



**PACIFIC REGIONAL CONSULTATION FOR MEMBERS OF  
PARLIAMENT ON THE PACIFIC PLAN, HUMAN RIGHTS  
CONVENTIONS & STANDARDS & THEIR APPLICATION TO  
DOMESTIC LAW, POLICY & PRACTICE**

**29 October – 2 November, 2007**

**Copthorne Hotel, Auckland, New Zealand**

**REPORT BY RRRT**

**INTRODUCTION**

The Regional MPs Consultation on Human Rights and the Pacific Plan was the first of its kind, focusing on human rights regionally. The MPs consultation was organised by RRRT with financial support from AusAid, Pacific Islands Forum Secretariat and the Human Rights Unit of the Commonwealth Secretariat. NZAid is a core supporter of RRRT as well. This workshop was Pacific organised and Pacific resourced except for one resource person. There were six resource persons from RRRT, one from the UNDP Pacific Centre and one from the PIFS.

A highlight of the consultation was the staging of a “Mini Parliament” on the final day in which all MPs had to apply their human rights (HR) knowledge to a given law, practice or policy, taken from a Pacific Island country (PIC) but unbeknownst to them, to assess it for human rights compliancy. This took the form of a staged parliamentary debate with the asking of parliamentary questions, discussing a proposed law or amendment to a law, raising a question on a restriction to a right, raising the issue of the ratification of a human rights treaty, discriminatory practices, affirmative action and other aspects of human rights. The involvement of MPs in the Mini Parliament is discussed towards the end of this report in more detail.

This Regional Consultation for Members of Parliament on Human Rights and the Pacific Plan is intended to be an annual consultation for Members of Parliament on human rights organised by RRRT. A total of twenty-five Members of Parliament (twenty-two males and three females) from the Cook Islands, Federated States of Micronesia, Kiribati, Nauru, Niue, Papua New Guinea, Samoa, Solomon Islands, Tuvalu and Vanuatu attended. The Tongan MPs who were scheduled to come were unable to attend as, on the day of their departure, a number of them were apparently arrested and charged for the allegedly criminal “democracy activities” which had led to the riots of November 2006. This information need to be confirmed.

**BACKGROUND**

Currently there is very little knowledge about the Pacific Plan and what it means to Pacific Islanders. MPs are a critical group as legislators. The promotion, protection, and realisation of human rights is also intrinsically connected to the achievement of all Strategic Objectives in the Pacific Plan, but in particular to those of reduced poverty (4), improved health (6), improved education and training (7), improved gender equality (8), recognised and protected cultural values, identities and traditional knowledge (11), improved transparency, accountability, equity and efficiency in the management and use of resources (12), improved political and social conditions for stability and safety (13); and increased national ownership and commitment to regional approaches, plans, policies and programmes (14). All but one (14) of these strategic objectives are directly connected to provisions contained in the seven core human rights conventions. The conventions moreover have the advantage of imposing a legal and moral obligation for compliance and provide a further opportunity for the success of the Plan at national levels.

Members of Parliament and Legislative Assemblies represent a significant and powerful group potentially opposing ratification of human rights treaties referred to in Strategic Objective 12.5. They are also the least-targeted group by human rights organisations for training because of the difficulty in getting them to attend such training due to their commitments. There are also very few entry points for such training for most capacity building organisations wishing to work with MPs in this contentious area. Currently, Pacific Island MPs have very little knowledge of the Pacific Plan or human rights standards, whether nationally, regionally or internationally.

## **DAY 1**

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### **Opening**

**The Honourable Margaret Wilson**

**Speaker of the NZ House of Representatives**

The Honourable Margaret Wilson encouraged Pacific Island Parliamentarians to uphold human rights, the rule of law and the institutions of democracy in her opening of the consultation. She said human rights must be supported on a daily basis, not just written into the law and that it was possible to find ways through the difficult issues of culture, human rights and gender equality. The Speaker noted that while many, if not all, Pacific Island countries had included certain human rights in their national constitutions, few had signed up to international treaties on human rights. Nonetheless, she said she was encouraged that a number of Pacific Island courts had already begun to take ratification, or the signing up to international conventions, seriously. She said some Pacific Island countries may have hesitated in doing so because they knew it could not be taken lightly, but involved a number of practical commitments with resource implications.

NOTE: All the MPs attended the opening despite the 8.00am start because the Speaker had to catch a plane for Wellington. A number of MPs said that it was a real honour for them that the Speaker had done the opening despite having to rush away and fly off to Wellington to attend a lunch for the President of Ireland.

### **Introductions**

The participants and resource people/facilitators introduced themselves.

### **Understanding human rights in our PIC Constitutions**

**Imrana Jalal & Ratu Joni Madraiwiwi**

**RRRT**

This first session focused on the rights in their own PIC Constitutions. It provided an overview on the Bill of Rights as the heart of the Constitution and that which defined us as a democracy. There was an animated discussion about the democracy triangle and the concept of an evolving democracy. Also discussed were the special rules of interpretation for rights in the BOR and their special limitations. Unfortunately due to time constraints, we did not have time to discuss limitations of rights fully which we hoped to cover later. [Limitations on rights was done as part of the final session on Day 4. This session outlined how all rights, with the exception for a very few like the right to life and torture, were limited. Limitations on rights had to be subjected to the overall test, namely that they had to be reasonable and justifiable in a free and democratic society. There were discussions about the standards and tests that MPs had to ask themselves when restricting rights in legislation – these were presented as 5 tests which MPs could apply to all restrictions on rights to assess whether they met the appropriate standards. If the tests were applied and the restrictions met the standards in the tests then the MPs could legitimately restrict rights in legislation before them in Parliament].

The group work which followed was the Tracing Your Rights Exercise which attempted to familiarise participant MPs with what rights from UDHR, ICCPR and ICESCR were present and absent from their BOR. The MPs said this was a very valuable exercise as most had never looked at their own BOR before. Dame Kidu from PNG said it was a surprise to her for example that the affirmative action provisions would be able to assist her in her quest for increasing the number of women in Parliament. A number of them said that they wished they had done this before, because they might have approached their parliamentary questions and debate with more “ammunition”.

In the discussion following the presentation on what were human rights and the international treaties which recognized them, participants were asked to compare their respective Bill of Rights provisions in their own constitutions. Many found it a very useful exercise. Most MPs have never used their own BORs. Most Pacific Island states have incorporated the rights contained in the ICCPR. However, only Fiji and the Solomon Islands draft constitutions have provisions relating to economic, social and cultural rights reflected in ICESCR. There was a concern expressed about the resource considerations flowing from ratification of it. The ‘progressive realisation’ of these rights meant a gradual approach to implementation. States were expected to implement these commitments over a period of time. Some comment was made about the suitability of these rights given they were largely incorporated in constitutions drafted by our former colonial masters. The point was made that these rights were universal in nature but regard had to be made to context. There was recognition that Pacific Island societies had notions of fairness but this had to be scrutinised carefully, because often culture and customs were exploited to reinforce the status quo. The rights conferred in the constitutions of Pacific Island states were reflective of being part of a global community and the inherent nature of human rights. The entrenchment of the Bill of Rights in the constitutions of Pacific Island states was to ensure their adequate protection.

During discussions, the MPs from three countries pointed out that their Constitutions were not imposed from the outside as many would believe, and that their citizens were fully involved in the Constitutions making process eg Samoa and Kiribati.

## **Roles & responsibilities of MPs in human rights**

**Charmaine Rodrigeus**

**UNDP-PC**

**Overview: Opportunities for Legislators to Promote and Protect Human Rights**

CR discussed various options for Pacific legislators to use their powers and position to promote and protect human rights. Legislators had opportunities to engage with human rights issues when discharging their functions in (i) law-making; (ii) oversight; and (iii) representation. Specifically,

- Engaging in the ratification process for treaties/declarations (and other international agreements). Prior to signature of a treaty, consideration could be given to referring the draft document to a parliamentary committee for review, public discussion and comment. The Treaties Committee in the Australian Federal Parliament performs this function. Following signature of a treaty, the treaty should also be tabled in the legislature and presented to legislators by the Executive. This would provide an important opportunity to explain the treaty to the public as well. Once a treaty was ratified, consideration needed to be given to enacting or amending domestic laws, to ensure they were in accordance with the treaty rights.
- Asking questions in parliament: Legislators could use their powers to ask questions and make speeches to promote human rights. For example, legislators could ask questions about ratification, follow up whether treaty reports had been submitted on time, and inquire about whether recommendations of UN Human Rights Committees have been implemented. Legislators could also make specific inquiries about whether proposed Bills or regulations were human rights-compliant. Legislators could also call on government to make sure that national human rights reports were tabled. During the adjournment debate, legislators could use their allocated time to speak on human rights issues.
- Using committee oversight powers: Committees provided a major opportunity for legislators to delve into human rights in detail as well as allowing the public an opportunity to engage and comment. In some countries, specific human rights committees have been established, but in the Pacific it may be more cost-effective to empower an existing committee to deal with treaties and/or human rights implementation. Specifically, committees could consider reports a Government was intending to submit to UN treaty bodies, calling on the public and NGOs for comment and considering “shadow reports”. Standing orders could be amended to require committees to consider human rights in their work.
- Budgeting for human rights: The budget process provided an opportunity to demonstrate a serious commitment to human rights. During the annual budget process and debate, consideration could be given to whether sectoral budgets promote the realisation of rights (eg. right to health, right to education). Money could also be allocated to specific human rights bodies and/or for human rights activities (eg. training of police). The recommendations from UN treaty bodies could also be used as a basis for prioritising budget allocations.
- Taking action outside of the legislature: Legislators could also set up human rights groups within their political parties or as a cross-party group within the legislature. They could also meet with constituents and NGOs and use the media to promote human rights issues and debates. NGOs and experts could be invited to brief legislators and committees.
- Working with local experts and NGOs: It was suggested that legislators could more proactively engage with NGOs and experts in respect of human rights issues. Notably, these groups provide an inexpensive resource which could be called on to assist with briefings, legislative review as well as drafting and research.

A number of legislators commented that while they would be keen to attempt some of the approaches suggested, they had very limited resources to draw on. In particular,

parliamentary secretariats were often understaffed and/or under-resourced. This particularly affected the ability of parliamentary committees to properly discharge their oversight functions. They called on the international community to provide support in this area. CR suggested that regional parliamentary service provision (eg. regional library/information/research services) could be a means for sustainability supporting smaller parliaments to develop better secretariat services. This was strongly endorsed by many legislators. Legislators also noted that they would benefit from having access to legal advice on human rights issues, for example, via some sort of regional pro bono legal service. Even if lawyers could not undertake cases in-country, the ability to access advice off-island would be useful.

### **Introduction to human rights in the Pacific Plan**

**Apolosi Bose & Angela Thomas**

**RRRT & PIFS**

AB gave an overview of the Pacific Plan and the respective decisions of Forum Island Leaders in 2004 to have a Pacific Plan and the eventual adoption of the Plan in 2005. The discussion also looked at the four pillars of the plan, the fifteen Strategic Objectives and the respective Initiatives that have been agreed to as part of the Plan.

The discussion then moved to Initiative 12.5 on which the consultation concentrated. There was a brief introduction to human rights and how it was applicable to the Pacific Islands. The ratification of treaties was considered together with the obligations of state parties when they ratified or acceded to international human rights conventions. AB related his common experience in the Pacific Is, where those who tended to appreciate human rights were those who had experienced human rights violations.

The ratification of treaties was the start of a dynamic process which created the obligations of governments to provide for the rights contained in the Conventions. The initiative was a good one and parliamentarians played an important role in calling for ratification or ensuring that they were involved in the implementation and reporting process. Ratification could also attract international assistance from governments and development partners to ensure the proper enjoyment of the relevant rights by the citizens of Pacific Is countries.

## **DAY 2**

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### **Introduction to international human rights law and the international human rights system**

**Apolosi Bose**

**RRRT**

AB provided a brief introduction on the international human rights system, describing the International Bill of Rights and its importance in international human rights law. The participants then watched the OHCHR DVD after a short introduction and description of the International Human Rights Reporting System.

After the video, the participants had a discussion on the reporting aspects of the Treaty System. There was a general feeling amongst the participants that they needed to learn more about the reporting system. Further there was a need to build the capacity of senior

civil servants because they did the bulk of the reporting work. Dame Carol Kidu also spoke about her experiences in reporting on the CRC to the Committee in Geneva.

There was a suggestion that the UN or a Development Partner have an officer stationed in each Pacific Is country to assist help specifically with reporting.

## **ICCPR & ICESCR**

**Ratu Joni Madraiwiwi & Imrana Jalal**

### **RRRT**

Imrana and Ratu Joni did a joint presentation on ICCPR and ICESCR and the value of these Conventions to PICs, They covered the key provisions, which of these were in PIC Constitutions (most CP rights and rarely ESC rights), which were not and the reasons for their presence or absence. There were animated discussions about the viability of incorporating ESC rights into law and the capacity of PIC Governments to secure rights which were dependent on resources. Virtually none of the MPs knew about the progressive realisation of ESC rights and many expressed their surprise and said that they might have had different views if they had known that. There was animated discussion on the links between development and ESC rights. The MPs were divided on whether or not they wished to ratify ICESCR, but many expressed the view that they could now see how important it was to the development needs of PICs. Also noted were the links between ICESCR and the specific development goals of most PIC strategic and development plans as well as the Pacific Plan egs health, water and shelter were not just development needs but were also rights to be asserted. In this light, MPs agreed that the notion of accountability then became an issue. There was a general consensus that the Reporting process of Conventions had an inherent value because it created accountability and the need to show periodic progress before a group of experts. This element of accountability before a group of global experts in a Constructive Dialogue process was lacking in the Pacific Plan. Human rights conventions brought this much needed legal regime and accountability to the Pacific Plan.

RJ shared the types of ESC rights that had gone before the Human Rights Committee because the ICESCR Convention did not have an Optional Protocol individual complaint process. The case studies were a good way of demonstrating the practical applications of ESC rights. IJ led a discussion on the interrelatedness of ESC rights and the debates around privileging ESC rights over CP rights in Fiji and the problems with separating them. While difficult to gauge , there was nevertheless a perceptible shift in opinion in terms of how the MPs viewed ESC rights. ICCPR rights were already broadly accepted by all MPs and the only discussions about those rights had centred around the extent of limitations to free speech about which many MPs were sensitive.

## **CEDAW & Gender**

**Filipo Masaurua**

### **RRRT**

The session on CEDAW and Gender was facilitated to provide basic information on issues relating to the advancement of women under the International Bill of Rights and CEDAW.

Questions from MP participants centred around granting women seats under a quota system. Some MPS felt women should not be given favourable treatment in relation to elections and standing for elections. One MP from Samoa felt that it would be unfair for women to be given seats in parliament to fill necessary quotas - it would be unproductive

if women were given special privileges just because they were women. However, another participant remarked that such perspectives assumed a level playing field.

Furthermore questions raised in relation to legislative reform and the consideration of CEDAW included:

- How was gender neutral legislation drafted? Were there special and specific criteria for gender neutral legislation?
- How was CEDAW to be incorporated in national legislation, policies and regulations? Did specific legislation need to be passed? (e. g. Domestic violence, marital rape, family protection)
- How could Parliament effectively budget for human rights – especially women’s rights and issues? E. g. Maternal/child health, maternity leave, girls education
- How were parliamentary questions to be posed that were considerate of gender and human rights issues?

### **DAY 3**

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#### **The added value of ratifying human rights treaties for PICs**

**Imrana Jalal**

##### **RRRT**

This session was based on Imrana’s policy paper written for OHCHR. She took the MPs through the paper and pointed out that it could be used as a resource for them when they were debating ratification and implementation or asking Parliamentary questions or preparing Cabinet papers. Imrana presented on the value added for PIC governments to ratify the seven core HRCs, the constraints to ratification and the benefits of ratification. The links between the HRCs, the Pacific Plan, the MDGs etc were also discussed. Constraints to ratification in the following discussion focused around cultural, resource and financial constraints. Some MPs perceived that HR was not a priority because governments were focusing on economic development. There was lively discussion on how MPs saw economic development as disconnected from human rights but that in fact eg ICESR was intimately connected to economic development. In fact it was apparent that economic development without HR would mean that ED would not benefit all fairly. Imrana also focused attention on how MPs themselves could make use of the HR framework to help them decide the needs of their own constituents and to help determine development priorities within political parties and governments. In the general discussions, the reasons how ratification would ensure access to aid and technical assistance for implementation were canvassed.

#### **CRC, CERD, CAT, CMW**

##### **Human rights conventions: roles and responsibilities of MPs**

**Filipo Masaurua & Teaiaki Koa**

##### **RRRT**

##### **Convention on the Rights of the Child (CRC)**

The session on the CRC was basic with a brief introduction given to the participants. Delegates also discussed issues surrounding:

- Discipline of children – the use of the CRC to show judicial disapproval of actions which amounted to abuse under the guise of discipline.
- Corporal punishment
- Applicability of the CRC in PIC

A delegate from Kiribati asked if the CRC could be used to limit the number of children per family as it was difficult to support and provide for the children – economically. The right to found and start a family granted by the UDHR did not in anyway limit the right of people wishing to start a family or limit the number of children they should have.

### **Convention on the Elimination of all forms of Racial Discrimination**

Discussions focused on the definition of the following terms and concepts:

- What was the legal definition of race?
- What was the legal definition of ethnicity?
- Did the CERD apply to homogenous countries and communities or only to countries which have different racial and ethnic populations.

### **Convention Against Torture**

The session introduced the various provisions of CAT, in particular the definition of torture and the provision against cruel, inhuman and degrading treatment. Examples of practices that have been held by the International HR Commission, European HR Commission and Pacific courts to be ‘torture’ or cruel, inhuman or degrading treatment were also cited. In the ensuing discussions, many MPs felt that some forms of torture which have been held to be against the Convention should be allowed in the region as a punishment (eg caning) for heinous crimes such as incest.

### **Convention on the Rights of Migrant Workers and their Families**

This session introduced the CMW and the benefits to migrant workers from the Pacific Islands who were working abroad. There was an enthusiastic discussion because most PIC leaders saw this Convention as being beneficial mostly to migrant workers working in the Pacific and not the other way around. There was further discussion on responsibilities and rights that emanate from human rights Conventions.

The main issues discussed were:

- Were [Pacific Is] citizens working in other countries [including other PICs] receiving equal treatment as nationals of those countries?
- Were migrant workers in MP's countries receiving the same treatment as their nationals in terms of pay, access to health, education? If not, why so?

Unfortunately, there was insufficient time to discuss the new Convention on the Rights of Persons with Disabilities.

### **The application of international conventions in domestic law**

#### **Ratu Joni Madraiwiwi**

#### **RRRT**

The orthodox view of international law was that it is a separate branch or body of law. The more recent approach is to regard both as part of a single entity. The traditional perspective required the process of ratification and enactment of legislation to give effect to those international agreements. The courts in Kiribati, the Solomons and Tonga have largely followed that line. Vanuatu has veered between strict ratification and legislative enactment, and a more flexible approach in relying on conventions for guidance. Tuvalu has done the same. The Samoan courts have applied at least one convention (the Hague Convention on the International Aspects of Child Abduction) reflected international customary law and universally accepted norms. The courts in Fiji have used a provision in the constitution to incorporate conventions by reference where relevant. Tuvalu and Papua New Guinea have similar provisions. The slightly different emphasis by Pacific Island courts does not disguise the trend towards greater reliance on conventions to reinforce and enhance the rights asserted. However these rights must be granted in the

local Constitution or other local legislation before the Conventions can be cited or relied on. It was important to remember that context is critical and Courts are well aware of the need to harmonise and balance rights and other factors. There are often tensions in this process but the challenge was to find creative ways to harmonise the contradictions.

### **Framing parliamentary questions: using the language of human rights and human rights accountability during debates (group work)**

**Charmaine Rodrigeus**

**UNDP PC**

CR facilitated a group work session designed to encourage legislators to consider at a practical level how they could raise and action human rights issues in the legislature. Participants were given copies of news stories taken from Pacific News updates over the last 2 months and requested to work in small groups to identify:

- The range of human rights issues raised by the articles;
- What additional information they would need and sources of that information to enable them to take action;
- What different types of action they could take as an MP (considering the range of options discussed during this workshop);
- If any of the options required asking questions in the Chamber and/or a parliamentary committee, formulation of the relevant question/s.

The feedback from MPs in plenary was very insightful. Case studies raised rights issues on a range of topics, including the right to health, the right to life, freedom of expression, the right to privacy and the right to be free from torture. Members identified possible parliamentary strategies, and were very clear on the need to liaise with a range of stakeholders to verify information and clarify options before taking any action.

## **DAY 4**

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### **National Human Rights Institutions**

**Joy Liddicoat, NZHRC**

Ms Liddicoat, one of five human rights commissioners, has been with the New Zealand Human Rights Commission since 2002. She addressed the MPs on the following:

- The relationship between human rights and parliament - parliament itself is a fundamental HR institution – a democratic institution
- Why a HR commission was needed
- How a HR commission was set up
- How did one respond to Human rights abuses in one's constituency when the justice system did not work?
- Awareness on human rights
- Lawyers and human rights – a lack of lawyers to defend human rights violations
- Human rights, tradition and custom
- A Mobile human rights commission

The state has an obligation to respect, protect, promote and fulfill the human rights of the people. International standards for HR institutions are in the The Paris Principles

which are an agreed minimum standard. There was no single model of a HR institution – no set template. This gave “freedom, flexibility and autonomy” in devising a model that best suited Pacific pathways- Pacific states were free to give their own unique expression to the Paris principles- an agreed minimum standard. NHRIs should be nurtured in small, sustainable steps with resources and capacity consonant with their development. A legal base was desirable with broad public support. - Parliamentary support was essential. The whole pace of globalization and movement into the region of countries with huge resources had begun changing the dynamic. The challenge =was how to navigate the resulting information overload in a principled way so one may act ‘with integrity’. There were different options depending on the specific needs of each country. It was for each country to find its way forward

The driving force behind setting up Human Rights Commissions should be driven by Islanders, not outsiders.

Discussions centred around rights at the community level. In Melanesia, the government was against the idea of human rights as they saw it promoting individual rights as opposed to communal rights. A challenge for MPs was - how to respond to abuses in their constituency when one knew the justice system was not working well and there was no HR commission in place?

### **Budgeting for Human Rights** **Joy Liddicoat, NZHRC**

Group Work was done by MPs about how they might ask appropriate questions about budgets to ensure HR compliance; but also to ensure that national budgets allowed for HR in normal legislation but also for the establishment and funding of NHRIs. The group work led to discussion about how to provide for a HR compliant budget.

### **A Regional Human Rights Commission – possibilities and opportunities; benefits and constraints?** **Imrana Jalal, RRRT**

Imrana presented regional human rights system models from other regions of the globe. There were four regional HRCs: in the Americas, Europe, Africa and the Arab States. Last month the ASEAN states finally agreed to set up a regional HRC. That would leave the Pacific as the only region without a regional human rights body of some sort. The various regional human rights systems differ in their functions- some are promotional only eg Arab RHRC and some are protective and promotional either adjudicating rights as well as defending them and instituting court proceedings. There were discussions mainly centred around the African Charter of human rights and the viability of such a model for the Pacific. There was clearly broad support for setting up a regional body especially from the smaller countries in the region that felt it would be impossible for them to set up such a commission given the small size of their countries and their limited resources. After these discussions the MPs resolved to begin the debate in their own countries about the setting up of a regional system and to ask RRRT to lead the process in partnership with SPC and PIFS.

## **DAY 5**

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**John Tuhaika, Solomon Islands Government (heading the Constitutional Reform process)**

**Expanded Human Rights in the Draft Solomon Island Constitution Bill of Rights**

JT spoke about the crisis that led Solomon Islanders to agree to a new power sharing arrangement around Federalism. Chapter Four of the Draft Federal Constitution contained the conventional Fundamental Rights and Freedoms Charter. Apart from the traditional recognition given to civil and political rights, the Draft Federal Constitution has been expanded to include the rights of indigenous people in as far as their rights to their resources are concerned. This meant that the economic and cultural rights of Solomon Islanders will be given strong recognition and affirmation.

The Solomon Islands has, in the recent past, ratified the Convention on the Elimination of all forms of Discrimination against Women (CEDAW) and the Convention on the Rights of the Child (CRC). As such, both Conventions have also been included in Chapter Four of the Draft Federal Constitution. Interestingly, this essentially means that most, if not all, of the international conventions and covenants on 'rights' would be recognised.

The concept of Rights were less understood where they relate to individual protections. There was still a wide spread belief that Human Rights constituted a threat to the traditional values system simply because it gave equal recognition to all. CEDAW and CRC have often been highlighted as examples. Despite those uncertainties, women have now begun to assert their position within Solomon Islands society and institutions through the rights agenda of equality.

The inclusion of the Indigenous Rights in the Draft Federal Constitution of Solomon Islands was a major step forward. Indigenous rights did not always run parallel with the Western concept of Human Rights which were readily accepted by former colonies of the Western Powers without question. The modern Solomon Islands have come to realise that their indigenous rights have to be recognised so as to coexist with Western ideals to benefit Solomon Islanders. The challenge therefore is how these conflicting ideals can coexist. Whatever the case may be, people were adamant that the recognition of indigenous rights could no longer be disregarded.

The expanded human rights presented in Chapter Four of the Draft Federal Constitution came about because of sentiments raised during national consultations. Strong advocacy work has also pushed the government to ratify certain conventions which has been included in the Draft. The fact that these conventions were ratified by government has obligated itself to legislate for it. While many countries have tread carefully with regard to economic, cultural and indigenous rights, the Solomon Islands have taken on board all these rights in the Draft Federal Constitution. The expanded rights will pose huge challenges for the Solomon Islands. Whilst the promotion of Human Rights is fundamental, indigenous rights would also have its place in the Federal Constitution. This is a contentious point that has to be considered very seriously and carefully.

Human Rights and Implementation Institutions : The Draft Federal Constitution has also accommodated a Human Rights Commission; an Institution that has not existed previously in Solomon Islands. Although Human Rights were entrenched in the current Constitution, Solomon Islands despite thirty years of constitutional Government lacked a Rights consciousness. This was particularly evident following the tensions and within the early months of RAMSI intervention, when numerous Rights violations were raised, not a single case was brought before the courts alleging a breach of Rights. Every case was brought under the penal code. Owing to deep distrust of the Police at that time, some

leaders of villages who suffered the worst atrocities sought assistance from the Human Rights Office situated in Honiara at that time. The Office did not have the capacity to follow up the violations and to this date remain they remain unattended. This has created a loss of confidence that Rights despite their constitutional recognition were incapable of protection. The establishment of a Human Rights Commission (HRC) when the Federal Constitution comes into force was therefore justified. The HRC would ensure that the Human Rights provision of the Federal Constitution is adhered to. Establishment of HRC offices in the provinces were a necessity to ensure compliance as far down as possible, as well as ensuring that the people are well informed. Incidentally, it was envisaged that another body to be called Constitutional Implementation Commission (CIC) would be established to police and implement the requirements of the Constitution. These bodies would have the power to prosecute if non-compliance with the Constitution occurred.

This would meet one of the main issues that the Constitutional Reform would address- the future administration of Rights and enforcement. That meant a decentralized administration would be considered to ensure that the Rights were accessible to the local population in a manner in which they are informed of their purpose.

Conclusion : The political and historical past of Solomon Islands has led to new and enlightened thoughts that drive the desire for constitutional change in the country. The challenge to all Solomon Islanders and Government is finding the right balance. The question that should be asked is whether or not the introduction of Indigenous Rights in the Draft Federal Constitution was the right step to take? One could say that many things are desirable, but only a few are feasible or workable. Wisdom should help distinguish the difference.

### **MINI PARLIAMENT - FINAL SESSION – ASSESSMENT DEBATING LAW IN THE MINI PARLIAMENT OF TIPOTA DRAFT LAW OR EXISTING LAW - THE COUNTRY OF TIPOTA**

#### **TASK GIVEN:**

“Each MP is to take a provision/case study– see attached. More than one MP can choose the same case study/provision and some may decide to work together on one law/case study taking opposing positions and debating the draft provision or proposed amendment to an existing law. The submission should be made to the Hon Speaker of the House of Parliament of Tipota and should NOT last more than 5 minutes (during the actual Mini Parliament this was changed to 10 minutes). The “submission” by each MP may take the form of debating part of a Bill, or asking a Parliamentary question or raising the issue in Sector Committees or whichever form is appropriate given the rules applying to your Parliament and its various sub-bodies.”

The issues for the Mini Parliament to debate included but were not restricted to:

Free speech; religion and association

Gender Discrimination and equal rights in citizenship, land rights and status

Various other grounds of discrimination including HIV and disability

Family Law

The setting up of a national human rights institution and Budgeting for Human Rights

Limitations on human rights and what were appropriate restrictions and what were not

The added value of ratifying various treaties

Whether human rights should only apply to the State as the main duty bearer or to the private sector as well

Which rights should be protected and Affirmative Action

Pacific Culture and Human rights

Some MPs chose pressing issues from their own countries to debate.

“Each MP may like to address the following in the submission/question on the law, policy or practice:

- Is it consistent with the Bill of Rights in your Constitution or other laws?
- How do the human rights treaties apply to your situation?
- You can assume ratification of whichever of the human rights treaties as you like
- Is it consistent with human rights treaties either ratified (which you are obliged to apply) or even unratified treaties which may be of guidance?
- What social or economic issues impact on your submission/comments?
- Whether you wish to amend a provision or proposed provision.”

The country of “Tipota” was a mythical country to allow the MPs to frankly debate these issues without feeling that they were commenting on their own countries at a regional meeting. Many case studies/laws etc were all actual laws/policies/issues from from PICs.

Sir Peter Kenilorea (Speaker, SI Parliament) was the Hon Speaker of the House. The first two MPs set the tone of the Parliamentary session. The debates of each and every MP covered the critical points from the workshop, namely that each was grounded in their own Bill of Rights and applied the Conventions appropriately. From a technical point of view without exception all MPs applied the assessment criteria properly. It was clear that all MPs understood the application of human rights principles. Some went further and applied the five step by step standard test for assessing the legality of a restriction to a human right. The “speeches” were also very humorous at the same time. There were a lot of “interjections” and objections which Sir Peter ruled on appropriately. A summary of each “speech” has been separately recorded but would not be forwarded [Chatham House rules apply) unless an MP requested it The parliamentary debates continued until 2.30pm. Each MP spoke an average of 10 minutes.

Summary of the Mini Parliament:

A Samoan MP (former Speaker) said that this workshop was very special for them because unlike other training this was run and facilitated “By the sons and daughters of the Pacific.” He made this comment before his debate on freedom of religion.

A Solomons MP said that for him it was one of the most useful training workshops he had ever attended, and that he got to know his own constitution for the first time and that human rights training should be mandatory for all MPs. He also said that because of their own situation in Solomon Islands, it was very timely to attend. Many other MPs expressed similar sentiments and many discovered new provisions in their Bill of Rights which supported their various concerns but also provided guidance on how rights should be limited.

A PNG MP speaking on Affirmative Action for women using PNG Constitution and international law said that it should be compulsory for all MPs to do training about their own country constitutions, their own Bill of Rights and human rights training in general. She said also that as a result of this training she had discovered provisions in the PNG

constitution to promote the human rights in which she was particularly interested eg there is an affirmative action provision in the PNG constitution which justifies quotas for women in Parliament, a cause which she strongly supported and advocated for.

Other issues discussed were the right to religious freedom; the advantages of ratifying CAT – “The lack of ratification of CAT is an announcement to the world that we do not care and this is a failure on the part of the State. We must show the world that we care about the prohibition of torture. The Pacific Plan requires us to do this. Ratification will be in line with PP. Advantages of ratification signifies our confidence in our democracy. We have a habit of leaving things “for tomorrow” but we should not do that, we should act now.”; restricting free speech and limiting it and what the permissible restrictions. “Why on earth to take away this freedom now which we have been used to. There is no national disaster which deserves this. It is an integral part of the President’s job description to accept criticism. A leader must be willing to accept criticism to sustain our democracy.” ; on Gender Discrimination section 10 Lands Act, Tipota – “It is a travesty and great injustice that we have such a law in existence in 2007 in Tipota. Lands Act discriminates against women even though our constitution does not allow this. We need to amend to bring this Neanderthal law into line with our Constitution and with our international obligations. Relevancy is a critical issue. There is clear discrimination on the grounds of gender according to our constitutions but also CEDAW, and other core conventions which Tipota has ratified.”; some spoke on freedom of religion and how in small countries many human rights conflict and culture clashes could be solved by dialogue and discussion but that in the end rights ought to prevail; a female MP spoke on the Rights of People Living with HIV – provision of privacy and confidentiality for PLWHIV – “This is critical to contain the disease. Confidentiality is necessary so they can live a life without discrimination. They have a right to live like anyone else even to have children. If individuals are scared and hide away then spread cannot be contained. Countries that stress confidentiality are those countries have contained the disease.”; several MPs debated the issues of discrimination some suggesting for example extending the grounds; another Samoan MP spoke on a law that prohibits women from getting maintenance if after separation and getting a maintenance order they commit adultery - “I see no reason to amend this law. I oppose any amendment. - I speak about social issues this will not only affect the children but the community in general. Who is going to throw the first stone? If a marriage has broken down then the husband should be made to pay maintenance. “; an i-Kiribati female MP spoke in favour of setting up a national human rights institution- it will provide for a formal channel of dealing with human rights abuses and education. The HRC will also enable us to cope with the requirements for ratifying conventions and implementation.”; another MP spoke on proposed amendments to the grounds of discrimination. “ Custom and culture are very important but Art 15 should be expanded to protect against all forms of discrimination. Both ICCPR and ICESCR protect our culture and rights. We need to express these rights to include disability rights; to include non-discrimination on the grounds of economic discrimination; ICESCR rights are critical. Gender/sex discrimination – reflected in CEDAW- as Parliamentarians we should champion these rights. I formally move that Art 15 be amended to include the following groups...”race, ethnic origin, sex or gender, place of origin, age, language, political opinion, economic status or disability”...

An MP also spoke on gender and land rights - Tipotan Constitution secured rights of indigenous custom owners and that it was on the basis of custom law. Even if an amendment was passed giving women equal rights to land it would create problems because land was passed from father to eldest son so that was how land is passed. Everyone had a right to use land but not to own it. “We need to pass this amendment because if women inherit the land and then marry foreigners they would get the land.

This legislation should support ICESCR – Art 1 protects land and resources and if we follow this trend we could lose our land.” In comparison another spoke on an amendment to Constitution to include sex/gender because it was not yet a prohibited ground. As a result of this discrimination against women in the Land Act the custody of a child was given to the father automatically. He said the law was discriminatory against women and should be amended.

The Mini Parliament was an outstanding success from RRRT’s perspective. It was an opportunity to frankly and candidly assess whether the new-found knowledge had been internalised and applied appropriately. It was clear that all MPs had to varying degrees applied the knowledge properly. All were able to apply human rights standards from their own Bills of Rights as well as international Conventions to the given fact situations. They quoted the correct sections from the BORs and the appropriate articles from the HRCs and analysed the case studies given them on Day One to make their submissions on the proposed legislation or amendments or questions. They all worked hard on their Presentations and many did not go anywhere on Thursday evening but stayed in their rooms and worked on the parliamentary submissions.

Sir Peter Kenilorea’s exemplary leadership as Hon Speaker of the House set the tone of the Mini Parliament. It was clear that all the MPs took the Mini Parliament exercise seriously. In fact many tried to speak well beyond their allocated 10 minutes but were stopped by the Hon Speaker of the House.

## **CONCLUSION**

**As part of the final comments the MPs were asked to let RRRT know whenever they use the language of human rights in Parliament whether during debates about legislation or the budget; during sector Committee meetings; during Parliamentary Question time so that RRRT could keep track of whether human rights were being debated if at all.**

**In a private session with Angela Thomas from the PIFS the MPs debated the issue of a regional human rights body and then made a written request to RRRT that it explore the possibility of setting up a regional human rights body with SPC and PIFS. They discussed an informal resolution and signed it. They stated that the initiative had to be driven by Pacific Islanders. The informal resolution appears below:**

### **“ A PACIFIC ISLAND REGIONAL HUMAN RIGHTS COMMISSION**

We, the twenty five Members of Parliament, in our individual capacities, from eleven Pacific Island Countries (PICs) meeting in Auckland to discuss the Pacific Plan and Human Rights Conventions & Standards and their application to domestic law, policy and practice:

Conscious of the urgency for action to implement the Pacific Plan, in particular Initiative 12.5 which calls on PICs to ratify and implement international human rights conventions,

Therefore agree:

1. To ask RRRT to take a lead role in *setting up* OR *exploring the possibility of setting up* a Pacific Island Regional Human Right Commission to serve the needs of Pacific

Island governments and its peoples. This initiative should be driven by an indigenous regional human rights organisation of Pacific Islanders. This is critical for ownership by PIC governments and peoples because of the perception that human rights are alien to Pacific societies.

2. To ask RRRT with SPC and PIFS to lead this process. It is recognized that this is a long term process but discussions should begin now with Pacific Island governments and Pacific peoples.
3. That RRRT should if possible do this with technical and financial support from outside agencies such as NZAID, AUSAID, other donors, development agencies, UN OHCHR, NZHRC etc.

Dated this second day of November 2007, Auckland, New Zealand.”

## **FOLLOW UP**

1. There will be a two way relationship between RRRT and the MPs. RRRT has offered to provide human rights information and technical input for their parliamentary debates, committee sessions etc and also technical feedback on legislation to assess human rights compliance.
2. RRRT (Imrana, Filipino and Teaiaki) will contact the MPs every three months to obtain feedback on whether they used human rights analysis or information during Parliamentary debates, committee sessions or during budget sessions.
3. The LRTOs will be asked to follow up by perusing media publications in-country to assess whether Parliaments are using human rights language and analysis more.
4. An MP from SI has already asked Filipino to assist with his input into the budget debate looking at it from an ICESCR (economic rights) perspective. Filipino will follow that up immediately.

## **END OF REPORT**

**Combined Report by all Presenters**  
**Imrana Jalal, RRRT**  
**Ratu Joni Madraiwiwi, RRRT Consultant**  
**Charmaine Rodrigues, UNDP Pacific Centre**  
**Apolosi Bose, RRRT**  
**Filipo Masaurua, RRRT**  
**Teaiaki Koa, RRRT**  
**Angela Thomas, PIFS**  
**Talei Tuinamuana, RRRT**  
**Hannah Harborow, RRRT**