entered into force 4 November 2016).

<sup>73</sup> ICESCR (n 3) art 15.

<sup>74</sup> Law Council of Australia, *Policy on Sustainable Development* (14 September 2019).

<sup>75</sup> Ibid 3, 6.

<sup>76</sup> Margaret Alston, ‘Gender mainstreaming and climate change’ (2014) 47 *Women’s Studies International Forum*, 289.

<sup>77</sup> See, eg Enhanced Lima Work Programme on Gender in United Nations Framework Convention on Climate Change (UNFCCC) *Report of the Conference of the Parties on its twentieth session, held in Lima from 1 to 14 December 2014*, 20<sup>th</sup> sess, 2<sup>nd</sup> pt, 10<sup>th</sup> plen mtg, UN Doc FCCC/CP/2014/10/Add.3 (2 February 2015) 36.

<sup>78</sup> World Bank, ‘Pacific Islands: Disaster Risk Reduction and Financing in the Pacific’ (online, 1 April 2012) <<https://www.worldbank.org/en/results/2012/04/01/pacific-islands-disaster-risk-reduction-and-financing-in-the-pacific#:~:text=The%20Pacific%20is%20one%20of,%2C%20volcanic%20eruptions%2C%20and%20sunamis>>.

Island communities,<sup>79</sup> and in communities displaced due to natural disasters or climate change, women become increasingly financially dependent on their husbands,<sup>80</sup> and are more susceptible to sliding into poverty.<sup>81</sup>

58. CSGs play an important role in advocating for natural disaster responses to consider, and effectively respond to, the needs of women and LGBTI+ persons, including with respect to sanitation, privacy in shelters, healthcare and childcare services.
59. CSGs are also advocating for increased consultation with affected communities and women's organisations in the development of climate adaptation and relocation plans, and greater participation of women at all levels of decision-making.<sup>82</sup> This is consistent with emerging international recognition that climate change responses which integrate gender considerations and facilitate the participation and leadership of women result in better, more sustainable outcomes.<sup>83</sup>
60. The Law Council commends the climate change negotiator training delivered by Pacific Women in partnership with the Women's Environment and Development Organisation.<sup>84</sup> In addition to providing women with the opportunity to cultivate and practice critical leadership skills, the Law Council hopes that the initiative will increase the participation of women in decision-making on climate change and environmental issues, imbue a gender perspective in community, national and regional responses to natural disasters and climate change, and normalise and inspire greater participation of women in politics and the public sphere.

**Recommendation:**

- **In partnership with civil society groups, Australia should continue to support projects directed at building leadership skills among Pacific women, and boost women's participation in local, national and multilateral dialogues and decision-making on issues relating to climate change and the environment.**

**Advancing gender equality in law and practice**

61. On a national and international level, CSGs play an important role in advocating for PICT governments to ratify or endorse international instruments on gender equality and incorporate these obligations into domestic law and policy, as well as measuring progress relative to international standards.
62. Tonga is among the six UN member states that have not yet ratified CEDAW. In 2015, at the 59th session of the United Nations Commission on the Status of Women, Tonga's Government indicated its commitment to ratify CEDAW. This commitment was later withdrawn following widespread opposition from religious leaders and congregations, and some women's groups, concerned that CEDAW

<sup>79</sup> UN Women, 'Across the Pacific region, crisis centres respond to increased cases of violence against women amid COVID-19' (online, 11 June 2020) <<https://asiapacific.unwomen.org/en/news-and-events/stories/2020/06/across-the-pacific-region-crisis-centres-respond-to-increased-cases-of-violence>>.

<sup>80</sup> Human Rights Council Working Group on the Universal Periodic Review, *Summary of Stakeholders' submissions on Fiji*, 34<sup>th</sup> sess, UN Doc A/HRC/WG.6/34/FJI/3 (22 August 2019) 3.

<sup>81</sup> Neena Bhandari, 'How Some Pacific Women are Responding to Climate Change and Natural Disasters' *Inter Press Service* (online, 20 April 2020) <<http://www.ipsnews.net/2020/04/pacific-women-responding-climate-change-natural-disasters/>>.

<sup>82</sup> *Ibid.*

<sup>83</sup> See, eg Enhanced Lima Work Programme on Gender (n 77).

<sup>84</sup> Pacific Women Shaping Pacific Development, 'Annual Progress Report 2017-2018' (Report, August 2019) <<https://pacificwomen.org/key-pacific-women-resources/pacific-women-annual-progress-report-2017-2018/>>.

contradicted Tonga's unique cultural values and Christian beliefs, and that ratification of CEDAW would lead to legalisation of abortion and same sex marriage.<sup>85</sup> In response, 13 local NGOs have formed the Tongan Women in Leadership Coalition to advocate for the ratification of CEDAW through targeted initiatives to address these misconceptions.<sup>86</sup> This highlights both the potential of CSGs in building the case for gender equality and increasing recognition of the rights of women and girls, as well as the influence wielded by the church and faith-based organisations; and the need to educate and obtain the 'buy in' of these groups in initiatives that advance gender equality.

63. While the Law Council is pleased to note that a number of PICT CSGs have engaged in Universal Periodic Review (**UPR**) processes, it considers that this engagement should be further encouraged and UPR consultation opportunities widely advertised. Many CSGs can provide specialised information and insights into the protection of human rights in practice, identify gaps in implementation (e.g. inadequate resourcing of programs, or limited access to programs by minority groups and rural and remote communities), and offer practical suggestions to improve the enjoyment of human rights.
64. One significant area in which Pacific states lag behind many other regions in terms of human rights protection is the absence in most jurisdictions of an independent National Human Rights Institution (**NHRI**). At present, only Fiji, Samoa and Tuvalu<sup>87</sup> have established NHRIs (Samoa and Tuvalu within the existing structure of the independent Ombudsman).
65. The Law Council considers that NHRIs play a unique and vital role in bridging the 'protection gap' between the human rights of individuals and the responsibilities of the state by:
  - (a) Monitoring the human rights situation in the country and the State's actions;
  - (b) Providing advice to the State to assist it in meeting its international and domestic human rights commitments;
  - (c) Receiving, investigating and resolving complaints of human rights violations;
  - (d) Undertaking community human rights education programs; and
  - (e) Engaging with the international human rights community to raise pressing issues and advocate for recommendations that can be made to the State.<sup>88</sup>
66. The Law Council recognises that the Asia Pacific Forum (**APF**), in partnership with the Pacific Islands Forum Secretariat (**PIFS**) and the Office of the High Commissioner of Human Rights (**OHCHR**), has played a significant role in building traction towards the establishment of NHRIs in the region. This includes providing advice and legal drafting assistance to the governments of Fiji, Samoa and Tuvalu; conducting scoping visits in the Cook Islands, Federated States of Micronesia, Kiribati, the Marshall Islands, Nauru and Vanuatu; and advising governments and CSGs on the role, function, establishment and accreditation of NHRIs in Nauru, Palau, Papua New Guinea, Samoa and the Solomon Islands. The Law Council is

<sup>85</sup> Government of the Kingdom of Tonga, Ministry of Internal Affairs, Women's Affairs Division, 'Gender Equality: Where do we stand?' (2019) 5  
<[https://www.spc.int/DigitalLibrary/Doc/HDP/Gender/Gender\\_Equality\\_Where\\_do\\_we\\_stand\\_The\\_Kingdom\\_of\\_Tonga.pdf?attachment=true](https://www.spc.int/DigitalLibrary/Doc/HDP/Gender/Gender_Equality_Where_do_we_stand_The_Kingdom_of_Tonga.pdf?attachment=true)>.

<sup>86</sup> Ibid.

<sup>87</sup> Tuvalu's NHRI has not yet been formally accredited under GANHRI

<sup>88</sup> 'Fact Sheet 1: What are national human rights institutions?' *Asia Pacific Forum of National Human Rights Institutions* (undated) <<https://www.asiapacificforum.net/support/what-are-nhris/what-are-nhris/>>.

also pleased to note that the promotion of gender equality and the human rights of women and girls is mainstreamed across all activities of the APF, with simultaneous undertakings by member NHRIs.<sup>89</sup>

67. It is to be commended that most recent discussions on the establishment of NHRIs have been informed by public consultations and scoping studies conducted by PICT governments and APF. This has enabled CSGs to actively recommend appropriate NHRI models and functions with reference to a jurisdiction's government, legal system and available resources, and to meet needs on the ground.
68. To illustrate the potential contributions of NHRIs in the Pacific context, the Samoan Ombudsman prepares an annual report on human rights in Samoa, reviews existing and proposed legislation to assess compatibility with human rights, inspects places of detention, and engages with UN human rights processes.<sup>90</sup> Of particular note are the efforts of the Office to contextualise international human rights within understandings of Fa'asamoa (Samoa's culture and traditions).<sup>91</sup>
69. The Law Council encourages the Australian Government to continue to support the work of the APF, PIFS and OHCHR, with a view to establishing and strengthening independent and effective NHRIs.

#### **Recommendation**

- **Facilitate opportunities for civil society organisations to engage in dialogue with their own government institutions, especially in support of programs funded by Australian Foreign Aid.**
- **Continue to support the establishment and strengthening of independent and effective National Human Rights Institutions in the Pacific to monitor human rights protection and promote respect for human rights.**

#### **Human rights training and public outreach**

70. In addition to support services and advocacy, many local CSGs play a valuable role in providing human rights education, training and public outreach activities to advance gender equality. These initiatives include training women to understand their rights and increase awareness of human rights language, 'male advocacy' training to engage men as women's rights allies and agents of change, and gender-sensitisation training for law enforcement officials.<sup>92</sup>
71. Recognising the advantages of locally-run and culturally-responsive human rights training to build community awareness of universal human rights and contextualise them in local value systems and experiences, the Law Council encourages the Australian Government to continue to support and facilitate this work by local NGOs.

#### **Recommendation:**

<sup>89</sup> 'Promoting Gender Equality' *Asia Pacific Forum of National Human Rights Institutions* (undated) <<https://www.asiapacificforum.net/about/gender-equality/>>.

<sup>90</sup> 'What is the Human Rights function of the Office?' *Office of the Ombudsman and Samoa National Human Rights Institution* (undated) <<https://ombudsman.gov.ws/human-rights-2/>>.

<sup>91</sup> Office of the Ombudsman and Samoa National Human Rights Institute 'State of Human Rights Report 2015' (2015) <[https://ombudsman.gov.ws/wp-content/uploads/2019/01/2015\\_State-of-Human-Rights-Report-General\\_English.pdf](https://ombudsman.gov.ws/wp-content/uploads/2019/01/2015_State-of-Human-Rights-Report-General_English.pdf)>.

<sup>92</sup> See, for example, Fiji Women's Crisis Centre, Ma'a Fafine mo e Famili, Tonga Women and Children Crisis Centre, Samoa Victim Support Group, Samoa Faafafine Association and Vanuatu Women's Centre.

- **Continue to support local civil society groups in providing culturally-responsive human rights education and training programs that promote gender equality and enhance awareness of the rights of women and girls.**

## 5. Any related matters

### The impacts of COVID-19

72. The COVID-19 pandemic, including its health, social and economic impacts, has the potential to disproportionately impact women and girls in the Pacific.
73. Many PICT are particularly vulnerable to a health emergency caused by COVID-19, due to weak and under-resourced local health systems, inadequate water, sanitation and hygiene infrastructure, geographical isolation and poor transport infrastructure.<sup>93</sup> Within Pacific communities, the feminised health workforce<sup>94</sup> and role of women as primary caregivers in the home<sup>95</sup> would render woman more likely to contract COVID-19 in the event of a community outbreak.<sup>96</sup>
74. Most Pacific economies are heavily reliant on tourism, commercial fishing, commodity exports, and remittances from abroad. These critical sources of income have been severely curtailed by the pandemic in a region that is already vulnerable to food insecurity and highly reliant on informal sector income. In Fiji alone, the pandemic is estimated to have resulted in the unemployment of approximately 100,000 people, or one in nine Fijians.<sup>97</sup> The economic impact of the pandemic is expected to aggravate poverty and income inequality in Pacific islands, which is also likely to disproportionately impact women due to their overrepresentation in the informal employment sector.<sup>98</sup> It is essential that South Pacific governments take into account the gendered economic impacts of the pandemic; both in their emergency economic measures and throughout the recovery phase.
75. COVID-19 prevention measures restricting movement and encouraging (or mandating) self-isolation, coupled with increased unemployment and financial pressures on households, has been linked to an increase in the number of Pacific women and girls seeking domestic violence support services.<sup>99</sup> The President of the Samoa Victim Support Group reported a 150% increase in the number of helpline calls compared with the same time last year, and attributed this to enforced proximity of couples during lockdown, financial pressure, stress and anger.<sup>100</sup> A representative of the Fiji Women's Crisis Centre has reported that domestic violence complaints doubled in March and April 2020, compared with the

<sup>93</sup> Pat Conroy, 'Australia needs a comprehensive plan for COVID-19 in the Pacific' *The Interpreter* (online, 20 April 2020) <<https://www.lowyinstitute.org/the-interpreter/australia-needs-comprehensive-plan-covid-19-pacific>>.

<sup>94</sup> Mathieu Boniol et al, 'Gender equity in the health workforce: Analysis of 104 countries: Health Workforce Working Paper 1' (World Health Organisation, March 2019) 2-3 <<https://apps.who.int/iris/bitstream/handle/10665/311314/WHO-HIS-HWF-Gender-WP1-2019.1-eng.pdf?ua=1>>. See also Anna Rodney et al, *The Kingdom of Tonga Health System Review* [Health Systems in Transition, Vol. 5 No. 6] (Asia Pacific Observatory on Health Systems and Policies, 2015) <[https://iris.wpro.who.int/bitstream/handle/10665.1/11371/9789290617198\\_eng.pdf](https://iris.wpro.who.int/bitstream/handle/10665.1/11371/9789290617198_eng.pdf)>.

<sup>95</sup> Emma Barker-Perez, Charlie Damon & Megan Williams, 'CARE Rapid Gender Analysis COVID-19 Pacific Region' (CARE, 26 March 2020) 5, <<https://www.care.org.au/wp-content/uploads/2020/03/Pacific-RGA-FINAL-APPROVED-26March2020.pdf>>.

<sup>96</sup> Vivien Harvey-Wong, 'Coronavirus – a backward step for gender equality' *UNICEF Australia* (online, 8 May 2020) <<https://www.unicef.org.au/blog/news-and-insights/may-2020/coronavirus-gender>>.

<sup>97</sup> Gemala Darmadi, 'Fijians turn to bartering system as coronavirus shutdowns cause mass unemployment' *Pacific Beat* (ABC News), (online, 1 June 2020) <<https://www.abc.net.au/news/2020-06-01/as-unemployment-soars-fijians-turn-to-bartering-to-get-by/12303252>>.

<sup>98</sup> Barker-Perez, Damon & Williams (n 95) 6.

<sup>99</sup> UN Women (n 79).

<sup>100</sup> Ibid.

same period in 2019, following the imposition of restrictions related to the COVID-19 pandemic.<sup>101</sup> Moreover the Fiji Minister for Women, Children and Poverty Alleviation has also reported that almost 50% of women report a correlation between COVID-19 and increased violence.<sup>102</sup>

76. In its submission to DFAT on Australia's International Strategy on Modern Slavery, the Law Council identified the COVID-19 pandemic as a new driver of modern slavery.<sup>103</sup> The Law Council considers that COVID-19 is exacerbating existing global modern slavery risks by:
- (a) heightening risks for those already exploited (who may live in unstable, crowded, dangerous and unsanitary conditions without avenues to call for increased protections);
  - (b) exposing vulnerable cohorts, such as women and migrants, to greater risk of exploitation (for example, by exacerbating their financial insecurity, contributing to xenophobia and discrimination, and disrupting modern slavery response efforts);
  - (c) pushing greater numbers of workers into exploitative situations; and
  - (d) placing additional pressure on business to guarantee continuity of supply and meeting demand.
77. Noting that women and girls in PICT are already at greater risk of modern slavery victimisation (as discussed under Combatting Modern Slavery), the Law Council emphasises that the gendered risks and drivers of modern slavery in the context of COVID-19 should be recognised and mitigated within Australia's regional COVID-19 response and recovery assistance.

**Recommendation:**

- **That Australia's Pacific Step-Up initiatives:**
  - (a) **are developed with reference to a comprehensive gender analysis, and respond to the gendered impacts of the COVID-19 pandemic; and**
  - (b) **facilitate the full participation and visible leadership of Pacific women and girls at all levels of decision-making with respect to national and regional COVID-19 responses.**

<sup>101</sup> Evan Wasuka, 'Fiji Records Spike in Covid-19 Domestic Violence Cases' ABC News (online, 6 May 2020) <<https://www.abc.net.au/radio-australia/programs/pacificbeat/spike-in-covid-19-domestic-violence-in-fiji/12218510>>.

<sup>102</sup> Hon. Mereseini Vuniwaqa 'Media Release by the Ministry for Women, Children and Poverty Alleviation – Gendered Response to COVID-19 (Media Release, Fiji Government, 3 May 2020) <<https://www.fiji.gov.fj/Media-Centre/News/MEDIA-RELEASE-BY-THE-MINISTRY-FOR-WOMEN,-CHILDREN>>.

<sup>103</sup> Law Council of Australia (n 1) 10.

## Recommendations

- i. Provide additional financial and in-kind support to civil society groups who work to prevent and respond to domestic, family and sexual violence in the Pacific, placing particular emphasis on capacity-building work and improving coordination between services.**
- ii. Continue to work in collaboration with Pacific police forces to provide gender-sensitisation training and resources with a view to improving frontline responses to gender-based violence;**
- iii. Direct greater financial and human resource assistance towards strengthening legal institutions in the Pacific and easing strained judicial and legal assistance resources, with a view to improving access to justice to women and girls in the region.**
- iv. Place greater emphasis on the prevention of modern slavery in the Pacific region, including through awareness-raising and access to targeted, gender-sensitive sources of advice and support for victims.**
- v. Support civil society groups and development assistance programs with the objective of addressing key vulnerability factors driving modern slavery in the Pacific region, and improving awareness of existing laws and obligations regarding modern slavery and human trafficking.**
- vi. Continue to provide financial and in-kind support to evidence-based initiatives with the aim of advancing women's economic participation in the region, enhance financial literacy and improve awareness of employment rights.**
- vii. Identify opportunities to encourage the adoption of legislative amendments and government policies that:**
  - (a) Guarantee equal rights of women with respect to land, employment and assets; and**
  - (b) Better protect the rights and interests of women in the workforce, including sexual harassment and non-discrimination protections.**
- viii. Continue to support initiatives such as the Pacific Leadership Program and the Pacific Parliamentary Partnership program to increase the participation of women in social and economic decision-making at all levels.**
- ix. Increase support for initiatives directed at facilitating leadership of women at the community level, and undertake analysis to measure the success and enhance the efficacy of these initiatives.**
- x. Support and encourage the formation of coalitions by civil society groups to advance gender equality and promote women's leadership.**
- xi. In partnership with civil society groups, continue to support projects directed at building leadership skills among Pacific women, and boost women's participation in local, national and multilateral dialogues and decision-making on issues relating to climate change and the environment.**
- xii. Facilitate opportunities for civil society organisations to engage in dialogue with their own government institutions, especially in support of programs funded by Australian Foreign Aid.**

- xiii. Continue to support the establishment and strengthening of independent and effective National Human Rights Institutions in the Pacific to monitor human rights protection and promote respect for human rights.**
- xiv. Continue to support local civil society groups in providing culturally-responsive human rights education and training programs that promote gender equality and enhance awareness of the rights of women and girls.**
- xv. That Australia's Pacific Step-Up initiatives:**
  - (a) are developed with reference to a comprehensive gender analysis, and respond to the gendered impacts of the COVID-19 pandemic; and**
  - (b) facilitate the full participation and visible leadership of Pacific women and girls at all levels of decision-making with respect to national and regional COVID-19 responses.**