

**Stimulating a National Response to Human Rights Conventions in
Pacific Island Countries**

Translation of Human Rights Conventions into National Legislation,
Implementing Rules, Regulations, and Common Law in
Pacific Island Countries

Briefing Paper, Asia-Pacific Rights and Justice Initiative

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

Preamble, Universal Declaration of Human Rights, 1948

Methodology:

This briefing paper is the first in a series of papers initiated by the Access to Justice working group established in Suva, Fiji as part of the regional UNDP Asia-Pacific Rights and Justice Initiative. Limited consultations with institutions active in the human rights sector, including justice and advocacy components, were held in September / October 2003 in Fiji and Solomon Islands. The paper evolved in close coordination with the Regional Human Rights Education Resource Team (RRRT), a DFID funded project administered by the United Nations Development Programme (UNDP), and UNDP Pacific.

Executive Summary:

There have been areas of clear success in gaining acceptance for human rights instruments in Pacific Island countries (PICs), most notably with the nearly universal ratification of the Convention on the Rights of the Child.¹ Yet the PICs share the global problem of struggling to generate local level changes for the poor and disadvantaged people who are the primary targets of international instruments, and there continues to be a divide between documented rights and accessible opportunities for enforcement at the community level. Many international, regional and local entities have attempted to span this divide, resulting in some significant changes in governmental and societal behaviour. Other areas have remained intractable, resistant to efforts to conform the normative systems to international instruments. Moreover, aside from CEDAW and CRC activity in the past decade, and some success with refugee rights protection, ratification activity on international instruments appears to have halted in the Pacific; there have not been any ratifications of other “Big Six” international instruments since 1982.² This paper reviews the nature of obstacles faced by those attempting to realise the promises of international human rights instruments in a locally available framework for the disadvantaged, as well as the strategies devised to overcome obstacles to the nationalisation of documents in the Pacific. It then offers potential courses of action for future programming.

¹ RRRT uses the “Big Six” international instruments as major benchmarks in its work: International Covenant on Civil and Political Rights (ICCPR); International Covenant on Economic, Social, and Cultural Rights (ICESCR); Convention Against Torture (CAT); Convention on the Rights of the Child (CRC); Convention on the Elimination of all Forms of Racial Discrimination (CERD); and the Convention on the Elimination of All forms of Discrimination Against Women (CEDAW).

² See Annex One: Ratification of Big Six Instruments for PICs.

Background

International documents can be nationalised through several routes. A country's constitution can allow for the direct enforcement of international documents upon ratification of the instrument. This is very rare, as most countries in the Pacific require domestic enabling legislation for international instruments. When developing the enabling legislation, the ratifying or acceding country may either review existing laws and revise them piecemeal, or it can authorise the collection and expansion of a new comprehensive piece of legislation as Fiji has done with the Family Law Bill. While a comprehensive bill is by definition very inclusive, it is a daunting challenge to generate a full legislative package, and all reforms are delayed until the new bill wends its way through the legislative process. Piecemeal reforms, on the other hand, may allow for gaps in coverage but have the advantage of allowing "easy" reforms with an existing support base to be worked through quickly. A third option for nationalising human rights documents is for judges to use ratified documents, or the cases of other jurisdictions which refer to international documents, as an aid towards the interpretation of a case at hand in their own court. This option is limited by the nature of the constitutional empowerment of the judiciary, which limits the flexibility of interpretation to situations where the existing law is ambiguous when applied to the facts of a specific case. Therefore, the use of an international instrument in one case may not help other classes of claimants.

This paper analyses obstacles for specific groups of people due to the lack of certain types of legislation, but determining a direct causative link between these elements is not possible. There are too many social, economic, cultural and political factors at play in the development and implementation of legislation.³ Instead, the impact of international documents on national legislation is assessed by looking at how the instruments were used as tools to affect the growth and usage of the national justice infrastructure.⁴ The case studies reveal a range of obstacles that can thwart a person's access to justice in the Pacific, and illustrate the connectivity between supportive rights legislation, structures for enforcement, social and cultural values, and the ability of individuals to understand their duties and claim their rights. For example, a wife may remain in an abusive situation because there is no law protecting her, because the systems for implementation are not in place, because she refuses to use police protection due to cultural or religious beliefs, because she is unaware of her right not to be abused and how to claim it, or, finally, because the person abusing her is unaware of her right not to be abused and his duty towards her and the rest of the family. It is true that access to justice is blocked by an array of factors in the Pacific; however the interconnectivity of the factors creates many access points for programmes to advance the rights of the poor and disadvantaged.

Defining "Poor and Disadvantaged" in a Pacific Context

³ See United Nations Development Fund for Women (UNIFEM). Date Unknown. *Bringing Equality Home*. [http://www.unifem.org/index.php?f_page_pid=158]. 9 September 2003.

⁴ This is in line with the approach of regional projects such as RRRT. Meeting with Ms Imrana Jalal, 11 September 2003.

As an initial consideration, determining who the poor and disadvantaged are in the Pacific may not be an intuitive process. Standards used effectively elsewhere in the world, such as income levels or money available to pay for nutritional needs, do not fully represent the community experience in the Pacific. Some PICs may have “subsistence affluence” or large unreported incomes from overseas remissions, but many are also saddled with overwhelming infrastructure costs.⁵ Within this framework, economic indicators may miss the important difference between, for example, a woman without access to land and a man with control over community resources. Even though both may have the same annual income, one is in a significantly more powerful position because of their status as a landowner in the community, while the other could be silently locked into a cycle of submission irregardless of her income. Access to opportunity, therefore, forms an alternative, and more relevant, perspective for assessing who the poor and disadvantaged are in a society so that human rights programming can be more successfully designed.⁶

Obstacles to Accessing Justice

Once the population of poor and disadvantaged is defined, the obstacles they face in accessing justice can be more clearly understood. Although many international instruments have been signed by PICs to date, the intended beneficiaries generally remain poor and disadvantaged due to obstacles at various levels of society that prevent the translation of human rights principles into the normative justice system. Legal and human rights advocacy institutions in the Pacific⁷ identified the following obstacles:

- 1) **Defensive posturing by powerful institutions** - Societal institutions often resist changes that endanger their power base, and they use their influence to hinder the development of legislation that they find threatening. These institutions range from local groups, such as chiefs, to national representatives of international organisations, including churches and businesses.
- 2) **Government institutions can reflect societal and cultural biases** - The vast majority of Pacific Island countries are democracies, a system defined by both the will of the people and by how that will is translated into government action. Community fears, values and beliefs, as they are reflected in the selection of political representatives or other democratic processes, can therefore create obstacles to the recognition of greater human rights protections for disadvantaged groups.
- 3) **Geographic and Social Isolation** - Inanimate barriers are created by geographic isolation – lack of information and access to the limited support structures typically centred in capitals.

⁵ 2001. Australian Government’s Overseas Aid Program (AusAID). *Pacific Program Profiles 2000-01*. AusAID: Canberra.

⁶ 1999. UNDP. Pacific Human Development Report at 31.

⁷ See Annex 2: List of People Consulted

- 4) **PICs are *receiving* international instruments** - The Pacific Islands are generally late-comers to the debate on certain international instruments, such as the ICESCR and ICCPR, as a result of the timing of their independence. They therefore missed out on the urgency and support that the initial ratification process generated in other countries, and the advocacy network has not been established.
- 5) **International and local strategies build resistance** - At times, local and international agencies advocating for human rights may not have designed and implemented interventions that accommodated the political and social reality of an individual country in a specific context. The resultant friction adds to the height of the hurdle, and the process of implementation is delayed.
- 6) **There is a will, but no way** – At times events generate strong support for action, however the road has not been laid out and the opportunity to act is difficult to seize. This was reported in the context of child protection situations in both Fiji and Solomon Islands, as well as in environmental areas.
- 7) **With regard to human rights, the UN family in the Pacific is has prioritised awareness, but not advocacy** – Although some significant efforts have been made by UN agencies to further the ratification, awareness and reporting of international instruments, particularly with regard to the CRC and CEDAW, there have been only limited UN responses to human rights violations or problem areas in the Pacific.⁸ Partners in the Pacific have stressed that the measures that nationalise and empower human rights instruments, and not only the human rights instruments themselves, need to be supported by international agencies in order to nurture the growth of internal capacity for advocacy.

Recommendations

The obstacles, once defined, lead to mutually supportive routes for achieving human rights for the poor and disadvantaged that are built on a review of past strategies. A general review of PIC Common Country Assessments and UN Development Assistance Frameworks (CCA/UNDAF) indicates that the promotion of international instruments has been broadly included, but not specifically defined. This opens the door for additional work to develop the inclusion of the following activities in Country Cooperation Frameworks (CCF). Out of this review, the following areas have stood out as possible options for programming:

- 1) **Supporting the creation of Human Rights Commissions (HRC)** - Experience in PICs and elsewhere in the region has shown that HRCs are successful in furthering efforts to nationalise human rights instruments. As with other justice sector institutions, HRCs require support for their activities and for increasing the

⁸ For example, note *Regional arrangements for the promotion and protection of human rights in the Asian and Pacific region*. Commission on Human Rights. 1994. E/CN.4/1995/44 at Para 6, which states that attempts to engage UN agencies in the region in collecting information regarding their human rights activities were not fruitful and generally calls for more energetic programming. Many of the concerns raised in the paper are being addressed regionally, but the issue raised here remains active in the PICs.

stature of their work. UNDP Pacific's GOLD Project has highlighted this area as a possible focus for future programming.

- 2) **“Adopting” international instruments by accepting responsibility for their passage and implementation** – Reports of other agencies and organisations show that agencies that have accepted specific responsibility for the ratification and implementation of international instruments have, in several ways, been successful in PICs. UNDP should therefore consider “adopting” the ICCPR and ICESCR, which are directly related to existing programming objectives such as Governance, as regional UNDP human rights beacons. This suggestion includes the use of implementation models developed for the high-profile CRC and CEDAW. Alternatively, these, or other international instruments not already linked to a UN agency, can be included in the regional planning documents of UN agencies through agreement at the Country / Regional Management Team levels.
- 3) **Training of duty bearers and rights holders** - Systematic awareness raising and training on how to use national tools for claiming international rights for all people everywhere, to borrow an OHCHR phrase, with particular attention to the needs of those identified as poor and disadvantaged. Activities should target government institutions and professionals involved in activities related to identified areas of human rights concern, linking with other actors such as the Human Rights Commissions.
- 4) **Reaffirming the United Nations’ role in human rights advocacy and protection** – This recommendation is an important aspect of all other efforts as the legitimacy of UN efforts will be assessed by actors “in the trenches” based on the UN’s reputation for timely action related to support for all aspects of human rights. Positive experiences in Solomon Islands with Special Constable demobilisation, which was delayed but still timely relative to other actors, can be compared with the difficulty the UN had in establishing a belated presence in Bougainville in order to illustrate this point.
- 5) **Strengthening, or developing, regional and national human rights coalitions** – Several factors identified in the above obstacles limit the implementation of instruments even after they are ratified. The scope and depth of the work demanded by the geography and social factors at play in the PICs requires the conscious creation of coalitions to identify areas of rising concern, such as HIV/AIDS and the Commercial Sexual Exploitation of Children, before they reach critical mass, and for the empowerment of the even more isolated poor and disadvantaged. This also builds on the success of the CRC and CEDAW models, which have seen the creation of national committees to oversee implementation and reporting.

Access to Justice

Annexes 4 through 6 adapt analysis tools from the Asia/Pacific Access to Justice “Visioning” Workshop, held in Kathmandu 28-29 April 2003, based on material gathered

for this paper. The Access to Justice project uses a rights-based paradigm for analysing the issues emanating from the lack of access to justice for poor and disadvantaged people. In this perspective, everyone is the owner of certain rights. As the owner, they are entitled to the rights without having to earn them, and without there being discretion on the part of authority figures on whether or not to give these rights; in this way they are different from the concept of privileges that can be taken away or given at will. Human rights fall into the category of rights that all people own by virtue of being born human. In addition to the rights you hold, however, there are rights that you are obliged to protect or promote for yourself and others. People or institutions that have an obligation to protect or promote rights in certain circumstances are called duty bearers in the rights-based analysis. Many of the opportunities identified in this paper are based on increasing understanding of rights and duties at the community and individual level.

In many ways the consultations for this paper confirmed the applicability of the Access to Justice Visioning Workshop assessments to the Pacific context, with one significant addition. Those working with human rights in the Pacific gave many examples of entrenched issues relating to the democratic process in the Pacific, including the relationship between elected leaders and tradition, monitoring of people considered higher class, and policing officials in small island communities where family ties are paramount. The examples supported the conclusion that the electorate in the PICs may not understand and accept its duties under the democratic system. As the electorate is a duty bearer, it is not just a shame if the people elect a poor candidate, it is a failure of the community to responsibly fulfil their duty to make an informed choice in the community's best interest.⁹ Thus, when suggestions are made for awareness raising and mobilisation, they should be read in terms of awakening the community to the idea that they have a duty to perform an essential function in a democracy.

The Annexes, and the other examples offered in this paper, are drawn from comments and materials discussed in the context of this narrowly structured paper, and they are not exhaustive listings. The work of many good organisations and people may therefore not be presented. Finally, in spite of efforts to handle all of the Pacific Island countries as a single unit, the people of the Pacific are far from a uniform entity. There are, however, historical and cultural similarities, or at least points of reference, that may allow a general assessment of the development framework. The limitations of this approach are acknowledged, and this paper intends only to offer a framework for the later research into local conditions that is needed to support specific initiatives in individual countries.

⁹ The "first-past-the-post" electoral system has also received a great deal of blame for surprising electoral results in the PICs, where some countries reportedly experience situations where many MPs do not win even twenty percent of the votes. PNG has moved in 2003 towards the preferential voting system utilised by Fiji.

I. Background

A. Obstacles Faced by the Poor & Disadvantaged in Accessing Justice

1. Defining “poor and disadvantaged”

The fact that there are not masses of obvious, physically scarred and emaciated victims of social, political, or environmental catastrophe in most of the PICs challenges observers to define a regional concept of poor and disadvantaged people.¹⁰ It is also a region where the disadvantaged are expected to carry their burden quietly. Confusion is augmented when social and economic data is considered, since the distribution of per capita incomes in many PICs do not follow simple racial or religious patterns.¹¹ But Pacific Islanders for the most part have better standards of living than people with the same income profile in other regions. Within a delicate bubble of protection created by accessible food and resources in some PICs, however, are communities, and people within communities, whose struggles are often hidden by societal structures that do not necessarily view the individual’s well-being as positive for the community, or the general community’s well-being as essential for the larger state. They share with the disadvantaged around the world the fact that they are voiceless while economic and political aspirants, both internal and external, transform their countries.

Further evidence for the importance of determining who the poor and disadvantaged are in the Pacific is found in the tragedies striking three Melanesian countries over the past decade. In all three countries, Papua New Guinea, Fiji and Solomon Islands, a group claiming unresolved grievances initiated cycles of violence that resulted in coups in two countries and a decade long civil war in the third. Specific grievances aside, the point common to all of these situations is that groups without perceived access to systems of justice became fertile ground for leaders willing to use very destructive means to achieve aims. Moreover, the scale of the disruptions was not foreseen by external observers or internal analysts in any of the countries, and initial responses in PNG and Solomon Islands were tragically ineffective, arguably because the responses did not properly prioritise the underlying human rights issues such as access to justice. It may be more than coincidence that the country with the strongest justice system, Fiji, weathered the most recent upheaval in 2000 without the massive external support required in the other countries. The cost of surprise in the face of the explosion of violence in Papua New Guinea, Solomon Islands and Fiji has yet to be determined as the societies are all still

¹⁰ There are obvious exceptions found in Solomon Islands and Bougainville, however even the forced exodus of 20,000 Malaitans from Guadalcanal did not measure as a catastrophe by UN standards since most of the internally displaced were absorbed into communities instead of being left in temporary shelters. [Also cite to PINA articles concerning confusion over the devastation of Tikopia in the 2002 Hurricane that destroyed most gardens and homes on the island without much of an initial response from the international community].

¹¹ Yabaki, Akuila. Letter to the Editor. *Fiji Sun*. 15 September 2003 at 4, citing the 1991 Fiji Poverty Report.

recovering, some no doubt stronger for having stood the test, but all with deep scars and a nagging economic limp.¹²

There are many definitions of who is poor or disadvantaged being used in the Pacific. Most are based on attempts to find a quantifiable measure that can be used to assess a range of societies, and a nexus has emerged around empowerment issues. Whereas the United Nations has begun to standardise the phrase “poverty of opportunity” in its Human Development Reports, some find that local connotations of words common to the development dictionary fail to capture the essence of the Pacific condition.¹³ All agreed, however, on the need to acknowledge unique Pacific characteristics when shaping a regional definition of who is poor and disadvantaged.

Even more essential, however, is that a regional definition is reassessed in a local context when interventions are developed, a lesson to be learned from the global experience of UNICEF.¹⁴ In the Asia-Pacific region, UNICEF uncovered a stark example of the importance of targeting efforts based on disaggregated data: the impressive success of Vietnam in lowering the number of people classified as “poor” fell from fifty-five per cent in 1993 to thirty-seven per cent in 1998. Yet a deeper look uncovered the reality of the Central Highlands, where there was only a 1 per cent drop in the number of poor in the same period – down to still-stifling ninety-one per cent.¹⁵ Thus, regional, or even national, statistics on poverty, literacy, education, or health indicators can hide populations of poor and severely disadvantaged people. For example, when rates for females are hidden in figures for males in male-dominated societies, or the data for small outer island populations is included in larger provincial collections, the status of the rights for those women and island populations remains veiled. In the end, the materials suggest that numbers themselves can become an insidious type of rhetoric if they are not consciously collected in a manner intended to, echoing the word of the mandate for the Office for the High Commission for Human Rights, further all the rights of all people.

2. “Traced back to the lack of pro-poor and pro-human rights legislation.”

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

Article 8, UDHR

Legislation can be viewed as pro-poor and pro-human rights based both on its intended outcome and on whether it is able to be successfully used by those it is intended to

¹² See O’Callaghan, Mary-Louise, *Enemies Within*, quoting Australian Foreign Minister Alexander Downer, speaking on the Sandline Crisis: “Recent developments [in PNG] have clearly demonstrated the consequences of the lack of attention in the past.” Also, Fiji’s history includes a coup in 1987, which surprised many, and, even though the 1987 coup is now seen as creating an environment conducive to coups, nearly all were surprised again when a second coup occurred in 2000. Madraiwiwi, Jone. 2001. *Keynote Speech*.

¹³ Meeting with ECREA, 8 September 2003.

¹⁴ UNICEF. 2002. *Application of the Human Rights-based Approach to Programming in UNICEF Country Programmes of Cooperation*.

¹⁵ *Id.* at Section 4.4.

protect. Legal barriers to the realisation of rights can be actively or passively created by governments that do not prioritise the rights of the poor and disadvantaged. Governments actively block access to justice by passing laws directed at limiting rights, purposefully failing to provide resources to systems required for the passage or enforcement of laws, or otherwise empowering the abuse of rights. Equally challenging is a government's passive creation of barriers to the nationalisation of rights by overlooking recommendations or budgeting under the mistaken belief that social issues will be resolved simply by increasing economic performance.¹⁶ Passive barriers typically arise through ignorance of the impact of justice issues or the meaning of rights on areas that receive constant attention, such as employment or tourism.

The most direct active barrier is of course when a particular right is explicitly legislated against, as with censorship laws. At the other end of the spectrum is a right that is tacitly ignored by the system, undefined by national legislation or the constitution, out of a fear of political repercussions or the impact of empowering a previously marginalised group, such as homosexuals. There are also many less obvious barriers to effective implementation: for example, protection can be limited if the legislation is too narrowly defined, requirements to raise a complaint are too demanding, or the legislation as written could be too limited to offer protection.

Passive barriers to the nationalisation of international documents often implicate the people themselves. In a democracy, a system used in some form in all countries of the Pacific, people's understanding of their rights gives the machine animus. In the absence of forces usurping the democratic process, the people are the creators, knowingly or blindly, of their own abusers or protectors. Unfortunately, the reason for the lack of pro-poor and pro-human rights legislation to protect the poor and disadvantaged is therefore often connected to a lack of support for the legislation by the people themselves.¹⁷ However, in light of the inequitable distribution of information, the people are often given the power to choose leaders without having the tools to choose them wisely or influence them once they are in power.¹⁸ Other leaders, such as those in the church, are outside of the democratic process and can have a large impact on a community's perception of the meaning of a particular right without participating in public debate about the greater public good.¹⁹ Pro-poor and pro-human rights legislation, which may be the same animal, are therefore at times a reflection of the will of the people, curbed by the limiting factors of, amongst other things, access to information, governance, and community leadership.²⁰ While this offers an avenue for change, it also highlights the

¹⁶ ECREA, an inter-denominational organisation in Fiji, has, in conjunction with the International Labour Organisation (ILO) and other CSOs and institutions, prioritised the inclusion of socially responsible economic development planning. Meeting with ECREA, 8 September 2003. ECREA is also part of a nine member coalition in Fiji that rallied around a call for a people-centred budget in 1999, suggesting a reassessment of budgeting priorities around social welfare issues. 1998. Fiji Council of Churches et al., *What Constitutes a People Centred Budget*. Suva.

¹⁷ Discussed under Obstacle 4

¹⁸ Stiglitz, Joseph. 1999. *On Liberty, the Right to know and Public Discourse: The role of Transparency in Public Life*.

¹⁹ Meeting with Asenaca Colowai, Fiji Women's Rights Movement (FWRM), 8 September 2003.

²⁰ Discussed below in the context of several obstacles.

possibility of friction with special interest groups concerned about retaining their positions in society.

The issues of legal empowerment of communities and the capacity of the government to provide effective remedies are planned to be discussed in other Access to Justice briefing papers.

B. Nationalising human rights concepts in the “Big Six” international instruments

The nationalisation of the concepts in international human rights documents formally begins with a country’s acceptance of an international instrument, although the judiciary have also been successful at strengthening the national rights framework by using instruments that have not been ratified as interpretive guides. Whether it be through signature and ratification before an instrument comes into effect, or through accession once the instrument has been ratified by enough other countries to already be in effect, the country’s acceptance of an international obligation means that a country is committed to conforming their laws and actions so that they are promoting, or at the very least not contravening, the intent of the convention. Many instruments also have reporting obligations for the state party.

Unfortunately, international law has a reputation for not being enforceable, and many states have signed on to conventions and covenants without fulfilling their obligations. Although never applied by the UN in the Pacific, there are avenues for the enforcement of human rights created by the United Nations Charter that range from censure to armed intervention in the event of humanitarian crisis.²¹ In reality, though, it is exceptionally difficult to unite the 190-plus member countries of the UN to support action in an individual case. The small size of the Pacific in terms of economics and strategic importance in the current political climate means that few of its major upheavals in the past decade have made an impression on the international consciousness. For example, the Solomon Islands government requested United Nations assistance on several occasions between 1999 and 2003 in response to the arming of certain ethnic factions and the subsequent internal displacement of five to ten percent of its population. However, it has been reported that political manoeuvring involving the “One China” issue thousands of miles away blocked UN peacekeeping assistance.²² This demonstrates the Pacific political paradox – some times you may be too small to be heard or have your concerns addressed, but in another context your small voice can be considered a big enough threat to prevent support for even humanitarian assistance.

In spite of the limited reach of enforcement mechanisms, some countries have combined internal support for rights concepts with the assistance of UN and other agencies promoting the implementation of international human rights documents in order to realise some fundamental changes in the rights environment. International instruments have

²¹ UNICEF Human Rights Course at 351-353.

²² Comments at Regional Security Meeting, Nadi, Fiji, 2003.

found their way into the normative legal structures of the PICs through legislative review processes and court avenues, as well as through the development of the capacity of implementing agencies, such as the police, to operate in line with international principles. Several major legislative revisions have occurred in the Pacific, fuelled in part or completely by CEDAW and the CRC. All of these have stalled after the drafting phase, however, and their future is in the hands of the political process. Some judges have been able to use international instruments as interpretive guidelines for existing legislation that was deemed ambiguous under the facts of the case. On another level, changes have occurred in the more accessible operating regulations of courts and police throughout the Pacific, making them more accessible to, and respectful of, people in need.

Most PICs follow the lead of Australia, New Zealand and England in the interpretation of constitutional issues (French territories are not addressed here because the nature of their link to French systems and administration results in very limited UN interaction with the countries). Australian law has clearly defined the delicate balance between government branches when addressing the applicability of international instruments. In a 1995 appeal directly on point, the High Court of Australia stressed the separation of duties related to international instruments under the Australian Constitution.²³ While the Executive Branch in the Australian Parliamentary Democracy is empowered to ratify international instruments, the Legislative Branch is singularly empowered to create and alter laws. Therefore, only the Legislature is deemed to have the authority to establish the precepts of the instruments as “a direct source of individual rights and obligations under the law.”²⁴

However, the Australian Constitution was also acknowledged to have created a significant avenue for the Judicial Branch to introduce principles in international instruments when interpreting laws that are ambiguous, particularly if the laws in question were enacted in anticipation of the country’s entry into an international obligation.²⁵ Further, the High Court of Australia defined this power broadly, allowing for expansive application of the interpretive power:

If the language of the legislation is susceptible of a construction which is consistent with the terms of the international instrument and the obligations which it imposes on Australia, then that construction should prevail. So expressed, the principle is no more than a canon of construction and does not import the terms of the treaty or convention into our municipal law as a source of individual rights.”²⁶

The last sentence is not so much an effort to enfeeble the interpretive power as it is an attempt by the court to preclude accusations that the judicial branch is

²³ Minister of State for Immigration and Ethnic Affairs v. Ah Hin Teoh, F.C. No 95/013 (1995) 128 ALR 353.

²⁴ *Id.* at 6.

²⁵ *Id.* at 7. Also see Bangalore Principle 7 in IJALS. 2000. *Human Rights and the Application of Human Rights Conventions in the Courts Vol. 3* at 416.

²⁶ *Id.*

entering into the realm of the legislative branch in violation of the principle of the Separation of Powers. The court's power is deftly hidden in language deferential to the other branches. This approach to the application of international instruments is generally followed in PICs, and the case cited is used in the University of the South Pacific post-graduate professional licensing programme.

In comparison to the judicial incorporation of rights through rights-based interpretation of a legal framework in a specific case, human rights principles incorporated directly into the constitution, a Bill of Rights, or embodied in legislation enacted by the Legislature, benefit from both broad construction of their application and a strict, narrow, interpretation of any restrictions.²⁷ A judge therefore does not simply have the *option* of using a rights-based “canon of construction,” she has the *obligation* to apply the right as expansively as possible.

Other legal practices and patterns may also positively factor into the Pacific rights environment. PICs generally look at the “great principles of the common law [as providing] . . . equally protection to the community from evil and protection to the evil-doer from oppression.”²⁸ Common law, dating back many centuries, has contributed to the derivation of the international human rights documents themselves. There are times, therefore, when a right could be available through the application of common law principles even though a country has not ratified and empowered a particular international instrument. The drawback to this form of protection, as with any that are not enshrined in the national legal framework, is that it is only available in individual cases after a lengthy judicial process, and it remains dependent upon individual judicial dispositions.

²⁷ RRRT. 1999. *Readings and Precedents on Human Rights Issues Vol. 3*. RRRT: Suva at 289.

²⁸ Ratu Sir Kamisese Mara v. Fiji Times and Herald Limited et al., Fiji Court of Appeal, Hearing 23 July 1984, 119 at 245.

Legislation

Fiji Family Law Bill²⁹

The road to the current extensively documented draft Bill, now with the Attorney General, began through a reference given to the Fiji Law Reform Commission (FLRC), headed by Commissioner P.I. Jalal,³⁰ by the Attorney General & Minister of Justice in October 1996.³¹ Beginning in December 1997, the cover letters for the FLRC discussion papers contained direct references to the need to revise Fiji's law in order to satisfy treaty obligations, specifically those in the CRC and CEDAW, or to concepts taken directly from documents, such as need to consider the CRC's concept of the "Best interests of the Child."³²

The former Commissioner stressed, however, that although the international documents were tools for the reform of the laws of Fiji, they should not be mistaken as the reason for, or motivation behind, the reforms: the reform process had to be locally owned.³³

Implications for Poor and Disadvantaged

The FLRC extensively documented the current status of, and proposed changes to, the legislation to be collected under the Family Law Bill of Fiji. The suggestions specifically sought to create equal treatment and /or protection for disadvantaged groups in Fiji, including children and women. The process of review promoted the growth of formal and informal working group that linked the FLRC, the Attorney General's Office, many CSOs, and some international partners.³⁴ Eight years after the process started, the linkage between advocacy groups remains even though the Bill is currently waiting in the sidelines for its chance to be exposed to full Parliamentary debate. The depth of review and extensiveness of the consultations were considered a milestone in the Pacific by some observers, as the process was internally driven and staffed.

As powerful as the process was, as a draft the Bill is ultimately not yet able to increase poor and disadvantaged people's access to justice. Powerful community groups, including the Methodist Church, have raised concerns that some parts of the Bill, specifically those dealing with the maintenance of illegitimate children, would undermine Fijian cultural traditions. Political considerations are thought to be stifling the movement of the Bill, as the current coalition Government relies heavily on a traditional support base, which is closely linked to the Methodist church.³⁵ Some community awareness

²⁹ Draft.

³⁰ Ms Jalal is currently the Chief Resource Person for RRRT, Suva.

³¹ 1997. Fiji Law Reform Commission. *Preface, Fiji Law Reform Commission, Family Law Reform Discussion Papers 1-8*. FLRC: Suva.

³² Cover Letters dated 09/06/97 and 10 April 2003 specifically referenced, as bound in 1998. FLRC. *Family Law Reform: Discussion Papers 1-8*.

³³ Meeting with P.I. Jalal

³⁴ Meeting with Asenaca Colowai, FWRM, 8 September 2003.

³⁵ *Id.*

raising on the Bill continues, however the long wait between initial review of the laws and final endorsement has reportedly taken its toll on community support. The 2000 coup also undermined attention for the Bill, and there are suggestions that another review may be requested, nominally because of the time factor, but possibly as a stalling tactic.³⁶

Although acting as a barrier in the current case, the sophistication of the political process in Fiji has developed a correspondingly high level of debate and understanding of issues in many areas. For example, CSOs have produced detailed submissions on the human rights implications of the Constitutional Reforms in Fiji, various employment bills, budget submissions, and other human rights issues such as the post-coup sanctions in 2000 in addition to the comprehensive response to the Family Law Bill. Some have suggested that the trauma of the two coups in Fiji, and the accompanying debate about what rights were and how they could be accessed, greatly strengthened the motivation and skills of civil society in Fiji.³⁷ If this is true, then there is reason to hope that the turmoil in Solomon Islands and Papua New Guinea would likewise generate civil society growth.

Solomon Islands Domestic CRC Enabling Legislation

In 2000, AusAID provided funds to the Solomon Islands Government (SIG) for the drafting of domestic enabling legislation for the CRC, which Solomons had acceded to in 1995. The Ministry of Women, Youth and Sports fully supported the drafting of the legislation, but community involvement was minimal prior to the initial draft being formalised due to funding timelines. The draft domestic CRC legislation created an administrative function in the Ministry responsible for the children's portfolio, and empowered the Minister to create rules and regulations within a defined area.

Implications for Poor and Disadvantaged

As with the Fiji legislation, this Draft Bill has not yet reached Parliament. The legislation itself is straightforward since it does not attempt to create the framework for rights themselves, but rather the basic administrative platform for rights definition and protection. The system would allow for the evolution of protections and administrative responses to occur through mechanisms at the Ministerial level. This is of course much more accessible than following the reform process through Parliament as conditions changed and made legislation less relevant over time. On the other hand, the protections would become very dependent upon Ministerial motivation and qualification.

Solomon Islands is struggling to establish a working civil society network, and several successes have been recorded with rallying groups around electoral issues. Yet, the institutions have not evolved to the point where they have the expertise to manoeuvre through the political process confidently; Nor have many local individuals with technical expertise on children's issues appeared. A system that requires both political savvy and people with technical expertise for the protection of children therefore faces severe

³⁶ *Id.*

³⁷ E.g., Penny Moore. 1996. Statement to *Balance*. FWRM: Suva.

challenges to successful implementation – especially since there has not been a consultative or awareness raising campaign to develop understanding of the Bill at the community level.

Still, the draft Bill is relatively accessible, and it allows for direct interaction between community members and the Minister to develop protection mechanisms for children in partnership. This is a very new approach in the Pacific, and the potential is there for benefits to be created with properly targeted support if the Bill is enacted.

Court Cases

The efforts of organisations such as RRRT and the Pacific Judicial Education Project to develop the capacity of magistrates and judges in the Pacific has resulted in an increasing number of opinions that utilise international documents as part of their analytical framework. At the larger regional level, judges have been exposed to the potential of using international documents to enrich the national human rights environment for many years. For example, there was an Asia/Pacific Regional Judicial Colloquium in 1996 specifically covering the application of international human rights norms to the protection of women’s human rights. In the official Conclusions, the participants “noted that many opportunities exist for judges and other judicial officers to draw on [CEDAW] and other international human rights instruments so as to interpret and apply creatively constitutional provisions, legislation, the common law and customary law.”³⁸

Under common law, the precepts that are included in the judgement become binding on lower courts in the jurisdiction, and can be persuasive even to courts in other jurisdictions. Therefore training the judiciary, who typically have much longer terms of office than elected officials, is very efficient as the new interpretive tools can be applied to a vast number of cases over an array of topics.

On the other hand, having an international document used in a court opinion does not have the systemic impact of a legislative framework. For example, a court opinion itself can not be used to establish a cause of action for others in similar circumstances due to the issues surrounding the creation and alteration of laws discussed above. Also, the barriers to accessing the courts in the first place, such as court fees and the cost of legal representation, serve to limit the number of opportunities judges have to apply conventions.

Noel v. Toto³⁹ Vanuatu

³⁸ *Conclusions*, Asia/South Pacific Regional Judicial Colloquium for Senior Judges on the Domestic Application of International Human Rights Norms Relevant to Women’s Human Rights, 20-22 May 1996, Hong Kong, in RRRT. 1999. *Readings and Precedents on Human Rights Issues in the Courts*, Vol. 2 at 238.

³⁹ Noel v. Toto. No 18 of 1994, Supreme Court of Vanuatu, Louganville.

This case was an appeal of a decision on the distribution of proceeds gained from a family's customary land on Santo. Justice Kent initially outlined a course between customary and constitutional law in Vanuatu, balancing the clear direction to use customary law with regard to land issues with the equally clear constitutional direction that discrimination was not allowed. The ambiguity between these two prescriptions allowed other indicators to be used to interpret legislative intent, and the Judge used the ratification of CEDAW by Parliament to shape his opinion that “. . .in adopting such principles, the parliament is recognising rights of women as guaranteed under the Constitution.”⁴⁰ The judgement established that customary principles should be the foundation of determining land ownership, but only to the extent that they do not discriminate against women, in this case daughters and their offspring who were not receiving a share of profits from their family's land.

⁴⁰ Noel v. Toto at 11.

II. Examples of Obstacles

Obstacle 1 – Resistance from Powerful Internal Groups

Societal institutions often resist changes that may affect their power base. These institutions can include both local groups like chiefs and national representatives of international organisations ranging from churches to businesses. Yet the motivations of the groups should not be assumed to be ominous or intentionally repressive. The Fiji Women's Rights Movement (FWRM) emphasized an approach to community education that was inclusive and respectful of traditional power structures, acknowledging that ignorance of rights was often at the foundation of the resistance of many groups. They reported success with this approach in Fiji's groups, particularly when rights were presented in terms of their benefits to the community rather than as confrontational demands on leaders.⁴¹ This approach has also been very successful for RRRT in their work around the Pacific.⁴² That being said, the lack of intent to repress does not lessen the very negative impact these groups can have on attempts to extend the concepts of international documents to disadvantaged groups.

Example 1A: Vanuatu Domestic Protection Bill

A Domestic Protection Bill has been introduced in Vanuatu. Although the Bill has wide support from advocacy groups, academic institutions and regional organisations such as RRRT, it has stalled in large part due to opposition from traditional leaders.⁴³ The leaders have expressed concern that the bill erodes traditional family relationship structures, which may in fact be true – although custom is strongly protected in international human rights documents, customary practices that are deemed to violate the rights of others are considered superseded by the national and international rights documents.

This situation serves to illustrate the fact that human rights are a complicated array of protective spheres around individuals and groups. These spheres can overlap at times, but at other times they do not mesh, creating conflict between the groups. The traditional leaders in this scenario are considered to be in the advantaged category, much more powerful than the women in the community, and they appear to be overwhelming the rights of the women. But in a scenario considering traditional leaders in conflict with logging or mining interests, the traditional leaders would themselves be in the disadvantaged category. There should therefore not be a belief that certain groups are always in either the disadvantaged or the dominating position.

Moreover, the chiefs believe that they are exercising their right to culture, which is in line with the Universal Declaration of Human Rights as expanded by the corollary

⁴¹ Meeting with Asenaca Colowai, FWRM, 8 September 2003.

⁴² 2003. *Overwhelming Support for Bill of Rights*. National Express (SI). 19 September 2003.

⁴³ Meeting with RRRT Trainers, 5 September 2003.

International Covenant on Social, Economic and Cultural Rights (ICSECR). They are also exercising their perceived right within the parameters of democratic debate by influencing elected leaders. Others in the community do not have access to the debate forum equal to that of the traditional leaders, so the democratic process is not fully empowered. Yet a rights-oriented debate is occurring in a relatively open forum, and this offers a significant opportunity to empower democratic institutions as it is much easier to increase the power of one group to voice its opinion than it is to try to create a forum for debate in the first instance.

Example 1B: Tonga Censorship Efforts

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

Article 19, UDHR

Tonga, the only monarchy in the Pacific, has nonetheless evolved several significant democratic mechanisms in its hierarchy. There is friction at times between the democratic freedoms and institutions and the supporters of the royal hierarchy. One of the areas that receives a great deal of attention is the freedom of the press. In an example of a direct attempt by a PIC government to control a fundamental human right, elements of the Tongan government have made several attempts over the years to limit the freedom of the press, particularly with respect to what the press can publish about government, and royal, affairs.

This issue clearly delineates the friction that arises between groups in the frontier zone of rights advocacy. In addition to the parties directly related to the disputes, the royal family and its' supporters and the newspaper publisher, CSOs and institutions have been forced to work out their position on the debate. Although many have voiced support for freedom of the press, others are unwilling to express an opinion due to the fact that this issue is inextricably tied to sovereignty and political considerations.

Obstacle 2 – Community Beliefs and Values in Opposition to Human Rights

The vast majority of Pacific Island countries are democracies. Community fears, values and beliefs, as they are reflected in the selection of political representatives and support for initiatives, can therefore create obstacles to the recognition of greater human rights protections for disadvantaged groups. This is closely linked with Obstacle 1, the impact of defensive power structures in communities, since organisations such as churches have an intense impact on community attitudes.

Example 2: Human Rights Commission in PNG

The idea for a Human Rights Commission in PNG received significant support from the international development partners, with specific attempts to support the process by personnel from the Office for the High Commission for Human Rights (OHCHR), local advocacy groups, and many within the government itself. However, certain elected officials are purported to have been afraid that the legislation would empower groups promoting rights for people regardless of sexual orientation.⁴⁴ The officials then apparently sidetracked the commission, sacrificing potential rights protection for everyone in order to guarantee that a minority group could not access their rights.

Obstacle 3 – Geographic Isolation

Inanimate barriers are created by geographic isolation – lack of information and access to the limited support structures typically centred in capitals promotes distrust of democratic structures. The failure of rights to reach isolated areas is also easily overlooked as the voices of complaint are distant and faint, and a cycle of abuse is initiated that creates a group defined as disadvantaged by its lack of connection to the resource centres, vulnerability to powerful groups (discussed in Obstacle 1), and also by the danger for individuals to be further disadvantaged by the atmosphere created by repressive community beliefs (Obstacle 2). The effect is more pronounced on groups that would be considered disadvantaged in even urban settings, including people with special needs, children and women, but its impact is universal.

Example 3: Ethnic Conflict in Solomon

The Solomon Islands is an example of the gap between ratification and implementation is pronounced. Many international instruments were included in the national systems and legislation since the Solomons became independent in 1978, but the rights, and the skills needed to use those rights, had not reached the vast majority of the population. The conflict that resulted in the 2000 coup in Solomon Islands, and then culminated in an Australia-led intervention into a “failed state” in 2003, has been assigned a myriad of starting points. But in the face of hundreds of stories of trauma from non-combatants on both sides, the importance of determining winners and losers pales- everyone seems to have lost something. Conversely, the impact of isolation from the operations of government, justice systems and control of resources stands out vividly as a theme connecting communities throughout rural Solomon Islands. In spite of having signed more international instruments than many other Pacific Islands Countries,⁴⁵ Solomon Islands did not prioritise extending the coverage of these, and other essential Constitutional protections to life, liberty and property, to rural and peri-urban areas.

The SIG/UNDP Constitutional Reform Project consultations in early 2003 confirmed that communities throughout the country felt disconnected from their elected leaders and

⁴⁴ Report of RRRT Scoping Mission to PNG, August 2003.

⁴⁵ Solomon Islands is, for example, the only PIC that has signed the ICESCR.

formal systems of government, including service provision such as education and health, security support, and, sadly, access to justice. The impression of the communities were supported by the fact that most areas in Solomon Islands have not had access to a magistrate in over ten years, and only sporadic police support to communities during the same period. It is therefore not surprising, in hindsight, that at the heart of claims of the Guadalcanal militants in 1998 were allegations of murder, rape and theft going back over a decade. Similarly, Malaitan militants rallied around the unresolved trauma – including rape, murder and theft - of those evicted from Guadalcanal. Interestingly, the Malaitan situation received international attention until the internally displaced people were absorbed into rural communities in 1998/1999. Once the people were removed from a central location, attention shifted towards stabilising economic aspects of society and the claims of the two groups of people were largely left to fester. In fact, the initial claims remain unresolved in spite of the consolidation of power through a coup in 2000 and the distribution of tens of millions of dollars of money from the Republic of China through extra-judicial compensation payments. In stark contrast to international and domestic approaches to the coup in Fiji, there was not a single court case attempting to resolve conflict-related rights violations until 2003, nearly two years after a peace agreement was signed.⁴⁶

The cost of isolation is therefore twofold. It harms the people in the community who do not have access to information about their government, their leaders, their rights or the ability to question the absence of this access. Secondly, the isolation cuts off regional and international development partners and domestic entities from the information they need to effectively prioritise programming. Again in hindsight, if the cost of ignoring the claims of the poor and disadvantaged in rural Solomon Islands were realised in the mid-1990s, agencies could have dramatically shifted funding priorities. That being said, similar scenarios in Bougainville and Fiji did not serve to warn observers of the potential for extreme trauma in Solomon Islands.

Due to the history of extreme reactions when isolated communities are left without access to government, information and justice structures, and given the number of isolated communities in the Pacific Islands, this obstacle should remain at the forefront of planning. See Strategies 3 and 4 discussing RRRT's involvement with Solomon Islands Constitutional Reform Project and other aspects of governance.

Obstacle 4 – Pacific Islands Countries are “Receiving” International Instruments

The Pacific Islands are generally late-comers to the debate on certain international instruments, such as the ICESCR and ICCPR, as a result of the timing of their independence. Unlike countries prompted to initially support the instruments by existing domestic support, the PICs generally have to face the apathy of a population that is

⁴⁶ Reestablishing law and justice system is a focus for the Regional Assistance Mission to Solomon Islands, and it has vigorously pursued many cases since arriving in the Solomons in 2003. The internal capacity development of the Solomons remains to be addressed.

unaware of the rights and responsibilities in the documents passed by other countries in distant parts of the globe. The PICs also missed out on many of the debates in the General Assembly of the United Nations when the Covenants and Conventions were brought to the floor, so the awareness level of many national leaders may be as limited as that of the most rural constituency.

Example 4: Contrast CRC with ICESCR

The CRC has been ratified by most PICs, but the ICESCR has not. The CRC has been included in many legislative reviews and been the basis of hundreds of workshops throughout the Pacific. The ICESCR has not. Comparisons are admittedly weak here because the world – including the Pacific - has changed drastically between when the ICESCR was ratified in the 1960s and when the CRC entered the scene in the 1990s, as have the techniques for circulating information and building support for international conventions. However, the need for the protections contained in the ICESCR is clear when reviewing the concern people in the Pacific have expressed about, amongst other issues, the impact of globalisation on their society.

The techniques and experiences that were successful with the CRC and CEDAW may generate similar awareness and support for the ICESCR and other “old” documents like the ICCPR. The CRC, for example, is specifically connected to the mandate of the United Nations Children’s Fund (UNICEF) and there is a comprehensive reporting mechanism, with a special Committee sitting in Geneva to oversee the implementation of the Convention.

Obstacle 5 – Intervention Strategies Build Resistance

Local and international agencies advocating for human rights may not have designed and implemented interventions that accommodated the political and social reality of an individual country.

The identification of this obstacle may raise immediate objection since strategies for human rights advocacy are by definition often attempting to change strongly ingrained beliefs and structures. They will therefore of course create friction, and there is no clear line of how strong one should push in a given situation in order to walk the line between strong advocacy that could build support and extreme advocacy that builds resistance. However, interviews suggested situations where this line may not have been crossed intentionally, and some implied that strategies may have been deflated by individual or group resistance borne out of conflict that could possibly have been avoided.

Example 5 – Fiji Family Law Bill

The intense subject matter and long term personal commitments related to the Fiji Family Law Bill engendered very personal investments in its adoption. As discussed above, the Family Law Bill specifically sought to redress many gaps in the protection of disadvantaged classes of women and children. Broad support was developed for the Bill by the involvement of very senior advocates and institutions, including Ms Imrana Jalal and the FWRM. Ms Jalal was called into a special leadership role when she was asked to assume the role of Commissioner for the Fiji Law Reform Commission. After a crescendo of support developed, the Bill was drafted and found its way to Parliament – where it has languished for more than two years.

Some have suggested that personal convictions and approaches have bruised the egos of leaders who were unable to exert much authority during the public phase of the Bill's development, but who are able to quietly keep the Bill buried while numerous contemporary issues rise to the forefront. Under the review system, the Commissioner has a great deal of control over the consultations and subsequent drafting of proposed changes. In the case of the Fiji Family Law Reform, these consultations included wide circulation of Discussion Papers and five consultations in major population centres around the country. The results of the consultations recorded around forty five key agreement areas, and called for separate legislation to handle issues involving de facto relationships.⁴⁷ Aside from points of clarification, there were no indications of strong dissent at the consultations around the country, with only a strong consensus having been documented.

Although their views were not offered into the public forum during the consultative process, some Churches, such as the Methodist Church, have since voiced a strong resistance to portions of the Bill. Individual efforts have been made to encourage the churches to support the Bill, however some stated that the approach to advocating with churches may have been too direct, creating a line of confrontation rather than building a base for future dialogue.

If this were so in the past, more recent efforts have seen a toning down of rhetoric and a retrenchment of the advocacy process, which is muted in anticipation of a future tabling of the Bill by the Attorney General.⁴⁸

Obstacle 6 – There is a will, but no way.

The legal structure is sometimes not available to protect the rights of a disadvantaged group even though there is strong support for the protection. This obstacle actually reflects a deeper problem with human rights initiatives in the Pacific- they are very often reactive. The actions follow public opinion, which is usually shaped by a situation disturbing enough to mobilise what one person in Fiji termed the “apathetic masses”. The relationship between public opinion and government action is at the crux of the argument for the recognition of the duty borne by community members in a democracy.

⁴⁷ Results were in an undated chart attached to FLRC *Discussion Papers 1-8*.

⁴⁸ Meeting with Asenaca Colowai, FWRM, 8 September 2003.

In the example outlined below, a man was apprehended in Fiji on suspicion of various counts of child pornography. Although both New Zealand and Australia have maintained current laws in order to protect their own citizens from pedophilia in an increasingly technological world, and some reports had highlighted that the laws of Fiji needed review, it was not considered a priority to update the statutes in Fiji. As discussed below, other countries are unfortunately following in Fiji's footsteps, waiting for their own tragedy to motivate them to change the laws.

Example 6 – Anti- Child Pornography Legislation in Fiji

A case arose in Fiji involving the use of minors for pornographic purposes by a foreign national. Once publicised, there was an up-swelling of public and government support for the prosecution of the individual. However, the existing laws were not drafted to handle a case of this nature. Children were left exposed to this type of abuse in spite of the consensus against the activities. Fiji's Parliament responded quickly to public sentiment, and new laws were quickly drafted and adopted. This example illustrates both the need to regularly review laws to ensure their ability to protect disadvantaged groups, and also the speed with which laws can be adopted if stakeholder support exists.

Unfortunately, similar cases have been reported in Solomon Islands in the past ten years,⁴⁹ and the Committee on the Rights of the Child specifically called for Solomon Islands to “develop all necessary measures and programmes to prevent, combat and eliminate sexual exploitation of children”⁵⁰ The failure of state parties in the Pacific to link cohesively to address social issues may be a regional expression of the problem of geographic isolation (Obstacle 3). While one country will expend considerable resources to address an internal problem, neighbours do not benefit from the debate occurring on issues that share some features with their own social environment. The scope of changes is therefore typically limited to just one country. This has been true of the Family Law Bill in Fiji and the Domestic Violence Bill in Vanuatu, both discussed above, and the National Advisory Committee on Children (NACC) in Solomon Islands is struggling to begin a similar review process, but to date has not benefited from the experience, processes, and outcomes of its neighbours.

While some crops may simply ripen at different times when local conditions are right, international and regional organisations have the opportunity to expand the reach of movements in women's and children's rights that seem to be coming to fruition in many countries at the same time. This support can be accommodated through increased UN involvement in nationalising international norms through existing PIC forums such as the Secretariat of the Pacific Community (SPC) and the Forum Secretariat.

⁴⁹ A case arose in Solomon Islands in September 2003 involving a foreign national who allegedly had a digital camera containing photos of naked boys. While the man could be charged based on certain laws against buggery in the Solomons, many young girls under similar circumstances are left at the mercy of their “friends”,

⁵⁰ Committee on the Rights of the Child. 2003. Concluding Observations of the Committee on CRC: Solomon Islands. CRC/C/15/Add.208 at 15.

Obstacle 7 – The UN is not positioned to advocate for human rights in the Pacific.

The UN began as an institutional home for the loftiest notions of human interaction and advancement. Starting from this foundation, the institution has attracted incredibly talented and motivated individuals from all the nations that find support within its walls. However, the demands for assistance in addressing the concerns of the current version of a “modern” world, from internet regulation to planting guidelines, may have allowed the core ideals to lose their prominence at the national level. Often the distant Secretary General, or another New York or Geneva based entity, is left to be the standard bearer for human rights and principles in the UN system. This is reflected in the Pacific face of the UN, which is oriented away from the rights-advocacy sphere in favour of a more conciliatory approach towards Governments and entities. In spite of heart-felt efforts to implement rights-based programming in accordance with UN directives from the 1990’s, there remains a somewhat pervasive attitude that improving the indicators for incomes, services and infrastructure will in turn solve human rights abuses. While clearly essential components of people-oriented development, there is no reason to believe that “trickle-down” human rights approaches will be any more effective than trickle-down economics has been. A human rights violations is not cancelled out by a new road.

At the country level in the Pacific, many international human rights documents and principles are alluded to, but there is a reticence to publicise and condemn abuses that undermines the UN’s status as the pre-eminent bastion of rights promotion. Examples can be drawn from two countries discussed in detail above, Solomon Islands and Tonga. Although the civilian coup in Solomon Islands did not generate a single public statement from the UN system during the critical aftermath immediately after the Prime Minister was forced to resign, the Solomon Islands Common Country Assessment (CCA), written almost two years after the coup, very clearly, albeit delicately,⁵¹ outlines the failings of the coup-installed government and the serious flaws in the subsequent election.⁵² Therefore, while the UN is an able and balanced analyst of past behaviour, it has not been a vocal advocate for rights when they are in jeopardy and could possibly be protected.

Such a contemporary challenge continues to unfold across the Pacific with a heated battle over media freedom developing in several countries. In Tonga, the battle is being waged by people wanting to further the democratic agenda in Tonga, and combatants include even the traditionally stoic Catholic Church and other institutions, notably the Pacific Islands News Association, and countries such as New Zealand. Further, the push to allow government more power in controlling the media seems able to spread freely and

⁵¹ E.g., the 2000 coup in Solomon Islands is reduced to a subordinate clause in the 2002 CCA: “[I]t is pleasing to note that, except for the change of government brought about by a coup in 2000, all other changes of government have been constitutional.” UNDP. 2002. SI Common Country Assessment at 30. Presenting the coup as such may be interpreted as reducing the theft of national authority to the level of a minor slip in behavior – something to be noted but not emphasized.

⁵² *Id.* at Chapter 4.

profusely like a weed; Vanuatu has been in a similar battle with a newspaper editor, Papua New Guinea and, more recently, Fiji have narrowly survived attempts to entrench government control with a revamped Media Bill, and several other countries, seemingly bolstered by ideas from some elements from Africa and the Caribbean that were hosted during recent summits, have been attempting ad hoc control over the press. Although the debate has been on-going for several years, there has not been a public UN response to government efforts to deport a newspaper editor and block the distribution of a newspaper critical of some of the actions of the monarchy in recent months in Tonga. This issue falls squarely within the mandate to promote human rights generally, and good governance specifically, within the Pacific, and it appears to be growing where it currently exists and spreading to new territory. Since current and past programmes have not been effective in preventing the arrival of this challenge to fundamental democratic rights, the UN still needs to determine how it will handle this and similar cases of abuse in the future.

III. Practice Analysis (with illustrations from Pacific)

A. Strategy 1: Formation of an independent Human Rights Commission

A Human Rights Commission, properly empowered, can attack several of the obstacles identified above by working with existing structures and systems. Fiji is the first PIC to have formed a commission, simply named the Fiji Human Rights Commission.

Several countries have initiated the process of forming an independent Human Rights Commission, including Fiji and Papua New Guinea. The Fiji Human Rights Commission, formed pursuant to Chapter 4 Section 42 of the Constitution and empowered by the Human Rights Commission Act 1999, has a broad mandate to, amongst other duties, “invite and receive representations from members of the public on any matter affecting human rights.”⁵³ Other duties include human rights awareness raising, cooperation with other organisations for the betterment of human rights generally, promoting “better compliance in the Fiji Islands with standards laid down in international instruments on human rights,”⁵⁴ and encouraging “the ratification of international human rights instruments by the State . . .”⁵⁵ In short, the Fiji Human Rights Commission was created to overcome the obstacles outlined above by raising awareness of human rights, investigating complaints, and making recommendations to government on compliance with international standards.

A Human Rights Commission has many benefits to the overall human rights environment. As a government institution, it is by its existence a statement of commitment to certain ideals, particularly when the enabling legislation is as expansive as Fiji’s. Secondly, a Commission is nationally owned, which alleviates people’s fear of outside institutions and beliefs being forced onto a country. Third, a Commission develops the country’s capacity to respond to human rights issues internally, a much faster route than even the best intentioned external actor can take.

A central Human Rights Commission also has limitations. As a new institution, it can be seen as a marginal addition to the central government branches. It also depends to a large degree on the vagaries of public expenditure to determine the realistic scope of its work, requires sophisticated and experienced staff, and needs a government committed to allowing the commission to operate independently. Many times the claims brought to commissions such as Ombudsman Commissions and Human Rights Commissions, could have been raised as claims in a properly operating court system. Creating a new route for resolution of the claims may reflect resignation to the inoperative condition of the courts in some countries, which could limit attempts to improve the primary dispute resolution systems, and the commissions require the diversion of limited funds from courts for operation.

⁵³ Human Rights Commission Act 1999, Section 7 (1)(b).

⁵⁴ Human Rights Commission Act 1999, Section 7 (1)(f).

⁵⁵ Human Rights Commission Act 1999, Section 7 (1)(g).

B. Strategy 2: Formation of Strong Coalitions – Building on Strengths While Recognising Your Own Weaknesses.

As discussed above, coalitions formed symbiotically in Fiji around the Family Law Bill and anti-child pornography reforms. The coalitions were both beneficial to the general process of reform and also to the growth of the organisations involved as they were able to share experiences and motivation. Other countries have had similar experiences: the Civil Society Network in Solomon Islands banded together to successfully advocate for rights at several points during peace negotiations and electoral processes in 2000/2001; PNG civil society, led by the Media Council, created a Coalition Against Corruption that claims 2.5 million members; and VANGO, a Vanuatu NGO umbrella organisation, has stood up to voice its opinion on many issues, including presidential pardons and budgeting priorities. The coalitions are strengthened by the local ownership and control of the processes, and also build networks that support additional efforts.

Coalitions should also strive to foster partnerships at the community level in order to both properly target activities and to share ownership of the results. As discussed above in Section I.A., global experiences that highlight the importance of developing disaggregated data in order to target disadvantaged populations in countries have been confirmed in Asia. Certainly, the lack of data in the PICs has not hidden all human rights issues as there are very broad gender, freedom of speech and access issues that would have been obvious even without violence; however, the experiences reported in other parts of the region suggest that obtaining disaggregated data at this point would allow for the identification of the most needy populations in time to develop interventions before the disease of desperation sets in, and acts of desperation become more common. As there are many actors in the Pacific that have a human rights component in their mandate, including all of the institutions of the United Nations, regional organisations such as the Forum Secretariat and Secretariat of the Pacific Community, and local NGOs and Churches, there is an opportunity for the immense work of identifying the poor and disadvantaged in each country to be shared along with the duty to redress violations or address needs.

To that end, there are also powerful resources already established in the Pacific that are not yet being widely used to inform programming for human rights. The United Nations Development Fund (UNDP) has produced global Human Development Reports every year, Pacific Human Development Reports in 1994 and 1999, as well as individual country reports, such as the Solomon Islands Human Development Report in 2002. The Solomon Islands report was a milestone on several levels because it linked private business, academic institutions, authors from Solomon Islands, the Solomon Islands Government (SIG) and UNDP in a collective effort to print an accessible and durable document. In addition, the report identifies with subtlety an underlying paradox facing the country: on page 2, it notes that “In the past the focus of development was biased towards achieving economic growth at all costs with little consideration given to the human dimension. This approach resulted in human dissatisfaction, and destruction and

created the grounds for conflict between Solomon Islanders.”⁵⁶ On page 6, there are, however, five bullet points explaining how poverty, in the lack of money sense of the word, “. . . is a factor in all other aspects of human deprivation.”⁵⁷ What is a country to do, then, if concentrating on economic issues leads to the destruction described on page 2, but failing to concentrate on cash income will doom you to failure because of the reasons on page 6?

This may be where the regional and local entities enter the picture. UNDP has provided a huge body of work, but it is not particularly well suited, financially or administratively, for sustained activities at the community level in all ten countries it serves in the Pacific. This is where the concept of utilising strengths enters the picture; UNDP’s ability to pull in global expertise and analysis to create a document like the Human Development Report would be a very daunting task for a local NGO, or even a regional institution. This is not to say that these bodies do not have major inputs into the documents: the Solomon Islands report was primarily written by Solomon Islanders. However, the structure and tools of analysis, however, were developed with the benefit of UNDP’s global network. By the same token, UNDP would find it just as daunting to try to develop the hundreds of village level projects developed by local NGOs and others bodies in the Pacific. The challenge is therefore to find a mechanism to link macro level resources such as the Human Development Reports with meso and micro level projects of the large international partners and the local level implementers.

The relationship developed between UNDP, DFID and RRRT for human rights education and advocacy in the Pacific is one a model for such a linkage. Coalitions like this appear to be the most realistic way to handle the geographic, social, cultural and economic variations of the PICs. But the model must be deliberately developed if it hopes to address needs in the Pacific. There needs to be effective monitoring and evaluation feeding back into the structure of the relationships in order to answer questions about the proper role of different entities, whether goals are being met, and the proper direction for programmes to take in the future. Some noted during discussion that currently these decisions are being made based on administrative considerations rather than on programming results, which could seriously dilute the long term benefits of the coalitions, even those between UN agencies. Other challenges remain in the form of expanding the coalitions so that they are not solely made up of colleagues or those bodies under the same institutional umbrella – communities, NGOs, Churches and other organisations should also have a forum to link their ideas and efforts to the larger human rights movement in the Pacific.

That being said, coalitions can suffer from the same diseases that haunt political alliances or team sports; effective partners tend to be intelligent, strong minded entities and friction is inevitable. Battles over “ownership” of issues and accomplishments, perhaps made necessary by a competitive funding environment, can degenerate into competition for dominant roles and detract from the focus on achieving the original goal. External bodies or committees may help address these problems since those feeling maltreated will have a

⁵⁶ SIG/UNDP. 2002. *Solomon Islands Human Development Report* at 2.

⁵⁷ *Id.* at 6.

neutral location to work through the issues, but in the end the battle over funds may mean that some institutions enter into areas based on a thirst for funds rather than on their ability to answer a need. In areas like awareness raising, where there are many institutions providing the service, this is not a critical problem. However, where a duty is only being provided by a single organisation the competition can create a vacuum, denying a country, or the region, a particular service. In the Pacific, this can be seen in the fact that many agencies provide awareness raising, but there are no local entities, including UN agencies, outside of PNG and Fiji acting as “watchdogs” for abuses.⁵⁸

C. Strategy 3: Involvement with the Drafting Process

The tremendous impact a Law Reform Commission Board Member can have on the legislative process illustrates the benefits of direct involvement with the review process. This is again not a common opportunity, however in addition to Ms P.I. Jalal’s position as Chairperson of the Fiji Law Reform Commission, RRRT’s expansion into a regional resource resulted in an opportunity to draft the proposed Solomon Islands Bill of Rights (BoR). The organisation has therefore been well-positioned in both situations to assist people with understanding human rights and in developing ways to incorporate human rights into the legislative foundation of two countries.

RRRT’s experience has assisted in raising awareness that involvement in drafting legislation must entail a larger process, extending beyond the narrow structures of government and into the level of community participation. In response to lessons learned elsewhere, the RRRT approach to the Solomon Islands Bill of Rights (BoR) was developed with the intent to educate people from all strata of society through a variety of mediums in order to confirm support for the BoR from leaders. If advocacy efforts had been limited to any one level, the entire process could have been undermined due to physical and social issues. Physically, the issues identified in Obstacle 3 relative to geographic isolation meant that many people in Solomon Islands would not have received objective assessments of proposed constitutional provisions. Socially, many of the other obstacles discussed above could have undermined nominal support for the BoR as groups opposing a new document would have been able to manipulate traditional and current power structures to contort the outcome as desired.

In answer, RRRT, in coordination with the larger UNDP effort that included the Constitutional Reform Project itself, expanded its role beyond that of draftsman for the new BoR. The Solomon Island Paralegal programme extensively promoted awareness of the BoR at the community level through its training programmes, media outlets such as radio and print were accessed, and a final series of training reached out to Provincial and National leaders to fully educate them on the documents that they would be debating. As the drafting itself was specifically guided in part by the need for Solomon Islands to “[c]omply with the United Nations International Bill of Rights,”⁵⁹ the entire process of

⁵⁸ See Amnesty International. 2000. *Solomon Islands: A Forgotten Conflict*.

⁵⁹ RRRT. 2003. *Cover Note to Constitutional Reform of the Solomon Islands with MPs and Provincial Premiers 17th-18th September 2003*. Honiara.

drafting and advocating for the BoR embodied a model for nationalising international human rights documents into the national legal framework.

D. Strategy 4: Advocacy at Community Level

The articles and books reviewed, and the organisations and government bodies interviewed, all mentioned the importance of community awareness for effective implementation of a rights protection programme. However several projects also illustrate the importance of community awareness for the initial development of rights protection. The leaders sometimes need to follow, but only strong and focused advocacy work can develop the community awareness necessary to motivate a strong Pacific leader to follow. Several programmes in the Pacific work on developing this type of awareness.

In the Solomon Islands, provincial leaders around the nation focussed upon the call for greater autonomy when the national government coup in 2000 allowed resources to be hijacked from service provision to satisfy pockets of special interests, The idea for greater provincial autonomy had been circulating since before independence in 1978. Also, many in Solomon Islands have been directly motivated by the evolution of the Organic Law in PNG, which implemented decentralisation measures into the PNG political structures, and the situation in Bougainville, a resource rich, but isolated and under-developed, province that fought to gain independence from PNG. Several years after the Townsville Peace Agreement ended the official fighting in Solomon Islands, UNDP facilitated a community driven review of the national constitution. The scope of the project grew to national consultations, and the project fuelled the inclusion of expansive rights protections in the new constitution simply by raising rural people's expectations. The people were to some extent leading from behind, capitalising on the hopes inspired by the rhetoric of former leaders promising a better life "once a new constitution was created."

The awareness raising was effective because: it took the message directly to rural areas without relying on middle-men that may have their own agenda; it was consistent⁶⁰ and well resourced; and it was comprehensively supported by several organisations that worked in coordination with each other.⁶¹ In the end, the intentions of the international organisations who funded the constitutional review, the national leaders who called for the review, and the provincial leaders who demanded change were all secondary during the consultation process as the people themselves were empowered to speak about governance for the first time. Although the rural communities had for nearly three decades borne the duty of choosing a representative, they did not understand their duty or how they should fulfil this obligation. Care had to be taken in how the education and consultative process was handled, of course, as the entire process would have to return to the elected leaders for the people's ideas to be nationalised into the constitutional

⁶⁰ See RRRT. 2003. *Ten Reasons For a New Bill of Rights*, a pamphlet developed to clarify issues and define responses for the debate over a new Bill of Rights for SI.

⁶¹ See 2003 Solomon Islands Reports, RRRT.

framework, leaving the emotional input of the people in the hands of those they have played a role in electing.

E: Strategy 5: Training for Justice Sector Personnel

Many organisations in the Pacific have reached the conclusion that front-line personnel are a major factor in bringing human rights to the community level. The conclusion is often unfortunately reached when human rights abuses by authority figures are publicised, but the response has been to initiate various training programmes for the judges and magistrates that should be positioned to address abuses. Organisations have targeted magistrates, judges, the police and community leaders for trainings on human rights concepts. In some jurisdictions, such as the Solomon Islands, training has included issues contained in international common law. An overview of some of the programmes follows.

RRRT

RRRT is based in Suva, Fiji, but they have been evolving a programme called “community paralegals” for the past several years, building on lessons learned from earlier model. Community paralegals are not legal professionals, but rather community leaders that are given skills for the creative mobilisation of the community around issues of import to that community, as well as communication and advocacy skills to generate support for the community’s efforts. Some paralegals go through a six week training of trainers so that they can begin training others and develop a network. The programme is planned for implementation in seven PICs.

One success story involved a rural community’s mobilisation to block a Taiwanese company from dumping toxic waste in Makira Province, Solomon Islands. Concerned that the rural community was ill-equipped to handle toxic waste, the RRRT paralegal used her new skills to plan marches and make statements that were picked up by groups within Solomon Islands and the region, and the waste dumping plans were halted. Unfortunately, activity has been reported in the dump area as of mid-2003, so the battle did not end the war.

PNG Ombudsman Commission (OC)

The OC in PNG has noted a general lack of understanding of rights by people throughout PNG society, including government departments and offices. This situation allows small problems to grow, and large abuses to go unchallenged until extensive damage is created; the Ombudsman has seen this situation as promoting the cycles of violence and retribution since in the absence of a functional justice system there is not an entity to break the cycle. In answer, the OC has developed training programs for other Government institutions, such as the police, in order to raise awareness of the rights of citizens and obligations of state actors. The decision was also informed by the fact that

the current phase of AusAID capacity-building funding in PNG targets programs of government institutions that will be of benefit to other departments. Moreover, the OC has assisted organisations, such as the police, to develop internal monitoring and investigation systems for rights promotion and the review of claims. Unfortunately, the OC is not able to reach the community level so that the general public understands the rights, protections and obligations already in place in PNG so there is not the comprehensive approach that has been successful in other, albeit significantly smaller, PICs.

AusAID / NZAID / Other international partners

Regional foreign assistance is going through an intense transition, and the assistance to the justice sector is at the heart of new efforts due to the pervasive impact a break down in law and order has on a nation.⁶² Previous programmes in PNG, Solomon Islands, Vanuatu and Fiji modestly aimed at supporting internal efforts to train personnel. More recently, however, the nature of assistance has been redesigned to reflect lessons learned from the failure of earlier efforts to allow a government able to provide even basic services to its people in spite of at time immense natural wealth. The result was the Regional Assistance Mission to Solomon Islands (RAMSI), which began in mid-2003. There are now foreign nationals in line positions in many Ministries, including police, customs, and finance.

The comprehensive approach of RAMSI offers many prospects for the expansion of human rights in Solomon Islands, however there have not been many opportunities for the involvement of other institutions in RAMSI activities. As with most actions built on the concept of overwhelming force, the RAMSI efforts are built upon an agreement that temporarily abrogates many rights, and some question if the skills transferred to local partners in this atmosphere will be maintained once the occupying force is removed. A troubling example has arisen in the resolution of some cases in October 2003. Militant leaders from one faction, who are now in positions reflecting their new wealth and status, including several government ministers, have been arrested by the RAMSI supported police force. However, the mission may not have properly assessed the capacity of the justice system to withstand pressure, and the prosecutor has simply not shown up for several high profile cases of people either in Government or associated with those in power. The right to a speedy trial has been invoked, and several charges of intimidation and assault, and even the murder of a spouse (although this case is not directly connected to the ethnic conflict) have been dropped due to the absence of the prosecution. The short-term benefit to the people of Solomon Islands has been remarkable, if delayed; the long-term maintenance of the benefits will require a much broader coalition of the duty bearers in order to withstand the types of pressures currently undermining the application of justice. III. Recommendations

⁶² See the 2002 *Solomon Islands Common Country Assessment* for a general discussion on the impact of law and order on all aspects of society. Similar, but more intense, issues have been identified in Papua New Guinea, and there RAMSI staff have indicated that an intervention similar to the one used in Solomon Islands is being developed for Papua New Guinea. Discussions with RAMSI staff, October 2003.

III. Recommendations

A. Overview

The following areas have stood out as possible options for UNDP programming assistance, either directly or through a Regional Project. The activities would ideally be integrated regionally and nationally to create a network of bodies and resources for the ratification and implementation of international documents. The primary targets of the recommendations are based on current successes and on an appreciation of positive aspects of the Pacific context, such as the pervasiveness of democratic rule, high regard for family and children, and a special respect for life. The targets reflect the following general goals gleaned from consultations:

- Empowering people to recognise, claim and monitor their own rights and their duties to others in the community;
- Creating regional ownership of international instruments through mechanisms utilised successfully globally as well as those developed in the greater Asia/Pacific region;
- Developing international capacity to support rights holders and encourage duty bearers locally so that the mechanisms nationalising international instruments are implemented.

To that end, the following recommendations have been developed.

1. Supporting the creation of Human Rights Commissions.

The success in Fiji, as well as with the Ombudsman Commission in PNG and Vanuatu (to the extent that they cover Human Rights issues), indicates that the PICs would be able to effectively and creatively channel human rights-related activities through such a commission. Further, the United Nations has resolved to promote the development of independent and effective mechanisms to promote and protect human rights.⁶³ Therefore, pursuing activities related to human rights commissions would both promote the aims of the United Nations and realistically assist PICs to build internal capacity to develop human rights within their own cultural context.

2. Facilitate the “Adoption” of specific international instruments by United Nations agencies in the Pacific in order to invigorate support.

The instruments that are owned by a particular agency, such as the CRC in relation to UNICEF and CEDAW in relation to UNIFEM, have been more successfully incorporated into the modern, as opposed to colonially induced, Pacific legal structures. The pioneering instruments that were developed before an awareness of implementation techniques had evolved have not been as successfully integrated. The Pacific is rich in

⁶³ UN General Assembly resolution 48/134.

human resources and regional institutions such as the Forum Secretariat, that could very powerfully partner to stage a Pacific adoption process that would bring the debate and rights of the international documents onto the Pacific agenda. The partnership would be beneficial for all parties, as the regional organisations have a reach and ownership that external agencies could not duplicate, while the UN agencies and others have an objectivity that would allow them into the politically charged environment, and also a level of experience several decades ahead of that of regional institutions. As an example of this type of partnership, the Forum Fisheries Agency, based in Solomon Islands, has been working in partnership with UN agencies, other regional and international organisations, and PIC and other Governments to monitor and assist in the development of fish resources in the Pacific. The model works in economically oriented arenas, and offers hope that similar strategies could be adapted to equally benefit human rights in the Pacific. Finally, documents such as the ICCPR are very closely linked with existing UNDP Governance goals, and would serve as a rallying point for current and future projects.

3. Systematic Training and Education for all people, with attention to government institutions and professionals involved in activities related to identified areas of Human Rights concern.

The PICs comprise more than fourteen sovereign states, and several semi-autonomous political entities.⁶⁴ Nearly all of these countries have training programmes or academic requirements for their law makers and enforcers, their justice staff, their teachers and many other government and professional groups. Very few, however, have incorporated human rights awareness and tools into the official curriculum for the many training programmes. This creates an environment that is difficult to change as the new actors enter their positions without the awareness and skills needed to ensure respect for human rights, and then develop patterns of practice that further embed abusive behaviour. In other cases, there simply isn't significant training available for the newly appointed/elected/hired government actor, and the person is forced to adopt existing systems in order to survive the real challenges on the ground. In either case, opportunities are lost as the patterns of behaviour become established.

The training efforts of RRRT and FWRM in particular have been successful because they have targeted three levels of society simultaneously; the community at the micro-level, the government and professionals at the meso-level, and the policy makers at the macro-level. After the training, the three levels are able to work in a more integrated manner because the people have a common understanding of the meaning and import of human rights. Other United Nations organisations and regional and international groups have very powerful programmes and materials, but have not yet prioritised the development of the capacity to impact on the different societal levels in a coordinated manner. Unfortunately, the imbalance in understanding can fan the flames of dissent created by other points of friction in a community. For example, if a community is already

⁶⁴ Every UN agency has its own defined area of support. UNICEF has agreements to serve fourteen countries in the Pacific, for example, while UNDP focuses on ten.

experiencing problems with communication between its youth and the community elders, a quick rights awareness training for only the youth may insert more points of conflict into the environment as newly discovered, but perhaps not well understood, “rights” become weapons to promote other agendas. Conversely, had the elders also had access to rights training, the community may have been able establish a stronger foundation of rights and responsibilities for both the youth and the elders within a supportive framework.

In answer to the arant difficulties presented by the geographic reality of the PICs, the University of the South Pacific (USP) and UNDP have recently linked their programmes for distance education and communication using appropriate rural technology in Solomon Islands. The recent collaboration between USP and the People First Network (PFNet) in Solomon Islands currently offers limited educational and communication opportunities in a well documented pilot project. The communication facilities, with monitoring and educational capacities evolving, offer hope for increased rural involvement in government, for developing the ability of people to understand and advocate for human rights in their own communities with technical support and training. As the system grows, there is furthermore a unique chance to create a real-time monitoring presence to protect rights once they have been included in the national and local legal framework.

4. Reaffirming the United Nations role in Human Rights advocacy and protection.

In the call for the nationalisation of international documents, it seems aphoristic to state that there must be a cost to failing to implement human rights norms in a country that is a member of the United Nations. While positive reinforcement is the most diplomatic approach, Human Rights are such that a violation must at the very least be officially acknowledged. The issue of when sanctions or stronger action should be considered has not been a large part of the public dialogue in the Pacific, although the requests for UN assistance in East Timor, Bougainville and Solomon Islands have generated limited debate and delayed assistance. If the UN is to be respected as a source for Human Rights, then it must use its voice to address abuses and promote the ideals that are contained in the international instruments it is promoting; in the Pacific, as elsewhere, neutrality in allegiance can not be allowed to become the acceptance of all actions. International instruments contain very potent protections that are relevant to many current issues, yet the opportunity to use these instruments as leverage for improving the condition of the poor and disadvantaged has not regularly been seized outside of the reporting context.

An exception was noted in Solomon Islands, where the silence of the international community, and UN agencies, over political and legal anomalies after the coup in 2000 was gently broken by the opening of an Office for the High Commission for Human

Rights in Honiara in November 2000.⁶⁵ Under the direction of an international and then national officer, the OHCHR successfully introduced human rights into the highest levels of, *inter alia*, education, peace building, police training, elected and traditional leader forums, and the legal system. To compare the different approaches available to the OHCHR relative to other agencies, in 2001 the international OHCHR officer generated a letter supporting a Government statement that recent untied funds from a major donor would be invested in school fees. The action by OHCHR was motivated by concern over the diversion of nearly all of the social sector budget to militant interests, and gained broad support from diplomatic missions, NGOs and Church groups. However, UNICEF, the UN agency mandated to advocate for children's issues, did not feel comfortable signing such a public letter and in the end did not make any direct public statement regarding the impact that the diversion of funds from social expenditure had on the lives of children in Solomon Islands.⁶⁶

Unfortunately, the structure of OHCHR is such that it relies on discretionary funding that is distributed in a competitive environment. The small populations and relatively inexperienced media sources in the Pacific can not effectively maintain world opinion long enough to effectively garner funding in this environment, and the office has been struggling without programme and staff structures since the end of 2002.⁶⁷ Efforts to administer the OHCHR office through the UNDP office may extend its presence in Solomon Islands if UNDP is willing to eventually accept the role,⁶⁸ but in the short term Solomon Islands is facing a immense challenge as the guinea pig for a new Australian intervention paradigm, the Regional Assistance Mission in Solomon Islands, without a watchdog or human rights advocate in place. The fact that other UN agencies are in place with human rights awareness initiatives is very positive, but the question arises of whether several UN agencies with overlapping spheres of programming can, or should, replace an agency with a specific mandate. In the case of the PICs, which never had a representative of the OHCHR before 2000, the answer clearly lies in determining whether the other agencies are willing to commit to protecting and promoting all human rights for all.⁶⁹ If the answer is no, then the presence of OHCHR in the Solomons, and the rest of the PICs, is a necessary antecedent to a future UN role in efforts to promote the nationalisation of human rights instruments in the Pacific.

5. Developing Regional and National Human Rights Coalitions

As discussed above under Strategy B, coalitions offer the support for creatively linking the strengths of different entities in order to address the overwhelming challenges of identifying, targeting, addressing, and assessing programs in all of the PICs. Moreover, these do not need to be funded networks that themselves become drains on limited funds. There are already a large number of organisations, UN agencies, international

⁶⁵ The coup in Solomon Islands occurred in June 2000, with a new Prime Minister voted in by July 2000, so the OHCHR office opened after these events even though the initial Government requests for official assistance occurred in 1998/99. Full elections were not held until December 2001.

⁶⁶ The author was the UNICEF Pacific Country Desk Officer for Solomon Islands between 2000-2002.

⁶⁷ Meeting with Mr Ashley Wickham, OHCHR Solomon Islands, 1 October 2003.

⁶⁸ *Id.*

⁶⁹ OHCHR. 2003. *Annual Appeal: An Overview of Activities and Financial Requirements 2003*.

secretariats, regional bodies, NGOs and Churches holding meetings and workshops in all of the PICs. However, they generally do not yet have international human rights documents on their agendas. It may take several initial activities to change this, but in the long term coalitions can be formed locally and supported through existing networks.

Some examples of fledgling coalitions, in addition to the UNDP/RRRT case cited above, can be found in the Catholic Church response to freedom of speech in Tonga, the Women for Peace groups in Solomon Islands, the governance component of the Forum Secretariat and Commonwealth Secretariat when they urged the return of democratic rule in Fiji, and the Coalition Against Corruption in PNG. The challenge now is for these entities to move from protest roles into positions where they can facilitate the nationalisation of international documents. Such a transition would change the face of human rights activities from ad hoc actions to institutional programmes of existing duty bearers that could establish a more stable human rights environment for the development of the region.

B. Project Recommendations - Summary

Also see Annexes 4 – 6, which adapt analysis tools from the Asia/Pacific Access to Justice Workshop. The major addition to the issues identified and addressed at the workshop is the idea of creating awareness that the electorate is also a duty bearer in many crucial points in the creation and enforcement of rights in a democracy. All other areas were adapted as in the Annex, or supported as written by consultations for this paper.

Recommendation	Prioriti-sation	Entry Points	Good Practices – as discussed above.	Constituency Building / Which Obstacles are Addressed (Obstacles from above are listed at end of chart)
<i>1. Supporting the creation of Human Rights Commissions.</i>	High- medium to long term process of building capacity for internal monitoring of national and regional human rights situation.	<ol style="list-style-type: none"> 1. Existing Human Rights Commissions. 2. Existing Ombudsman Offices. 3. Solomon Islands Constitutional Reform process. 4. Development partners with law and justice components to programming. 	Strategy 1: Formation of an independent Human Rights Commission	<p>Human Rights Commissions build awareness of rights and processes in the country, but they can also have a much more profound affect in the form of empowering the legal structure by ensuring the rule of law and the equality of all in the assertion of rights. In this sense, the HRC allow the extension of human rights to the entire country because the constitutional rights, and those from international instruments, will be useful at the community level. It has been said that without equal enforcement of rights awareness raising is just a bitter reminder of what is missing in your community.</p> <p>Addresses Obstacles:</p> <ul style="list-style-type: none"> • 1,2, 4, and 5 by creating a mechanism to counter social and political forces that run counter to the principles of nationalised international obligations.
<i>2. “Adopting” international instruments by accepting responsibility for their passage and implementation.</i>	High – medium term as part of UNDAF obligation to promote international instruments.	<ol style="list-style-type: none"> 1. Review meetings for UNDAFs. 2. Incorporating into existing projects that cover rights contained in “Big Six” documents, such as UNDP’s GOAL and SMILE projects. 3. Heads of Agency meetings, Suva. 4. Partnering with donor and academic partners (USP, CQU, ANU, Waikato, etc.) partners, Forum Secretariat and Secretariat of Pacific 	<ol style="list-style-type: none"> 1. UNICEF with CRC. 2. UNIFEM with CEDAW. 3. RRR/UNDP with “Big Six” 	<p>A wide range of government, regional body, and NGO partners are possible members for working groups on the implementation and development of international instruments.</p> <p>Addresses Obstacles:</p> <ul style="list-style-type: none"> • 1 and by putting international pressure on the Government and groups that may be strong enough to stifle local rights movements. • 3 by creating programming options to identify and address populations that are not yet empowered by rights principles. • 4 through the building of local ownership of instruments by using the experience of other UN initiatives. • 7 as direct responsibility will be established for the

		Community for inclusion into agenda of regional meetings OR for co-sponsoring regional summits on instruments such as ICCPR.		monitoring of rights in core documents.
3. Training of duty bearers and rights holders: <i>systematic Training and Education for all people, with attention to government institutions and professionals involved in activities related to identified areas of Human Rights concern.</i>	High-long term strategy to support rights-based development.	1. UNDP/RRRT programme and many partners in the region. 2. Media Council, PNG. 3. FWRM, Fiji. 4. NGO community.	1.Strategy 4: Advocacy at Community Level 2. Includes use of appropriate rural technology, i.e. PFNet in SI.	The constituency impacted through these trainings are, through the nature of democracy, those that are defining their country. Therefore, every increment of increased understanding can dramatically impact on governance, access to justice, and other areas influenced by the quantity and quality of participation. Addresses Obstacles: <ul style="list-style-type: none"> • 1 & 2 by creating an informed electorate that is able to operate the democratic machinery to achieve positive outcomes. • 3, 4, 6 by empowering those distant from the rights debate, linking the electorate to create issue-based voting blocks, and creating a watch-dog attitude to identify future challenges to rights.
4. Reaffirming the United Nations role in Human Rights advocacy and protection.	Very High – immediate.	1. Coordination with OHCHR (particularly if office is closing). 2. Review meetings for UNDAF. 3. UNDP/RRRT ICT communication initiatives with rural appropriate technology linked to community paralegals.	1. OHCHR in Solomon Islands.	This area is essential for developing external and internal support for leaders that are trying to play by the rules, many of whom are not faring well in many regional elections, particularly in PNG and Solomon Islands. Addresses Obstacles: <ul style="list-style-type: none"> • Directly applicable to Obstacle 7, however this point underlies the capacity of UN actors to both build respect at the community level and their ability to obtain funds from international partners for programming. Without respect for the integrity, neutrality and moral authority of the UN, all aspects of programming are undermined.

<p>5. <i>Developing Regional and National Human Rights Coalitions</i></p>	<p>Very High – immediate.</p>	<p>1. Media Council / Coalition on Corruption, PNG. 2. UNDP/RRRT. 3. ECREA, Fiji. 4. PIANGO. 5. Transparency International. 6. NGO community. 7. Development partners. 8. Regional institutions, such as Forum Secretariat and Secretariat of the Pacific Community.</p>	<p>1. Strategy 2: Formation of Strong Coalitions – Building on Strengths <i>but</i> Recognising Your Own Weaknesses. 2. Developing human rights consultations within the region and placing human rights on the agenda of regional bodies, following the lead of Commonwealth Secretariat or governance and economic wings of Forum Secretariat.</p>	<p>Coalitions affect both those inside of them, through increased support and more sophisticated dialogue and resource sharing, and those whom the coalitions reach through the various members’ programming. Due to the challenges of working in the Pacific, coalitions are thought by many to be the only way to prioritise and achieve universal respect for human rights. The local coalitions would be able to build an action plan appropriate for their constituency (to, for example, start collecting disaggregated data in order to identify the disadvantaged).</p> <p>Addresses Obstacles:</p> <ul style="list-style-type: none"> • All obstacles are addressed by this recommendation, which builds on the successful techniques of other UN and international agencies. • These coalitions are also important for creating local capacity to assess and respond to human rights issues that emerge.
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Obstacles identified in Section II:

- 1) **Defensive posturing by powerful institutions**
- 2) **Government institutions can reflect societal and cultural biases**
- 3) **Geographic and Social Isolation**
- 4) **PICs are *receiving* international instruments**
- 5) **International and local strategies build resistance**
- 6) **There is a will, but no way**
- 7) **With regard to human rights, the UN family in the Pacific is has prioritised *awareness*, but not *advocacy***

Annex One - Ratification of Big Six Instruments for PICs

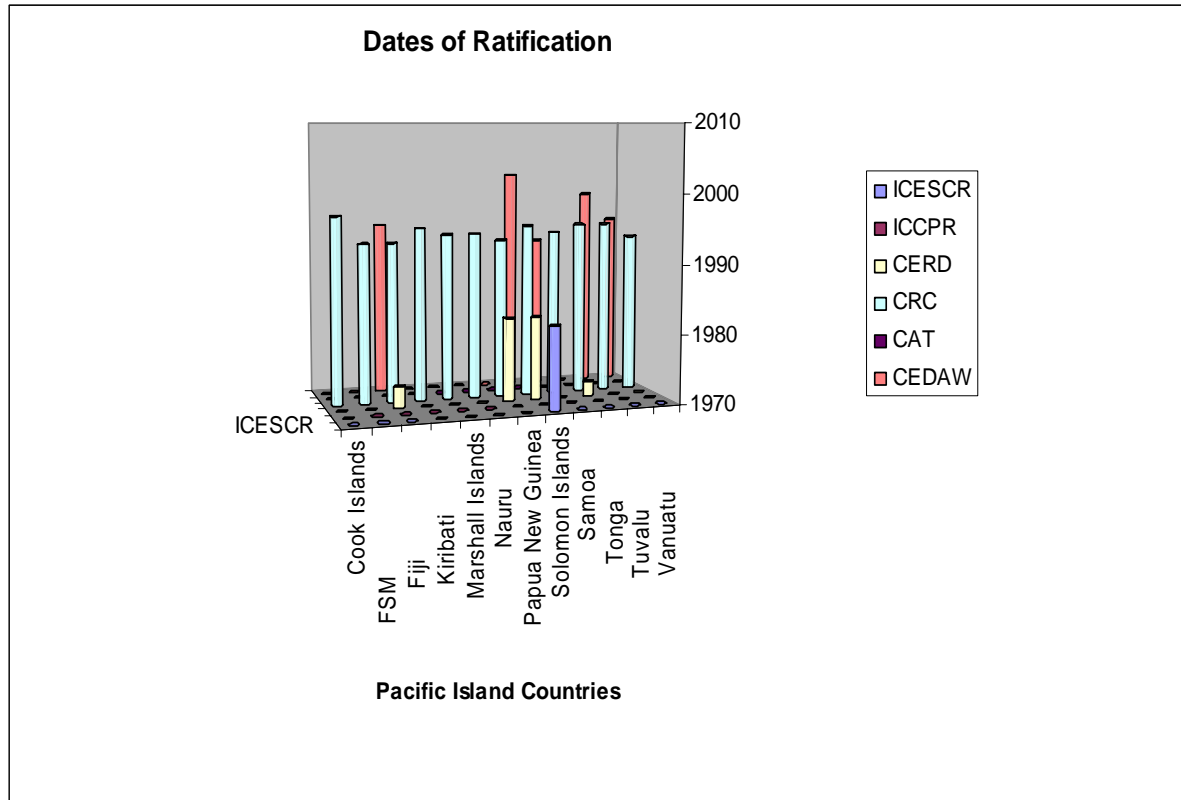


Chart based on RRRT and United Nations data for the Pacific.

The above chart starts before the wave of independence hit the Pacific in the mid-late 1970s. The length of the bars shows how long it took for ratification of documents. A pattern of ratifications of CERD at independence is visible with the short white bars, with the lone Solomon Islands ratification of ICESCR standing out in royal blue. The next wave hit with light blue CRC bars that proliferated in the 1990s. More recently, five pink CEDAW bars have appeared in the twelve countries represented in this chart since the early 1990s.

The small circles at the base of the chart are the documents forming the Big Six that have not gotten off of the ground yet. Other than the CRC and CEDAW, there have not been any ratifications of Big Six documents since 1982.

The CEDAW ratification date for Cook Islands was not confirmed so it is absent on the above chart. This does not change any of the patterns described above.

Annex Two – List of People Consulted

Listed alphabetically by organisation.

NAME	ORGANISATION	POSITION	PH/EMAIL:
Anika Kingmele	Attorney General's Chambers, Ministry of Justice and Legal Affairs, Solomon Islands Government.	Senior Crown Counsel	
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Annex Four: Sub-Practice Alignment of Initiatives on Access to Justice in the Pacific
Examples from around the Pacific

NORMATIVE PROTECTION OF RIGHTS			
By international and constitutional law	<p>PICs Generally</p> <ul style="list-style-type: none"> -Advocacy for treaty ratification- particularly tied to CEDAW and CRC (See Annex 1) and ILO efforts. -Disadvantaged populations generally have very weak understanding of current rights. -Heavy involvement of NGOs in awareness raising efforts. -Some involvement by international agencies 	<p>Fiji</p> <ul style="list-style-type: none"> -Monitoring and Promoting Implementation of HR treaties -NGO Network involvement -Lobbying by international partners (Commonwealth, Australia, New Zealand, etc. for return to democratic rule after coup). -Active law reform process at times (not yet assisted by UN). <p>Papua New Guinea</p> <ul style="list-style-type: none"> -Ombudsman active in pursuing violations of leadership code. -Recent overtures to revive efforts to start human rights office. 	<p>Solomon Islands</p> <ul style="list-style-type: none"> - UNDP Project coordinating the reform of the Constitution, incl. new Bill of Rights. <p>Tonga</p> <ul style="list-style-type: none"> -Freedom of speech in current constitution threatened by proposed amendment. <p>Vanuatu</p> <ul style="list-style-type: none"> -Ombudsman -Enforcement of Separation of Powers resulting in imprisonment of former PM -Subsequent debate about powers of President to grant pardon. -Inclusion of CEDAW principles in case (<u>Toto</u>)

<p>By Legal and regulatory frameworks</p>	<p>PICs Generally -Advocacy for changes to legal frameworks linked to CEDAW and CRC (See Annex 1), ILO efforts and politically expedience (issues around terrorism, international money transactions, etc.). -Law reform for compliance with international obligations active and extensive in some countries. -Disadvantaged populations generally have very weak understanding of current legal and regulatory frameworks. -Heavy involvement of NGOs in awareness raising efforts.</p>	<p>Fiji -NGO Network involvement -Active law reform process resulted in extensive, well-documented, revision of Family Law Bill.</p> <p>Solomon Islands - RAMSI directed as restoring ability to apprehend people who violate rights of others, but judicial system is now the weak link as legal staff do not yet feel safe to complete duties.</p>	<p>Vanuatu -Ombudsman reviews cases of abuse of office -Domestic Violence legislation passed and awareness raising efforts funded by UNICEF.</p>
<p>By customary norms</p>	<p>Fiji Great Council of Chiefs work within structure of democratic Constitution.</p> <p>PICs Generally -Training of customary leaders on human rights principles.</p>		

* See Sub-practice alignment of current initiatives, Annex 3 in Asia / Pacific Access to Justice Report

Annex Five: Accountability Analysis

GROUP 1: NORMATIVE PROTECTION in Pacific

Identification of duty bearers in Pacific

Major addition lies in the understanding that the people are duty bearers for their own rights in a democratic system, and they have an obligation to vote with conscience and accountability.

Examples of Duty Bearers in the area of normative protection of rights			
HR treaties/ Constitution	Subordinate legislation	Customary norms	Jurisprudence
<ul style="list-style-type: none"> • UN Agencies • Development partners • MOFA, MOLJ • Law reform commission • Legal advisor of government • Ombudsman Commission • Human Rights Commission • HR NGOs, civil society, representatives of minority groups • Parliament, including legal drafter's department • Academia • Media institutions • Electorate responsible for promoting rights agenda and choosing capable leaders. 	<ul style="list-style-type: none"> • Local government • Parliament • Legal drafting departments in ministries • UN Agencies • Development partners • Bar • Community groups and members • Electorate responsible for choosing capable leaders 	<ul style="list-style-type: none"> • Community leaders • Indigenous people's systems • Community groups and members • Academia/ NGOs 	<ul style="list-style-type: none"> • Judges • Lawyers • Academia

Analysis of strengths and weaknesses to fulfill obligations

	STRENGTHS	WEAKNESSES
MINISTRY OF LAW AND JUSTICE	<ul style="list-style-type: none"> • Technical capacity • HR awareness 	<ul style="list-style-type: none"> • Inertia due to political realities • Under funded • Lack of experience • Lack of personal security if unpopular decisions made
PARLIAMENT (including drafting committees)	<ul style="list-style-type: none"> • Final decision-making authority • Subcommittee structure (eg. on human rights) • Growing sophistication in some countries 	<ul style="list-style-type: none"> • Limited technical capacity • Very political by nature, but can be built around personal advancement rather than good of community • Limited knowledge about impact of human rights instruments on economy, traditional culture, etc. • Generally insensitive to human rights
NATIONAL HUMAN RIGHTS	<ul style="list-style-type: none"> • Relatively new and energetic • Clear mandate and legislative 	<ul style="list-style-type: none"> • Under funded, understaffed • Lack of credibility in some

COMMISSIONS	<ul style="list-style-type: none"> power for championing HR • Independence • Huge potential 	countries as mandate and powers very limited
MINISTRY OF FOREIGN AFFAIRS	<ul style="list-style-type: none"> • Mandate for coordinating treaty monitoring (Linked to MOJ in PNG) • Aware of international priorities/ international obligations • Typically very experienced individuals 	<ul style="list-style-type: none"> • At mercy of political will of party in charge • Limited involvement with NGOs, Churches, or other organizations involved in supporting disadvantaged and poor people.
JUDICIARY	<ul style="list-style-type: none"> • Potential for independence • Powers vested by constitution • Judicial activism • Adjudication of cases, including international law 	<ul style="list-style-type: none"> • Propensity to political influence • Tend to be conservative in some countries • Corruption an issue in some countries • Lack of knowledge of international law (new areas) • Gender insensitivity
CIVIL SOCIETY	<ul style="list-style-type: none"> • Potential for independence • Champions can creatively maneuver in fashion unavailable to Government or others. • Technical capacity very high in some areas of expertise in some countries • Role of “parallel reporting” to treaty bodies potential for expansion • Often more highly experienced and knowledgeable in HR documents than any other actor 	<ul style="list-style-type: none"> • Political influence • Limited outreach: lack of coordination/ organizational capacity • Confrontational attitude in some countries • Internal and inter-organisational competition a threat

* See Results of Accountability Analysis, Annex 4 in Asia / Pacific Access to Justice Report.

Annex Six: Assessment of Empowerment Analysis from Asia/Pacific Workshop

(From the Asia/Pacific Access to Justice Workshop Report)

GROUP 1: URBAN/RURAL POOR

Identification of most disadvantaged groups among the poor

Low caste	Squatters/ landless/ homeless	People with temporary jobs/unemployed/jobless
Bonded labourers	Poor/ working poor	People living in remote areas
Women/youth/orphans/beggars	Aged (elders)	Illiterate
Ethnic minorities	Migrant workers	Sex workers

Major obstacles in accessing justice

Lack of awareness, lack of legal knowledge, alienation (structural and personal)
 Lack of access to public services (expensive, no resources, no facilities, cumbersome), e.g. police station/post; courts. Lack of personnel in public services (e.g. legal representation: high legal fees, high fines); lack of access to quasi-judicial mechanisms
 Lack of organized civil society. Reasons: government restrictions, lack of expertise, lack of resources, lack of capacity to organize, lack of commitment)
 Lack of legal backing (the poor are in a permanent “illegal” status): poor education, illiteracy, provisions, policies
 Procedural discrimination (economics)
 Lack of voice, participation, inclusion in process (policy, lawmaking): a) cultural, political, religious, legal; b) drafting, consultation, arbitration, access to media.
 Exclusion from the mainstream (lack of legal recognition, no reservation)
 Corruption (cultural- individual; structural – institutional).

Analysis of poor people’s strengths and weaknesses to claim and exercise rights

Strengths	Weaknesses
Recognition under international treaties and constitutions	No money/ sufficient financial resources
Commitment to movement	No internal facilitator
Vibrant civil society	Illiteracy
Strong moral ground	Lack of commitment by donors/ NGOs/ government
Indigenous systems	Traditional systems/institutions
Leaders/informal	Limited reference materials or no materials
Community solidarity	Language (accessibility)
Group identity	Conflicting discourse

Suggested issues where lessons need be collected

Legal provisions	Lobbying/Advocacy	Government Policies/Practices	ADR
Pro-poor legislation Transparency/ Participation Inclusion/ Accountability Non-discriminatory procedures International laws/ Domestic enforcement	Public Campaigns Capacity Building CSOs Networking media, etc. International standards	Recognition of International laws Inclusion of A2J in Government programmes Political will	Strengthening existing systems Promote ADR where doesn't exist

GROUP 2: WOMEN

OBSTACLES IN ACCESSING JUSTICE (Structural (S) and Individual (I))	STRENGTHS
Poor (S) Illiteracy/ lack of education (S) and (I) Lack of awareness (I) Powerlessness (S) and (I) Traditional role (patriarchal society) (S) and (I) Lower wages (S) and (I) Economic status (S) and (I) Lack of representation (S) Lack of participation in decision making (S) No access to economic resources (e.g. credits) (S) Customary practice (S) and (I) Lack of mobility Language barriers (for indigenous and ethnic minorities)	Peer support Formal/ informal networking (incl. CBOs) Communication Problem articulation capacity Ability to influence the future generation Socially pro-active Fighting and lobbying – and as a consequence, existence of special legal provisions.

Suggested issues where lessons need be collected

Institutional reform
(parliaments, ministry)
NHRAP

Law reform:
Gender equality
Adequate representation

Special Articles
Court access

Sensitization of law-enforcement officers (judges/court staff)

ADR
Strengthening of civil society
(NGOs, CBOs) on gender
issues:
Sensitization at:
Community Level

Government Level
Special microfinance
schemas for women
Legal aid/for women
awareness
Engendering budget process

Literacy/education promotion/
incentive schemas
Legal literacy included in
school curriculum

SUGGESTED CLUSTERING OF LESSONS NEEDED ON A2J BY WOMEN
Legal and institutional reform Capacity development of law enforcement agencies Awareness and advocacy (thru. NGOs and CBOs) Legal literacy and education Economic reform (budgeting) ADR Legal counsel and legal aid

GROUP 3: INDIGENOUS PEOPLES AND ETHNIC MINORITIES, MIGRANTS AND INTERNALLY DISPLACED PEOPLE

Identification of obstacles and strengths to claim and exercise rights

	Indigenous Peoples and Ethnic minorities	Migrants and IDPs
	From attributes of minorities	System features

OBSTACLES	Ghetto mentality Lack of awareness of system Lack of literacy Low self-esteem	Outsider perception Distinct customary practice: find legal system alien Biases in legal framework and justice system Susceptibility to abuse by law enforcement Historical practice	Lack of legal rights/ no legal recognition of refugee status ("alien")/ IDPs vs. refugees Mental disorientation/ dislocation Hostility of host population No groups/ organizational capacity
STRENGTHS	Group cohesion, ethnic identity, rich cultural background Traditional justice institutions		

Suggested issues where lessons need be collected

Legal framework for IDPs
Legal aid mechanisms for ethnic minorities
Mobile legal Aid for IDPs

Awareness - legal literacy
Legal recognition of indigenous people

Mobilize indigenous NGOs for legal aid

Cross fertilization of traditional institutions and HR Values :

Build on traditional institutions, but instil HR values
Work with religious leaders
Identify "insiders" (Gatekeepers, Persons with authority, Tribal Elders/Chiefs)
Identify Major Shortcomings of traditional institutions

Strengthening linkages between informal and formal system
Define mandate of informal system for minor crimes/sentences
Appeal to formal system

GROUP 4: PERSONS LIVING WITH HIV/AIDS AND PERSONS WITH PHYSICAL/ MENTAL IMPAIRMENT

Identification of obstacles and strengths to claim and exercise rights

	Persons living with HIV/AIDS	Persons with physical/mental impairment
OBSTACLES	Stigma Feeling of shame Family and community impact (in case of ADR also) Economic hardship Criminalization of HIV/AIDS Institutional and social apathy Discrimination in workplace Weak prevention system	Ostracism Weak due process in categorizing/determining existence of mental impairment Susceptible of abuse in criminal activities Inadequacy of justice services (including lack of skills of judges, police, etc.) Inadequate infrastructure and physical access, especially of those living in remote areas Lack of access to information (more obstacles) Few NGOs working in the field of physical/ mental impairment
STRENGTHS	Good HIV/AIDS related NGOs, with access to funding Strong willingness by people from those groups to overcome obstacles Progress in the legal framework	

Strategies and research agenda:

STRATEGIES	RESEARCH AGENDA
<p>Enactment of laws to prevent the existence and spread of the causes of discrimination (e.g. spread of HIV, work-related disability) and allow differential treatment</p> <p>Enforcement of laws and regulations</p> <p>In-camera proceedings for HIV/AIDS</p> <p>Option to fast-track cases for persons living with HIV/AIDS – so they can see the end of the case during their lifetimes and there’s no impunity for discrimination</p> <p>Sensitive judges, judicial staff and police on HIV/AIDS and physical/mental impairment</p> <p>Stronger penalties for discriminatory practices</p> <p>Promote role of media in a) Protecting victims and b) revealing discriminatory practices</p> <p>Support NGOs in bringing high-profile cases</p> <p>Legal information and legal aid efforts specifically targeted to these groups</p> <p>Training medical staff on legal aspects of HIV/AIDS and discrimination (medical ethics)</p> <p>Prison reform for adequate treatment, equal rights and prevention of spread of HIV/AIDS</p>	<p>Existing judicial perception and practices on HIV/AIDS and disability</p> <p>Existing medical perception (codes of conduct, charters)</p> <p>Collect projects where HIV/AIDS and disability component is included</p> <p>Comparative studies of legal frameworks incorporating HIV/AIDS and disability issues</p> <p>Compilation of ground-breaking jurisprudence (especially when the State was condemned, and jurisprudence resulting from public interest litigation)</p> <p>Comparative experiences on codes of conduct of judges, etc.</p> <p>Study on “sensitive” judicial procedures (eg. fast track, in-camera proceedings) and effective redress</p> <p>Initiatives taken on decriminalization of the victim</p> <p>Study on: double-jeopardy (HIV/AIDS and disability in the context of other disadvantaged groups (prostitutes, migrants) as compared to HIV/AIDS and disability in privileged groups</p> <p>Map NGO and government work in targeted legal aid/information</p> <p>Map networks of HIV/AIDS and disabled people groups to get to know what are their legal needs</p> <p>Explore role of quasi-judicial (ombudsman, human rights commissions) in dealing with cases – to avoid publicity of courts</p> <p>Innovative prison reforms</p> <p>Media practices</p>

* See Results of Empowerment Analysis, Annex 5 in Asia / Pacific Access to Justice Report