

STAND UP AND FIGHT

**Addressing Discrimination and
Inequality in Solomon Islands**

Equal Rights Trust in partnership with
The Secretariat of the Pacific Community – Solomon Islands Country Office and
The Secretariat of the Pacific Community – Regional Rights Resource Team



EQUAL RIGHTS TRUST
IN PARTNERSHIP WITH
THE SECRETARIAT OF THE PACIFIC COMMUNITY – SOLOMON ISLANDS COUNTRY OFFICE
AND
THE SECRETARIAT OF THE PACIFIC COMMUNITY – REGIONAL RIGHTS RESOURCE TEAM

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Addressing Discrimination and Inequality in Solomon Islands

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The Equal Rights Trust is an independent international organisation whose purpose is to combat discrimination and promote equality as a fundamental human right and a basic principle of social justice.

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We have many bad traditions in Solomon Islands, especially for women. I have four children and it has been very hard for me, but now that I have separated from their father, I am at last able to breathe more freely because he used to beat me on a regular basis. I have a case in the court against him. It is very difficult as he keeps harassing me despite a court order, but I will persist. We women are now organising, we have to stand up and fight for our rights.

R.R., a Solomon Islander interviewed by
the Equal Rights Trust, Honiara 2011

*Work, work, work
I am tired
Of marriage.
He bosses me:
Do this,
Do that,
He thinks I am
A machine,
There's always plenty to do.*

(...)

*But when in high spirits
He steps out and calls:
"Shut up!"
Please pass my love,
I am not what he thinks.*

Lemu Darcy

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Dimitrina Petrova, Executive Director of the Equal Rights Trust, oversaw the production of the report, assisted by Jim Fitzgerald. The first draft of the report was prepared by Jim Fitzgerald, Jade Glenister, Joanna Whiteman and Richard Wingfield on the basis of evidence gathered from field research coordinated by SPC-SI, a review of existing literature and review and analysis of laws and policies. Between May and October 2014, SPC and the Trust undertook a validation process, consulting with experts and stakeholders from civil society, academia and government in Solomon Islands on the first draft report. Following this exercise, Jim Fitzgerald and Joanna Whiteman revised the draft report, taking into account the feedback received. Savelina Roussinova edited substantially the final draft. The report was finalised and authorised for publication by Dimitrina Petrova.

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Finally, we wish to thank all persons who shared their stories with us. This report is dedicated to them and all other persons in Solomon Islands who have suffered – and those who continue to suffer – discrimination and exclusion.

ACRONYMS AND ABBREVIATIONS

AIDS	Acquired Immunodeficiency Syndrome
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CEDAW Committee	Committee on the Elimination of All Forms of Discrimination against Women
CESCR	Committee on Economic, Social and Cultural Rights
CRPD	Convention on the Rights of Persons with Disabilities
CRC	Convention on the Rights of the Child
CRC Committee	Committee on the Rights of the Child
CSOs	Civil Society Organisations
DHS	Demographic and Health Survey
FPA	Family Protection Act
GDP	Gross Domestic Product
HIV	Human Immunodeficiency Virus
HRC	Human Rights Committee
ICCPR	International Covenant on Civil and Political Rights
ICERD	International Convention on the Elimination of All forms of Racial Discrimination
ICESCR	International Covenant on Economic, Social and Cultural Rights
IFM	Isatabu Freedom Movement
ILO	International Labour Organization
INGOs	International Non-Governmental Organisations
LGBTI	Lesbian, Gay, Bisexual, Transgender and Intersex
MEF	Malaita Eagle Force
NGOs	Non-Governmental Organisations
RAMSI	Regional Assistance Mission to Solomon Islands
SINSO	Solomon Islands National Statistics Office
SPC-SI	Secretariat of the Pacific Community – Solomon Islands Country Office
SPC RRRT	Secretariat of the Pacific Community – Regional Rights Resource Team
STD	Sexually Transmitted Disease
STI	Sexually Transmitted Infection
TB	Tuberculosis
TRC	Truth and Reconciliation Commission

UN

UNAIDS

UNDP

UNESCO

UNHCR

UNICEF

UPR

WHO

United Nations

Joint United Nations Programme on HIV/AIDS

United Nations Development Programme

United Nations Educational, Scientific and Cultural
Organization

United Nations High Commissioner for Refugees

United Nations Children's Fund

Universal Periodic Review

World Health Organization

EXECUTIVE SUMMARY

It is thirteen years since Solomon Islands emerged from a five year long civil conflict which resulted in over 200 deaths, the displacement of more than 30,000 people, significant destruction of infrastructure, a total collapse of law and order and the breakdown of democratic government. Since 2003, Solomon Islands has been working towards achieving peace and reconciliation, including through faltering attempts at constitutional reform.

Yet as this report identifies, many of the underlying inequalities which precipitated the conflict remain. Moreover, it finds that these inequalities are rooted in traditions which emphasise and exacerbate difference.

Patriarchal attitudes and gender stereotypes are pervasive in Solomon Islands, typified by the “bigman” culture whereby communities look to a strong male figure to provide leadership. This and other inherently sexist notions create a society in which gender discriminatory laws and social norms go largely unchallenged. The result is that women are almost invisible in public life and are unable to participate on an equal basis with men in any area of life regulated by law.

The report also finds that the traditional wantok system of community kinship and organisation, while positive in some respects, emphasises difference and fosters division. In particular, the report highlights the concerns of Solomon Islanders that corruption and nepotism by those in positions of power can lead to discrimination on the basis of wantok. It also finds that, while there is no consistent pattern of disadvantage affecting particular islands, the country’s limited economic resources and the difficulties of providing and maintaining infrastructure across a large number of islands result in significant disparities in access to employment, education, health-care and basic services, which in turn can foster resentment.

In respect of other grounds of discrimination, this report again finds that traditional cultural attitudes are a key driver. Persons with disabilities are seen not as human beings of equal worth but at best as objects of charity and at worst as “cursed”. Homosexuality is stigmatised, with the effect that lesbian, gay and bisexual people are rarely open about their sexuality. Fear of HIV results in denial of access to basic services, including health services.

These and other patterns of discrimination persist in the context of a weak legal and policy framework, in which a limited non-discrimination provision offers the only legal safeguard against discrimination.

However, the report also highlights the opportunity which the people of Solomon Islands have, in the form of a national consultation on a draft constitution. Thus, the report concludes that this is the moment for Solomon Islanders to unite to challenge the traditions which have fostered division. Now is the time to stand up and fight for a constitution and for laws which guarantee equal participation for all.

Part 1: Introduction

Purpose and Structure

The purpose of this report is to highlight and analyse discrimination and inequality in Solomon Islands and to recommend steps aimed at combating discrimination and promoting equality. The report brings together, for the first time, evidence of the lived experience of discrimination and inequalities of many different forms, with an analysis of the laws, policies, practices and institutions established to address them.

The report comprises four parts. **Part 1** sets out its purpose and structure, the conceptual framework which has guided the work, and the research methodology. It also provides basic information about Solomon Islands, its history and the current political and economic situation. **Part 2** discusses the principal patterns of discrimination and inequality affecting different groups in Solomon Islands. **Part 3** analyses the legal and policy framework as it relates to non-discrimination and equality. **Part 4** contains conclusions and recommendations, drawn from an analysis of both the patterns of discrimination and inequality examined in Part 2 and the gaps, weaknesses and inconsistencies in the legal and policy framework identified in Part 3.

Conceptual Framework and Research Methodology

The conceptual framework of this report is the **unified human rights framework on equality**, which emphasises the integral role of equality in the enjoyment of all human rights, and seeks to overcome fragmentation in

the field of equality law and policies. The unified human rights framework on equality is a holistic approach which recognises both the uniqueness of each type of inequality and the overarching aspects of different inequalities. The unified framework brings together:

- a) types of inequalities based on different grounds, such as race, gender, religion, nationality, disability, sexual orientation and gender identity, among others;
- b) types of inequalities in different areas of civil, political, social, cultural and economic life, including employment, education, and provision of goods and services, among others; and
- c) status inequalities and socio-economic inequalities.

The unified human rights framework on equality is expressed in the Declaration of Principles on Equality, a document of international best practice, adopted in 2008, signed initially by 128 and subsequently by thousands of experts and activists on equality and human rights from all over the world.

This report is the result of a five year partnership with the Secretariat of the Pacific Community – Solomon Islands Country Office (SPC-SI) and the Secretariat of the Pacific Community Regional Rights Resource Team (SPC-RRRT). Since 2010, the Equal Rights Trust has been working in Solomon Islands, in partnership with SPC-SI and SPC-RRRT, on two projects designed to empower civil society to combat discrimination and inequality in Solomon Islands.

Throughout these projects, the Equal Rights Trust and its partners have undertaken research on discrimination and inequality through interviews, roundtables, focus groups and consultations with those facing discrimination in Solomon Islands and with organisations which work with these groups, as well as through reviewing publications and data produced by others. All of this work has contributed to the development of this report.

We have also reviewed existing literature on discrimination and inequality on different grounds, and analysed and assessed the country's legal and policy framework related to equality. Moreover, prior to publication, this report was the subject of an extensive consultation, in which its findings and conclusions were exposed to scrutiny by experts and stakeholders from civil society, government, academia and the media. We believe that as a result, the report's findings and conclusions have been significantly strengthened.

Country Context, History, Government and Politics

Solomon Islands, situated to the east of Papua New Guinea and the northeast of Australia, consists of approximately 997 islands. It is among the smallest countries in the world with a total area of 30,407 km².

According to the 2009 census, Solomon Islands has a population of approximately 550,000; but a recent projection in a report by the Solomon Islands National Statistics Office indicates that the current population may be closer to 750,000 people. The capital city, Honiara, located on the largest of the islands, Guadalcanal, has a population of approximately 65,000. The overwhelming majority of the Solomon Islands' population is Melanesian, constituting approximately 95.3% of the population. There are also a number of small ethnic minority populations including Polynesians (3.1%) and Micronesians (1.2%). However, Solomon Islanders strongly self-identify on the basis of *wantok*, groups defined by shared linguistic and cultural heritage, and by their island of origin.

Though the official language of Solomon Islands is English, only around 1%-2% of the population speak it. Instead, the most commonly spoken language is Solomons Pijin. According to the 2009 census, Solomon Islands is "characterised by a rich linguistic diversity". In a 2013 Draft Constitution, it was stipulated that both English and Pijin should be official languages of Solomon Islands, with other languages to be "used where appropriate".

In 2014, the World Bank estimated the Solomon Island's GDP at approximately \$1.16 billion (in current US\$), placing the country in the lower middle income group. In the same year, the Human Development Index value for Solomon Islands was 0.506, placing it 156th out of the 188 countries ranked. As these figures indicate, Solomon Islands is a relatively poor country and this is reflected in the structures of employment, education and healthcare. For example, the country suffers from high unemployment and according to the 2009 census, while 63% of the population aged 12 and over was economically active, only 24% was in conventional employment.

Solomon Islands became self-governing in 1976 and achieved independence from Britain two years later with the Solomon Islands Act 1978. In October 1978, only three months after independence, a group of Guadalcanal people aggrieved by immigration from the island of Malaita formed a movement to demand the establishment of a "state government" for the province of Gua-

dalcanal. Over time, the failure to find a solution to the various demands of the Guadalcanal people and to underlying ethnic tensions resulted in the creation of an armed group in 1998, initially called the Guadalcanal Revolutionary Army, and later, the Isatabu Freedom Movement (IFM).

This armed group violently harassed Malaitan settlers forcing up to 30,000 people in and around Honiara to flee to other parts of the country. As the government was unable to stop the violence and foster any effective peace talks, in 2000, the Malaita Eagle Force (MEF), a rival militia group, was formed in response to the IFM. On 5 June 2000, the MEF raided a police armoury in Honiara, seized the capital and overthrew the national government. Soon after, a new government was elected. In October 2000, the national government, the MEF, the IFM and the various provincial governments signed the Townsville Peace Agreement, brokered by Australia and New Zealand. Nevertheless, even after the Townsville Peace Agreement, lawlessness and violence in Honiara and the surrounding area continued until 2003. This entire period of violence and civil unrest is known as “the Tensions”.

In 2007, Derek Sikua was elected Prime Minister. In 2009, under his leadership, a Truth and Reconciliation Commission, on the example of the one established in post-apartheid South Africa, was established. The Commission registered 5721 human rights violations, 200 deaths, 212 cases of abduction, 95 cases of illegal detention, 1413 cases of torture and ill-treatment, 63 statements about sexual violence, 1882 testimonies of forcibly displaced families, and 1856 cases of property violation. The Commission also revealed that “the Tensions” led to serious limitations in the provision of essential services, such as health and education, in the affected areas of Solomon Islands.

The general human rights record of Solomon Islands is poor. In 2015, Freedom House rated Solomon Islands as only “partly free” with scores of 3 for civil liberties and 3 for political rights. Solomon Islands was, however, included on the Freedom House list of electoral democracies in 2015.

Part 2: Patterns of Discrimination

Part 2 of the report discusses what the Equal Rights Trust’s research identified as the principal patterns of discrimination and inequality in Solomon Islands. It is based on original direct testimony collected from a wide range

of individuals, as well as interviews with experts, together with analysis of existing research undertaken by authoritative sources, such as international organisations, government bodies, non-governmental organisations and academics, news reports and statistical data. This part of the report does not seek to provide an exhaustive picture, but to provide an insight into what appear to be the most significant patterns of discrimination in the country.

In this part we present evidence of discrimination and inequality on grounds of gender, ethnicity, disability, sexual orientation, health status, economic status, and citizenship. In respect of each ground, the report discusses the ways in which people experience discrimination and inequality in a range of areas of life, including as a result of discriminatory laws, the action of state actors carrying out public functions, exposure to discriminatory violence, and discrimination and inequality in areas such as employment, education and access to goods and services.

With respect to discrimination on the basis of **gender**, section 2.1 of the report finds that discrimination against women in the Solomon Islands is extremely severe and widespread, affecting the ability of women to participate on an equal basis in many areas of life. The report finds that women experience discrimination and disadvantage resulting from the persistence of deep-rooted gender stereotypes, patriarchal attitudes and paternalistic policies, largely shaped by the model of conservative Christianity practiced by the overwhelming majority of the population.

In Solomon Islands there also exists a range of legal provisions which reflect this patriarchal ideology, discriminating directly against women, and found in the Penal Code, the Evidence Act, the Islander Divorce Act, the Affiliation, Separation and Maintenance Act, the Labour Act and the Citizenship Law. Furthermore, violence against women is highly prevalent and socially accepted in Solomon Islands, demonstrating the overwhelming influence of traditional sexist attitudes in society. Statistics highlighted in this report are startling: the levels of violence against women in Solomon Islands are among the highest in the Pacific region, with more than half of all women experiencing sexual violence by an intimate partner and 64% of women aged between 15 and 49 experiencing violence in the home. Patriarchal attitudes and traditional negative stereotypes have also limited women's participation in education, employment and political life, the cumulative impact being a society in which women do not participate on an equal basis with men in any area of life.

Section 2.2 examines discrimination on the basis of **ethnicity**. In Solomon Islands, a deeply complex system has developed over time of cultural and social group identification, reflecting the tendency of people in Solomon Islands to self-identity on the basis of place of origin and shared customs. This section of the report examines two significant patterns of such ethnic self-identification and highlights evidence of both discrimination and substantive inequality arising on the basis of both aspects of ethnicity.

The first pattern of ethnic self-identification is found at the geographical level and relates to Solomon Islanders' tendency to identify with others originating from a particular island. In this context, our field research found a number of examples of prejudice against people from certain islands. The report also identifies evidence of significant disparities between the different provinces in relation to access to basic services, many of which are essential to the enjoyment of social rights which the state is required to guarantee without discrimination. The second pattern of ethnic self-identification examined by the report is at the community level, in the form of the traditional *wantok* system. The report identifies evidence of state agents discriminating against those from other *wantoks*, or favouring members of their own *wantok*. Indeed, testimonies gathered for this report have demonstrated a clear pattern of perception and concern about state corruption based on the *wantok* system and consistent allegations of unfavourable treatment were made on the basis of *wantok*, in the areas of employment, education and delivery of services.

With respect to discrimination on the basis of **disability**, section 2.3 finds that while the Constitution does not prohibit discrimination on the basis of disability, a number of its provisions and provisions in other laws discriminate, or create the conditions for discrimination, against persons with disabilities, especially against persons with mental or intellectual disabilities. Our research has also found that significant stigma is attached to disability in Solomon Islands, which has a serious impact on the ability of persons with disabilities to participate in many areas of life on an equal basis with others and creates conditions for exclusion and discriminatory mistreatment, in both the private and public sphere. The report shows that there is a deep-rooted paternalistic ideology entrenched in Solomon Island society, and adopted by the state in practice, regarding disability. This approach, focussing on "welfare" rather than rights, as well as the lack of legal provisions for reasonable accommodation, limit the ability of persons with disabilities to participate equally in many areas of life.

Section 2.4 of the report examines discrimination on the basis of **sexual orientation**, finding that lesbian, gay, bisexual and transgender persons in Solomon Islands experience severe and systematic discrimination and inequality. Most critically, Solomon Islands law directly discriminates against lesbians, gays and bisexual persons, through criminalising same-sex sexual activity. The Penal Code in Solomon Islands punishes “unnatural offences” (buggery) by up to fourteen years’ imprisonment and “gross indecency” between two persons of the same sex, whether male or female, by up to five years’ imprisonment. Though few lesbian, gay and bisexual people in Solomon Islands are open about their sexual orientation, making it challenging to gather evidence about discrimination in practice on grounds of sexual orientation, interviews and focus groups conducted in Solomon Islands for this report have demonstrated high levels of stigma and prejudice against people on the basis of their actual or perceived sexual orientation. These testimonies have indicated the existence of severe cases of harassment and discriminatory violence, and of discrimination in both employment and education.

Section 2.5 of the report, examining discrimination on the basis of **HIV status**, finds evidence of stigma and prejudice associated with HIV status and has shown that the small number of persons living with HIV in Solomon Islands experience discrimination in accessing healthcare as a result of such stigma. Indeed, the views expressed by respondents to the government’s Demographic and Health Survey raise serious concerns about the potential for direct discrimination in access to basic goods and services by people acting out of fear or prejudice. However, this report also highlights some positive steps that have been taken by the government, which has committed itself to introducing measures in order to tackle the spread of HIV and AIDS, including through the reduction of stigma and discrimination, which it recognises as a barrier to effective prevention and treatment.

Discrimination and inequality on the basis of **economic status** is examined in section 2.6. Research for this report shows that in Solomon Islands, poverty can act as a serious barrier to accessing basic services and thus to the enjoyment of many economic and social rights. For example, our research indicates that those living in poverty are limited in their ability to enjoy their right to health, with testimonies revealing that, for example, many people can’t afford the long journey to faraway health centres. The report also shows evidence of intersections between economic status and other grounds of discrimination;

discrimination and inequality on the basis of economic status can overlap with gender discrimination and ethnic discrimination, in a mutually reinforcing manner. Poverty is shown to be both a cause of discrimination and inequality and an aggravating factor for those experiencing discrimination on other grounds, increasing the vulnerability of such groups subject to discrimination on these grounds.

With respect to discrimination on the basis of **citizenship**, discussed in section 2.7, we find that there are a number of laws in Solomon Islands which exceed the permissible limits of state discretion in differentiating between citizens and non-citizens. International human rights law recognises a degree of state discretion in deciding whether and if so how to differentiate between citizens and non-citizens in certain areas of life, though states must act within the scope of permissible limitations. In the case of Solomon Islands, non-citizens experience a number of disadvantages as a result of discriminatory laws and broad limitations on the right to freedom of movement, which are unlikely to be so justified. Of greatest concern is the fact that the Constitution excludes the application of the right to non-discrimination to laws concerning “persons who are not citizens of Solomon Islands”. As none of the treaties to which Solomon Islands is party permit such a restriction on the right to non-discrimination to citizens alone, this constitutional provision is in clear violation of Solomon Islands’ international legal obligations.

Part 3: Legal and Policy Framework Related to Equality

Part 3 of the report describes and analyses the legal and policy framework related to equality in Solomon Islands in order to assess its adequacy to address the patterns of inequality and discrimination highlighted in the preceding part. It examines both Solomon Island’s international legal obligations and the domestic legal and policy framework which protects the rights to equality and non-discrimination. In respect of domestic law, it predominantly examines the 1978 Constitution of Solomon Islands, the principal source of anti-discrimination protection in the country. Notably, however, Solomon Islands is currently in the process of constitutional reform. Therefore, part 3 also explores the constitutional reform process, by examining the various draft constitutions that have been published by the Constitutional Reform Unit, the national body tasked with drafting the new constitution. It also examines government policies which have an impact on inequality, before

turning to an assessment of the enforcement and implementation of existing laws and policies aimed at ensuring equality. Finally, this part reviews judicial practice related to discrimination.

Section 3.1 of the report assesses Solomon Island's **participation in international instruments** relevant to equality. It finds that Solomon Islands has a mixed record of participation in international human rights and other legal treaties, having ratified only four of the nine core United Nations human rights treaties: the International Covenant on Economic, Social and Cultural Rights (ICESCR), the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), and the Convention on the Rights of the Child (CRC). The report also notes that at Solomon Islands' Universal Periodic Review by the Human Rights Council in 2011, several states made recommendations urging the country to sign and ratify the remaining international human rights instruments, all of which were accepted by Solomon Islands. However, despite this commitment, the state has not since ratified any more of the core treaties.

Further, the report finds that the extent to which Solomon Islands' ratification of the ICESCR, the ICERD, the CEDAW and the CRC has resulted in a full acceptance and co-operation with the obligations and relevant treaty body regimes has been inconsistent, and that Solomon Islands has a particularly bad record in relation to its reporting duties under the international human rights instruments. For example, while it succeeded to the ICERD in 1982, it has not submitted any of the reports required in accordance with the treaty's reporting procedure since its initial report in 1983.

In relation to the status of Solomon Islands' international obligations in domestic law, the Constitution makes no provision for the automatic incorporation of international law into the national legal framework. International treaties must be enacted in legislation to become part of domestic law. However, Solomon Islands remains obliged to comply with its international legal obligations, regardless of domestic laws and, furthermore, must pass national legislation to give effect to human rights guarantees, including the rights to equality and non-discrimination.

Section 3.2 analyses Solomon Islands' **domestic legal system**, though it is noted at the outset that there is a critical deficit of national law dealing with

matters of equality and non-discrimination in Solomon Islands. Indeed, aside from provisions laid out in the Constitution, the report finds that there is not even partial protection from discrimination in the law.

Regarding the **Constitution**, Chapter II (Fundamental Rights of the Individual) contains the most important provisions in relation to upholding equality and non-discrimination. Though there is no right to equality in the Constitution, it does provide a limited right to non-discrimination in section 15. However, the wording of section 15 is highly problematic, containing an incoherent assortment of discrimination principles, limitations to their scope and exceptions to their application.

Section 15 prohibits discrimination in three key areas: legislation; the acts of public officials and authorities; and the provision of certain services. Crucially, section 15(4) defines “discriminatory” in a way most reflective of the definition found in international law of direct discrimination only, yet also providing a formulation that differs from international law in significant ways. For example, a key inadequacy of the definition is that the list of grounds upon which discrimination is prohibited is closed, and limited to only six: race, place of origin, political opinion, colour, creed and sex. Overall, the gaps and far-reaching exceptions contained in section 15 substantially reduce its impact and, as a result, section 15 falls far short of what is required under Solomon Islands’ international obligations.

The report also examines the current constitutional reform process occurring in Solomon Islands. It briefly explores the key equality and non-discrimination provisions of the published drafts and the most recent 2014 Draft made available to the Equal Rights Trust. Looking at the development of the draft Constitution through the consultative process, the report shows that over time there has been both rise and fall in the levels of protection offered by provisions relating to matters of equality and non-discrimination. In the 2004 and 2009 Draft Constitutions, provisions not only included a newly worded right to non-discrimination but, crucially, a right to equality was inserted into the framework. The 2011 Draft Constitution marked a reversion back to provisions mirroring the current 1978 Constitution, removing the right to equality and reinstating the wording of section 15, in relation to discrimination.

Positively, the Bill of Rights in the most recent 2014 Draft, improves significantly on the current Constitution and on the previous drafts in relation

to the rights to equality and non-discrimination, reintroducing a right to equality and expanding its non-discrimination provision significantly. This is a promising development. However, as the report shows, the 2014 Draft is still not in full compliance with Solomon Islands' obligations in international law, and the rights of equality and non-discrimination would still not be fully guaranteed if this Draft were adopted.

Section 3.2.3 explores **specific anti-discrimination legislation in the national legal framework** of Solomon Islands. As noted earlier, the report found that there is no specific equality or anti-discrimination legislation in the country and very few pieces of legislation which relate to equality.

Moreover, despite a number of draft laws touching on issues of discrimination on the basis of disability and HIV status currently being developed in Solomon Islands, the report finds that there is only one draft bill with a sufficient equality and non-discrimination focus to merit a full analysis. The Persons with Disability (Equal Opportunities, Protection of Rights and Full Participation) Bill 2006, provides that persons with disabilities should “enjoy, on an equal basis with other persons, rights in political, educational, economic, spiritual, cultural and social fields, in family life and all other aspects of life”. It also makes it an offence to “discriminate against, insult or harass a person with disabilities on the basis of their disabilities”. The bill provides detailed protections for people with disabilities in certain areas of life, including education, healthcare and employment. For example, Part V of the Bill prohibits discrimination on grounds of disability in many areas in the field of employment and requires employers to provide reasonable accommodation for employees with disabilities.

In section 3.2.4, we find that in relation to **non-discrimination provisions in other legal fields**, there are no non-discrimination provisions in any other pieces of legislation in Solomon Islands. However, the report does note that under section 48(1) of the Political Parties Integrity Act 2014, the state provides for a positive action measure, requiring political parties to ensure that at least 10% of all candidates it selects and endorses for an election are women. As it is clearly demonstrated in section 2.1 of the report, there is a severe underrepresentation of women in the political sphere in Solomon Islands and thus it is encouraging to see this attempt to address the issue.

Further, the report examines the Family Protection Act 2014 which, while not expressly including any reference to non-discrimination, is an important development from an equality perspective, as it seeks to prohibit all forms of domestic violence. This legislation is particularly positive given, as demonstrated in section 2.1, the widespread nature of violence against women in Solomon Islands, including domestic violence. Unfortunately, the Act does not construe domestic violence as a form of gender discrimination as recommended by the CEDAW Committee.

Section 3.3 examines **government policies** and finds that, in contrast to the conspicuous absence of national legislation related to equality and non-discrimination, the government of Solomon Islands has established several national policies which seek to address issues related to the protection from discrimination or advancement towards equality of certain groups, including women and persons with disabilities. However, despite this welcome progress, the report also notes that there is limited awareness of the existence national policies and, more crucially perhaps, there no clear evidence that they have had any impact on the position of the groups they purport to assist, as there is a distinct lack of regular reporting detailing the extent to which the policy measures have been implemented and goals achieved.

Finally, section 3.4 analyses **the implementation and enforcement of laws and policies related to equality**. The report concludes that the mechanisms and provisions put in place by Solomon Islands to guarantee victims of discrimination access to justice and appropriate remedies are poor and ineffective. Section 3.4.2 examines jurisprudence on equality and non-discrimination in Solomon Islands. We found that the judiciary has yet to develop jurisprudence on the rights to equality and non-discrimination. This is partly because of the lack of specific national law related to equality and partly because human rights protection is a recent development in Solomon Islands.

The report's overall conclusion is that the system of laws, policies and practices in place to prevent discrimination clearly occurring in Solomon Islands is manifestly inadequate. The country's national legislation and the scant judicial practice indicate insufficient regard for the human rights that Solomon Islands has agreed to uphold, and save for a small number of limited constitutional provisions, provides very weak protection from discrimination.

Part 4: Conclusions and Recommendations

Part 4 of the report presents its **conclusions and makes recommendations** to the Solomon Islands' government. Section 4.1 sums up the conclusions of parts 2 and 3: that in Solomon Islands there are persistent and pervasive patterns of discrimination and inequality, coupled with a critically weak national legal framework of protection. This conclusion is supported both by the extensive evidence of discrimination on various grounds which is presented in part 2, and the assessment of the framework's enforcement and implementation in part 3. Thus, while Solomon Islands appears, in some limited ways, to be heading in the right direction, **there is substantially more to be done by the government to ensure that it fulfils its obligations to respect, protect and fulfil the rights to equality and non-discrimination.**

Section 4.2 of the report presents the Equal Rights Trust's recommendations, whose purpose is to strengthen protection from discrimination and to enable Solomon Islands to meet its obligations under international law to respect, protect and fulfil the rights to non-discrimination and equality. All recommendations are based on international law related to equality, and on the Declaration of Principles on Equality, a document of international best practice which consolidates the most essential elements of international law related to equality.

The report makes recommendations in ten areas:

- Implementation of the recommendations of the Truth and Reconciliation Commission
- Strengthening of international commitments related to equality
- Constitutional reform
- Repeal or amendment of national legislation
- Substantive law protecting the rights to equality and non-discrimination
- Enforcement
- Duty to gather and disseminate information
- Policies to respect and promote the rights to equality and non-discrimination
- Education on equality
- Prohibition of regressive interpretation, derogations and reservations

1. INTRODUCTION

1.1 Purpose and Structure of This Report

The purpose of this report is to highlight and analyse discrimination and inequality in Solomon Islands and to recommend reforms to law, policy and practice to combat discrimination and promote equality. The report explores a number of well-recognised human rights problems, and also seeks to shed light upon less well-known patterns of discrimination in the country. The report brings together – for the first time – evidence of the lived experience of discrimination and inequalities by many different categories of people with an analysis of the laws, policies, practices and institutions established to address them.

The report comprises four parts. **Part 1** sets out its purpose and structure, the conceptual framework which has guided the work and the research methodology. It also provides basic information about Solomon Islands, the country's recent history and the current political situation.

Part 2 presents patterns of discrimination and inequality, examining patterns arising on the basis of ethnicity, gender, disability, religion and belief, sexual orientation and gender identity, citizenship, economic status and health status. In each section of this Part, the report examines evidence of discriminatory laws, discrimination by state actors, discriminatory violence and hate crime and discrimination and inequality in the areas of employment, education, healthcare and participation in public life.

Part 3 begins by reviewing the main international legal obligations of Solomon Islands in the field of equality and non-discrimination in the framework of the United Nations and other international bodies. This part then discusses Solomon Islands national law related to equality and non-discrimination, starting with the Constitution before examining national legislation. Part 3 also reviews state policies relevant to equality. The potential for the realisation of the rights to equality and non-discrimination is illustrated through a review of judicial practice and a review of the operation of government and independent bodies responsible for the implementation of human rights laws.

Part 4 contains the report's conclusions and recommendations, which are based on the analysis of patterns of inequality and discrimination examined

in Part 2 and the limitations of Solomon Islands legislation and state policies revealed in Part 3.

1.2 Conceptual Framework and Research Methodology

This report takes as its conceptual framework the unified human rights perspective on equality, which emphasises the integral role of equality in the enjoyment of all human rights, and seeks to overcome fragmentation in the field of equality law and policies. The unified human rights framework on equality is a holistic approach which recognises both the uniqueness of each different type of inequality and the overarching aspects of different inequalities. The unified framework brings together: a) types of inequalities based on different grounds, such as race, gender, religion, nationality, disability, sexual orientation and gender identity, among others; b) types of inequalities in different areas of civil, political, social, cultural and economic life, including employment, education, and provision of goods and services, among others; and c) status inequalities and socio-economic inequalities.

The Unified Human Rights Framework on Equality

The unified human rights framework on equality is expressed in the Declaration of Principles on Equality, adopted in 2008, signed initially by 128 and subsequently by thousands of experts and activists on equality and human rights from all over the world.¹ The principles formulated and agreed by the experts are based on concepts and jurisprudence developed in international, regional and national legal contexts.

Since its adoption, the Declaration has been used by those developing anti-discrimination legislation in a number of countries and has received increasing support at the international and regional levels. In 2008, the UN Committee on Economic, Social and Cultural Rights (CESCR) made use of a number of key concepts from the Declaration in its *General Comment 20: Non-discrimination in economic, social and cultural rights*.² In 2011, the Parliamentary Assembly of the Council of Europe adopted a Recommendation

1 *Declaration of Principles on Equality*, Equal Rights Trust, London, 2008.

2 Committee on Economic, Social and Cultural Rights, *General Comment No. 20, Non-Discrimination in Economic, Social and Cultural Rights (art. 2, para. 2)*, U.N. Doc. E/C.12/GC/20 (2009).

calling on the 47 Council of Europe member states to take the Declaration into account when developing equality law and policy.³

Principle 1 of the Declaration defines the right to equality:

*The right to equality is the right of all human beings to be equal in dignity, to be treated with respect and consideration and to participate on an equal basis with others in any area of economic, social, political, cultural or civil life. All human beings are equal before the law and have the right to equal protection and benefit of the law.*⁴

Thus defined, the right to equality has a broad scope, and its content is richer than that of the right to non-discrimination. The right to equality has as its elements the equal enjoyment of all human rights, as well as the equal protection and benefit of the law. Most importantly, it encompasses equal participation in all areas of life in which human rights apply. This holistic approach to equality recognises the interconnectedness of disadvantages arising in different contexts, which makes it necessary to take a comprehensive approach to inequalities in all areas of life.

This report takes the right to equality, as expressed in the Declaration, as the baseline against which it assesses the presence or degrees of inequality. It goes beyond narrower notions of equality found in many legal systems, by understanding equality not only as a right to be free from all forms of discrimination, but also as a right to substantive equality in practice. As discussed below, this motivates our analysis of disadvantages affecting different groups beyond those which arise as a result of discernible acts of discrimination. From this perspective, many societal inequalities relevant to human rights are seen as a consequence of historic disadvantage, while asserting that the right to equality requires states to address unfair inequalities, however “innocuous” their cause. Thus the unified framework makes *de facto* unfair inequ-

3 Parliamentary Assembly of the Council of Europe, *Resolution and Recommendation: The Declaration of Principles on Equality and activities of the Council of Europe*, REC 1986 (2011), 25 November 2011, available at: <http://www.assembly.coe.int/nw/xml/XRef/X2H-Xref-ViewPDF.asp?FileID=13190&lang=en>.

4 See above, note 1, Principle 1, p. 5.

alities, whether or not they result from discrimination, a relevant subject for this report.

Regarding the relationship between the rights to equality and non-discrimination, the Declaration construes the right to non-discrimination as subsumed in the right to equality.⁵ Thus, when examining the situation of a particular group of persons, the report looks both at examples of discrimination and at inequality in participation in areas such as employment or public life, differential access to goods and services and socio-economic disadvantage.

The unified human rights framework on equality makes it desirable and possible to provide a general legal definition of discrimination covering all types of discrimination. Principle 5 of the Declaration offers such a definition:

Discrimination must be prohibited where it is on grounds of race, colour, ethnicity, descent, sex, pregnancy, maternity, civil, family or carer status, language, religion or belief, political or other opinion, birth, national or social origin, nationality, economic status, association with a national minority, sexual orientation, gender identity, age, disability, health status, genetic or other predisposition toward illness or a combination of any of these grounds, or on the basis of characteristics associated with any of these grounds.

Discrimination based on any other ground must be prohibited where such discrimination (i) causes or perpetuates systemic disadvantage; (ii) undermines human dignity; or (iii) adversely affects the equal enjoyment of a person's rights and freedoms in a serious manner that is comparable to discrimination on the prohibited grounds stated above.

Discrimination must also be prohibited when it is on the ground of the association of a person with other persons to whom a prohibited ground applies or the perception,

5 *Ibid.*, Principle 4, p. 6.

whether accurate or otherwise, of a person as having a characteristic associated with a prohibited ground.

Discrimination may be direct or indirect.

Direct discrimination occurs when for a reason related to one or more prohibited grounds a person or group of persons is treated less favourably than another person or another group of persons is, has been, or would be treated in a comparable situation; or when for a reason related to one or more prohibited grounds a person or group of persons is subjected to a detriment. Direct discrimination may be permitted only very exceptionally, when it can be justified against strictly defined criteria.

Indirect discrimination occurs when a provision, criterion or practice would put persons having a status or a characteristic associated with one or more prohibited grounds at a particular disadvantage compared with other persons, unless that provision, criterion or practice is objectively justified by a legitimate aim, and the means of achieving that aim are appropriate and necessary.

Harassment constitutes discrimination when unwanted conduct related to any prohibited ground takes place with the purpose or effect of violating the dignity of a person or of creating an intimidating, hostile, degrading, humiliating or offensive environment.

An act of discrimination may be committed intentionally or unintentionally.⁶

This definition takes a broad view regarding the list of **protected characteristics**. It contains both a list of explicitly prohibited grounds of discrimination and a “test” for the inclusion of further grounds, according to which “can-

6 *Ibid.*, Principle 5, p. 6–7.

didate grounds” should meet at least one of three listed conditions.⁷ Thus, the definition provides a foundation for tackling the full complexity of the problem to be addressed – people’s lived experience of discrimination. It recognises that a single person may experience discrimination on a “combination” of subtly interacting grounds, or on grounds not previously recognised as “prohibited”, and that the cumulative impact of discrimination on different grounds can be bigger than the sum of its parts. The unified perspective acknowledges that the phenomenon of discrimination must be addressed holistically, if it is to be effectively challenged.

The Declaration defines three forms of **prohibited conduct** which constitute discrimination: direct discrimination, indirect discrimination and harassment. All three concepts reflect current expert opinion on the definitions of the different forms of discrimination in international human rights and equality law.⁸ They are used throughout Part 2 to assess the patterns of discrimination identified by the research against the state’s obligation to respect the right to non-discrimination, and in Part 3 as a basis against which to assess the adequacy of legal provisions intended to protect people from discrimination.

The report also relies on a number of other important concepts and definitions contained in the Declaration of Principles on Equality. Thus, the report employs the definition of **reasonable accommodation** provided in Principle 13 of the Declaration:

7 Petrova, D., “The Declaration of Principles on Equality: A Contribution to International Human Rights”, in *Declaration of Principles on Equality*, Equal Rights Trust, London, 2008, p. 34: “The definition of discrimination in Principle 5 includes an extended list of ‘prohibited grounds’ of discrimination, omitting the expression ‘or other status’ which follows the list of characteristics in Article 2 of the Universal Declaration of Human Rights. While intending to avoid abuse of anti-discrimination law by claiming discrimination on any number of irrelevant or spurious grounds, the definition nonetheless contains the possibility of extending the list of ‘prohibited grounds’ and includes three criteria, each of which would be sufficient to recognise a further characteristic as a ‘prohibited ground’. This approach is inspired by the solution to the open versus closed list of ‘prohibited grounds’ dilemma provided by the South African Promotion of Equality and Prevention of Unfair Discrimination Act (2000).”

8 See, for example, United Nations Committee on Economic, Social and Cultural Rights, *General Comment No. 20: Non-discrimination in economic, social and cultural rights (art. 2, Para 2, of the International Covenant on Economic, Social and Cultural Rights)*, UN Doc. E/C.12/GC/20, 2009, Para 10.

To achieve full and effective equality it may be necessary to require public and private sector organisations to provide reasonable accommodation for different capabilities of individuals related to one or more prohibited grounds.

Accommodation means the necessary and appropriate modifications and adjustments, including anticipatory measures, to facilitate the ability of every individual to participate in any area of economic, social, political, cultural or civil life on an equal basis with others. It should not be an obligation to accommodate difference where this would impose a disproportionate or undue burden on the provider.⁹

In line with international law in this area, the approach taken in the report is that a denial of reasonable accommodation constitutes discrimination.¹⁰ Reflecting an emerging international consensus on this issue, the concept of reasonable accommodation “is extrapolated to cover other forms of disadvantage beyond disability, as well as, more generally, differences which hamper the ability of individuals to participate in any area of economic, social, political, cultural or civil life”.¹¹ Thus, in the context of this report, it is accepted that the duty of reasonable accommodation can arise in respect of grounds other than disability.

Similarly, the report employs the understanding of **positive action** provided in Principle 3 of the Declaration. As with other principles in the Declaration, this principle draws upon emerging approaches in international and regional human rights law, in this case with regard to the concepts of special measures

9 See above, note 1, Principle 13, p. 10–11.

10 See, for example, Convention on the Rights of Persons with Disabilities, G.A. Res. A/RES/61/106, 2006, Article 2; United Nations Committee on Economic, Social and Cultural Rights, *General Comment No. 5: Persons with Disabilities*, UN Doc. E/1995/22, 1995, Para 15: “disability-based discrimination” includes “the denial of reasonable accommodation based on disability which has the effect of nullifying or impairing the recognition, enjoyment or exercise of economic, social or cultural rights”.

11 See above, note 7, p. 39.

in the various instruments,¹² whereby “it should be noted that the Declaration captures the growing tendency of interpreting “special measures” as part of, rather than an exception to, equal treatment”.¹³ Principle 3 states:

To be effective, the right to equality requires positive action.

*Positive action, which includes a range of legislative, administrative and policy measures to overcome past disadvantage and to accelerate progress towards equality of particular groups, is a necessary element within the right to equality.*¹⁴

The notion of positive action plays an important role in the unified perspective on equality, and, therefore, in the approach of this report. As previously discussed, the right to equality extends beyond a right to be free from discrimination and contains an element of participation on an equal basis with others in all areas of life regulated by law. Positive action is key to addressing those inequalities which are not attributable solely to discrimination. Having identified patterns of substantive inequality in Part 2, Part 3 of this report analyses the adequacy of positive action measures to address these.

The review of laws and policies in Part 3 of this report is based on an assessment against those parts of the Declaration which set out the **obligations of the state** with regard to the rights to equality and non-discrimination, including in particular Principle 11. In this regard, the Declaration applies the understanding of state obligations in the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR), as explained, *inter alia*, in General Comment 3 of the CESCR and General Comment 31 of the UN Human Rights Committee. As stated in the commentary on the Declaration:

12 See, for example, International Convention on the Elimination of All Forms of Racial Discrimination, G.A. Res. 2106 (XX), 1965, Article 1(4); Convention on the Elimination of All Forms of Discrimination against Women, G.A. Res. 34/180, 1979, Article 4(1); and Organisation of African Unity, Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, OAU Doc. CAB/LEG/66.6, 2000, Article 2(1)(d).

13 See above, note 7, p. 32.

14 See above, note 1, Principle 3, p. 5.

By analogy with the interpretation of States' obligations set out in General Comment 3 of the UN Committee on Economic, Social and Cultural Rights, States are required to take all necessary steps, including legislation, to give effect to the right to equality in the domestic order and in their international cooperation programmes. The right to full and effective equality may be difficult to fulfil; however, the State does not have an excuse for failing to take concrete steps in this direction. The requirement to take such steps is unqualified and of immediate effect. A failure to comply with this obligation cannot be justified by reference to cultural, economic, political, security, social or other factors.¹⁵

Application of the Unified Human Rights Framework on Equality

Applying the unified human rights framework on equality has a number of consequences for the content, structure and methodology of this report. The **first consequence** is reflected in the subject and scope of the report – the presentation of discrimination and inequality on a number of different grounds in the same study. While it is clearly beyond the scope of the report to provide a detailed analysis of discrimination and inequality arising on every ground, the aim has been to present what appear to be the most significant patterns of discrimination and inequality found in the Solomon Islands context.

Presenting patterns of discrimination and inequality alongside each other requires a specific weighing of the sources of evidence. To some extent, Part 2 of the report relies on pre-existing research into inequalities affecting particular groups, and disaggregated data on the position of different groups in particular areas of life. Such information was available in some areas, but limited in others. For example, there is a lack of published research or data on the position of lesbian, gay and bisexual people in Solomon Islands. In this and other areas where pre-existing research was unavailable, the Equal Rights Trust has relied more heavily on direct testimony from individual victims, or interviews with professionals working on behalf of particular groups. The evidence obtained through field research and desk research has been weighed and contextualised, with a view to presenting patterns of discrimina-

15 See above, note 7, p. 38.

tion and disadvantage in a way which is as representative of Solomon Islands reality as possible. In so doing, it is hoped that the report also illuminates the links between inequalities on different grounds, through identifying overarching issues, instances of multiple discrimination and common experiences.

The **second consequence** of applying the unified human rights framework relates to the material scope of application of the right to equality, which encompasses all areas of life regulated by law. The report seeks to assess people's experience of discrimination across the full range of areas of life, including in respect of interactions with the state, personal safety, employment, education and healthcare. But in this respect, too, the evidence is uneven: there is little evidence of discrimination or inequality in particular areas of life for certain disadvantaged groups, either because persons within these groups do not experience disadvantage in a particular area, or because evidence of such disadvantage was not forthcoming in the course of the research. For example, the report found evidence of direct discrimination in law against non-citizens in the areas of political participation and land ownership, but no evidence of discrimination against this group in other areas of life.

The **third consequence** of applying the unified framework is to require an analysis of both violations of the right to non-discrimination and the right to equality. The report takes the right to equality, as defined in the Declaration of Principles on Equality, as the standard against which it assesses the degree of inequality. Thus, the report investigates historically-generated patterns of substantive inequality, by looking at the element of "participation on an equal basis with others in economic, social, political, cultural or civil life",¹⁶ thereby extending beyond experiences of discrimination. This is the case, for example, with the examination of substantive inequalities between the country's different provinces in levels of access to public services and infrastructure. Our research did not identify evidence that these disparities were the result of direct or indirect discrimination; nevertheless, the disparities themselves, when considered in light of the right to participate on an equal basis with others, are a matter of concern in this report.

The **fourth consequence** of applying the unified framework is the definition of discrimination used, which, reflecting best practice in outlawing discrimi-

16 See above, note 1, p. 5.

nation on grounds that have come to be regarded as unfair in modern society, provides the basis for our consideration of the range of identity-based groups included in the report. Thus, the report examines discrimination on grounds of race and ethnicity; gender; disability; sexual orientation; health status; citizenship; economic status; and religion or belief. Furthermore, the report examines some patterns of discrimination – such as the discrimination suffered by girls – which do not fall exclusively within one specified ground, but which constitute important forms of multiple discrimination. Furthermore, analysis of certain types of discrimination, notably that suffered by children, is interwoven throughout the report, rather than considered separately. This is not because they are less important or widespread, but because they appear to be strongly defined by one or more of the major protected characteristics covered in the report, particularly gender and ethnicity.

The **final consequence** of this approach is to present evidence of factual patterns of discrimination and inequality alongside an analysis of the legal and policy framework related to equality. The existence and enforcement of laws and policies prohibiting discrimination and promoting equality is a critical factor – though by no means the only one – in ensuring enjoyment of the rights to non-discrimination and equality. Protecting people from discrimination by enacting such laws is a key state obligation in respect of these rights. Thus, this report seeks to match an assessment of the lived experience of discrimination and inequality with a review of Solomon Island’s legal and policy framework, in order to establish where the law discriminates, where gaps and inconsistencies in legal protection exist, and where laws are inadequately enforced.

The analysis of patterns of discrimination in Part 2 of the report gives rise to significant concerns about the adequacy of laws and policies designed to address discrimination and inequality in Solomon Islands. Part 3 of this report assesses the adequacy of the legal and policy framework in the light of the Declaration’s principles relating to access to justice for discrimination victims, evidence and proof in discrimination proceedings, and other elements of enforcement of equality rights.¹⁷ While the necessity of effective enforcement of the rights to non-discrimination and equality is illustrated by the findings in Part 2 of this report, these issues are discussed in more detail in Part 3, and Part 4 formulates recommendations about legal and policy reform, imp-

17 *Ibid.*, Principles 18–25, pp. 12–14.

lementation and enforcement. Thus, it is hoped that the information contained in Part 2 provides a strong evidence base for analysing the effectiveness of the laws and policies discussed in Part 3, and therefore ensuring that the conclusions and recommendations in Part 4 are relevant and robust.

Research Methodology

The Equal Rights Trust has been working in Solomon Islands since 2010, in partnership with the Secretariat of the Pacific Community – Solomon Islands Country Office (SPC-SI) and the Secretariat of the Pacific Community Regional Rights Resource Team (SPC RRRT). The three organisations have worked together in the context of two projects designed to empower civil society to combat discrimination and inequality in Solomon Islands.

Throughout these projects, the three partners have undertaken research on discrimination and inequality through interviews, roundtables, focus groups and consultations with those exposed to discrimination in Solomon Islands and with organisations which work with these groups, as well as through reviewing publications and data produced by others. The Equal Rights Trust has also reviewed, analysed and assessed the legal and policy framework related to equality in Solomon Islands.

Research for Part 2 of this report included both desk-based research and field work, with the latter featuring focus group discussions and semi-structured interviews. Initial desk-based research to identify the major patterns of discrimination in Solomon Islands took place in late 2012, with researchers working at the Equal Rights Trust. In mid-2013, SPC-SI and SPC RRRT identified and recruited a group of focal points to act as field researchers in each of Solomon Island's ten provinces. Field researchers were provided with training and guidance, before being asked to conduct focus groups and interviews in their respective localities. This research was then conducted between May and July 2013. In total, 35 focus groups were conducted, while 78 persons gave individual interviews about their personal experiences of discrimination and inequality.

Alongside the field research, desk research continued throughout 2013 and 2014. This involved a review of relevant literature on discrimination and inequality in Solomon Islands, including reports by both the government and NGOs to UN treaty bodies and the Universal Periodic Review (UPR) process;

government and intergovernmental data and reports; and research published by international and national NGOs, academic studies and media reports. The literature review covered relevant aspects of human rights and equality, as well as a number of related issues in fields such as development studies, economics and conflict studies. Given the need to look beyond discrimination and assess equality of participation, traditional methods of human rights documentation were complemented by sociological research, in particular related to employment, education and healthcare.

Wherever possible, statistical data was relied on to improve understanding of inequalities. It should be stressed, however, that statistical data on Solomon Islands is limited, being largely restricted to the last census completed in 2009. Where statistical data has been used, the basic data has come from reports and publications produced by the Solomon Islands National Statistics Office (SIN-SO),¹⁸ complemented by and compared to data from the World Bank, the World Health Organisation (WHO), the United Nations Development Programme (UNDP), the United Nations Educational, Scientific and Cultural Organisation (UNESCO), and other sources. The scarcity of relevant statistical data – in particular data disaggregated by protected characteristics such as gender, ethnicity, age or religion – presented a challenge to effective quantitative research on discrimination and inequality. This in itself is a cause for concern, as the government should ensure that it collects disaggregated data allowing it to assess and address inequalities.¹⁹

18 Solomon Islands National Statistics Office' website, available at <http://www.spc.int/prism/solomons>.

19 States have an obligation to collect data on different groups in certain areas of life under the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of Persons with Disabilities, an obligation which is frequently invoked by treaty bodies when reviewing state compliance. In 2014, the Committee on the Elimination of Discrimination against Women urged Solomon Islands to collect data disaggregated by sex, age, race, ethnicity, disability, geographic location and socioeconomic background. (Committee on the Elimination of Discrimination against Women, *Concluding observations on the combined initial, second and third periodic reports of Solomon Islands*, CEDAW/C/SLB/CO/1-3, 7 November 2014, Para 47). Under the Declaration of Principles of Equality, the obligation to collect disaggregated data covers all characteristics relevant to identifying structural disadvantage. Principle 24 states: "To give full effect to the right to equality States must collect and publicise information, including relevant statistical data, in order to identify inequalities, discriminatory practices and patterns of disadvantage, and to analyse the effectiveness of measures to promote equality." (*Declaration of Principles on Equality*, Equal Rights Trust, London, 2008, Principle 24, p. 14.)

Research on law and policy for Part 3 was undertaken by the Equal Rights Trust. Research on Solomon Islands' international legal obligations benefited from the United Nations Treaty Collection database²⁰ and the website of the Office of the High Commissioner for Human Rights.²¹ Research on Solomon Islands laws, including the Constitution and national legislation, consisted of reviewing primary sources, accessed via the online database maintained by the Pacific Islands Legal Information Institute.²² Research on government policies was undertaken through review of state reports to the UN treaty bodies and documents gathered from government websites.

In order to ensure the accuracy of the report's findings and conclusions, a draft of this report was exposed to a validation process. Between May and October 2014, SPC-SI and SPC RRRT presented and discussed a draft of the report with interested parties from civil society, government, academia, the media and other fields. In these meetings, and in correspondence thereafter, the report was subjected to critical evaluation by a range of stakeholders, with the aim of validating its findings and conclusions. The comments, criticisms and other feedback from these stakeholders were incorporated into the draft prior to publication.

As part of its validation process, on 26 August 2014, SPC convened a consultation meeting to engage with representatives of government ministries and other stakeholders. Representatives from the Ministry of Home Affairs, the Ministry of Justice and Legal Affairs, the Ministry of Public Service, the Ministry of Education and Human Resource Development, the Ministry of Commerce, the Ministry of Development, Planning and Aid Coordination and the Ministry of Fisheries and Marine Resources, together with representatives from the Constitutional Reform Unit in the Office of the Prime Minister and Cabinet, the Law Reform Commission and the Solomon Islands Correctional Services participated in this meeting. During the meeting, participants were given an

20 United Nations, *United Nations Treaty Series Online Collection*, available at: <http://treaties.un.org/pages/UNTSONline.aspx?id=1>.

21 Office of the High Commissioner for Human Rights, available at: <http://www.ohchr.org/EN/Pages/WelcomePage.aspx>.

22 Pacific Islands Legal Information Institute, *Pacific Law Databases: Solomon Islands*, available at: <http://www.paclii.org/databases.html#SB>.

opportunity to review and comment on the findings and conclusions in Parts 2 and 3 of the report, providing updates, correcting inaccuracies or informing the partners of additional relevant facts. The results of this consultation meeting, together with all other feedback from the validation process, were taken into account during the finalisation of this report. In addition, in the interests of balance, we have sought to include the government's perspective on the issues discussed in the report, based on policies and public statements, including in particular official reports to UN treaty bodies, wherever relevant.

Scope and Limitations of the Report

It is not possible for any report to provide an exhaustive account of discrimination and inequality in a given country, and this report is no exception. The reality of discrimination and inequality is such that experiences are as many and varied as the population of Solomon Islands itself. Each person will have their own experiences of discrimination and inequality, arising in different areas of life, in different circumstances, in interaction with different persons, institutions or groups and as a result of any aspect of their identity, or any combination of these aspects.

For these reasons, the aim of Part 2 of this report is to provide a broad overview of the principal patterns of discrimination and inequality felt to be most significant in the national context. The report does not address the experiences of all categories or groups of people in all areas of life. These omissions should not be interpreted as an indication that there is no disadvantage in the omitted areas, or in respect to the omitted groups. Rather, the decision not to include an assessment of discrimination or inequality in a particular area or for a particular group was motivated simply by a lack of evidence during the desk and field research stages of producing this report. Analysis of certain types of discrimination, notably the ones suffered by children, is interwoven in the report, rather than presented separately. The decision to not devote separate sections to these groups is motivated not by their lesser significance in the country context, but by our opinion that, from the point of view of equality and non-discrimination law, discrimination against these groups appears to be strongly defined by one or more of the major protected characteristics covered in the report, particularly gender and ethnicity. For example, the discrimination against girls from a particular province is better understood through the prism of ethnicity and gender, rather than age.

As noted above, the research for this report was seriously constrained by a lack of disaggregated statistical data pertaining to the situation of certain groups, and certain areas of life. Consequently, certain issues, which would usually fall within the scope of a report addressing inequality and discrimination, do not feature in the report at all. Further, the absence of disaggregated data in relation to certain areas of life, such as housing, education, employment, criminal justice, etc., has limited the extent to which the authors have been able to discuss inequalities in all areas of life for every group we have covered in the report. For example, while the report discusses the experiences of some groups in the education system, or employment, it has not been possible to examine all groups' experiences in these areas of life.

1.3 Country Context

Solomon Islands, an archipelago in the South Pacific Ocean, situated to the east of Papua New Guinea and the northeast of Australia, consists of approximately 997 islands.²³ Solomon Islands is among the smaller countries in the world, both in terms of size and population. The total area of the country is 30,407 km²²⁴ and the population is approximately 750,000.²⁵ The capital city, Honiara, located on the largest of the islands, Guadalcanal, has a population of approximately 65,000.²⁶ The country is divided into nine provinces – Central, Choiseul, Guadalcanal, Isabel, Makira-Ulawa, Malaita, Rennell and Bellona, Temotu, and Western, plus the capital territory.²⁷

23 Solomon Islands National Statistics Office, *2009 Population and Housing Census: National Report*, 2009, p. 1, available at: <http://www.spc.int/prism/solomons/index.php/sinso-documents?view=download&fileId=59>.

24 *Ibid.*

25 The total enumerated population at the 2009 census was 515,870, though the National Statistics Office estimated that there had been an “8.3% undercount, and the population size stood more likely at 558 thousand at the time of the Census”. (Solomon Islands National Statistics Office, above note 23, p. 6). The United Nations estimated the population in 2013 to be 561,231. (United Nations Department of Economic and Social Affairs, Population Division, *Population, Development and the Environment 2013*, 2013, available at: <http://www.un.org/en/development/desa/population/publications/development/pde-wallchart-2013.shtml>). In 2015, a report prepared by the Solomon Islands National Statistics Office stated that the “projected 2015 population based on the 2009 census is 762,412” (Gaiafuna, J., *Solomon Islands: Country Report*, Solomon Islands National Statistics Office, 2015, p. 2, available at: http://www.unsiap.or.jp/e-learning/el_material/PSS/1507_Informal/cr/SOL_cr.pdf).

26 See above, note 23, p. 7.

27 *Ibid.*, p. 2.

The overwhelming majority of the Solomon Islands population is Melanesian, constituting approximately 95.3% of the population.²⁸ There are a number of small ethnic minority populations including Polynesians (3.1%) and Micronesians (1.2%).²⁹ Melanesians constitute the majority in all but one of the ten provinces, with Rennell and Bellona being the only one with a Polynesian majority.³⁰ This said, the country's relative racial homogeneity belies deeper ethnic and cultural divisions. Solomon Islanders identify strongly with others on the basis of *wantok* – groups defined by shared linguistic and cultural heritage. Similarly, people identify strongly with their place of origin, defining themselves as part of a community with others residing on the island from which they originate. The number of refugees, asylum seekers and stateless persons is very low: the Office of the United Nations High Commissioner for Refugees (UNHCR) estimated that there were just three asylum seekers in 2014 and no refugees or stateless persons.³¹

Although the country's official language is English, only 1%-2% of the population speak it, the *lingua franca* being Solomons Pijin.³² A Draft Constitution published in 2013 would have made both English and Pijin official languages with other languages “used where appropriate”; and would require that “[a]ll indigenous vernaculars of Solomon Islands shall be equally maintained, respected and promoted”.³³ According to the 2009 census, Solomon Islands is “characterised by a rich linguistic diversity”.³⁴ Approximately 120 indigenous languages are spoken across Solomon Islands.³⁵

Christianity and, in particular Protestantism, is the most widely professed religion in Solomon Islands. Almost three quarters (73.4%) of the population is Protestant, made up of the Church of Melanesia (31.9%), South Seas

28 *Ibid.*, p. 83.

29 *Ibid.*

30 *Ibid.*

31 United Nations High Commissioner for Refugees, *2015 UNHCR regional operations profile – East Asia and the Pacific*, 2015.

32 See above, note 23, p. 3.

33 Draft Federal Constitution of Solomon Islands 2013, section 5(1) and 5(2).

34 See above, note 23, p. 3.

35 United Nations Human Rights Council, Working Group on the Universal Periodic Review, *National Report: Solomon Islands*, UN Doc. A/HRC/WG.6/11/SLB/1, 15 April 2011, Para 9.

Evangelicals (17.1%), Seventh-Day Adventists (11.7%), the United Church (10.1%), and the Christian Fellowship Church (2.5%).³⁶ 19.6% of the population is Roman Catholic, other Christians account for 2.9% of the population, and the remaining 4.1% stated adherence to other religions or none.³⁷

World Bank estimates of Solomon Island's GDP for 2014 stood at around \$1.16 billion (in current US\$),³⁸ placing the country in the lower middle income group. GDP per capita in the same year was \$2,024.2.³⁹ In 2014, the Human Development Index value for Solomon Islands was 0.506, placing it 156th out of 188 countries ranked.⁴⁰

As these figures indicate, Solomon Islands is not a rich country and this fact is reflected in the fields of employment, education and healthcare. The country suffers from high unemployment: according to the 2009 census, while 63% of the population aged 12 and over was economically active, only 24% of the population was in employment.⁴¹ According to the same census, "[t]he bulk of the population depends on agriculture, fishing, and forestry for part of its livelihood", while "[m]ost manufactured goods and petroleum products must be imported".⁴²

School enrolment rates increased significantly between 1999 and 2009,⁴³ though data published by UNESCO indicates that net enrolment at both primary and secondary levels remains low: net enrolment in primary education was 93.2% in 2012, while net enrolment at secondary level was 42.2% in the

36 See above, note 23, p. 81.

37 *Ibid.*

38 World Bank, *Data: Solomon Islands*, 2015, available at: <http://data.worldbank.org/country/solomon-islands>.

39 World Bank, *World Development Indicators: GDP per capita*, available at: <http://data.worldbank.org/indicator/NY.GDP.PCAP.CD/countries>.

40 United Nations Development Programme, *Human Development Report 2015: Work for Human Development*, 2015, p. 210, available at: http://hdr.undp.org/sites/default/files/2015_human_development_report_1.pdf.

41 See above, note 23, p. 204.

42 *Ibid.*, p. 2.

43 *Ibid.*, p. xxviii.

same year.⁴⁴ UNESCO's most recent 2013 data indicates that only 71.5% of children enrolled in primary school completed that stage of their education, though 93.4% of those completing primary school made the transition to secondary school.⁴⁵

Inadequate access to health services in Solomon Islands is a widespread problem, especially for the population residing in the rural areas. Ninety nine percent of residents are not covered by any public or private health insurance scheme and due to a lack of financial means, local traditional healers are often consulted in place of a doctor.⁴⁶ The Health Profile of Solomon Islands produced by the World Health Organisation illustrates that health outcomes in the country are somewhat worse than other countries in the region. Life expectancy at birth is almost 69, which is above the global average, but below the regional average of 76, while life expectancy at age 60 is 17 years, equal to the global average but below the regional average of 21.⁴⁷ Under-five mortality is 30.1 per 1000 live births, which is significantly below the global average (45.6 per 1000 live births) but above the regional average (19.5 per 1000 live births).⁴⁸

Recent History

Undiscovered by non-inhabitants until the 16th century, Solomon Islands was colonised by the United Kingdom in the late 19th century. The southern Solomon Islands (Guadalcanal, Savo, Malaita, San Cristobal and the New Georgia group) became a British Protectorate in 1893 and by the beginning of the 20th Century protectorate status had been extended to cover the whole of the Islands.⁴⁹ Solomon Islands became self-governing in 1976 and achieved inde-

44 United Nations Educational, Scientific and Cultural Organisation Institute for Statistics, *Country Profiles: Solomon Islands*, available at: <http://www.uis.unesco.org/DataCentre/Pages/country-profile.aspx?code=SLB®ioncode=40515>.

45 *Ibid.*

46 *Ibid.*, p. 50.

47 World Health Organisation, *Solomon Islands: Health Profile*, 2015, available at: <http://www.who.int/gho/countries/slb.pdf?ua=1>.

48 See above, note 40, pp. 240-1.

49 Dupont, J., *The Common Law Abroad*, Fred B. Rothman Publications, 2001, p. 1210; Roberts-Wray, K., *Commonwealth and Colonial Law*, Stevens & Sons, 1966, p. 897.

pendence in 1978 with the Solomon Islands Act 1978,⁵⁰ though Elizabeth II remained the head of state as Queen of Solomon Islands. On gaining independence, Solomon Islands immediately joined the Commonwealth of Nations.

In October 1978, only three months after independence, a group of people from Guadalcanal, the country's biggest island, formed a movement to demand the establishment of a "state government" for the province of Guadalcanal. In 1988, another petition was submitted to the government by Guadalcanal people, demanding, among other things, compensation for the deaths of a number of indigenous people, the repatriation of illegal settlers coming mainly from the neighbouring island of Malaita and the reduction of internal migration, reiterating the call for adoption of a "state government".

In the late 1990s, Tensions between the population of Guadalcanal and recent migrants from Malaita over jobs and land rights erupted into violence. During the period 1998-2003, the country experienced armed internal conflict between these different groups known as "the Tensions". In 1999, while Malaitan settlers were being evicted from Guadalcanal, the 1988 Guadalcanal petition was resubmitted with similar demands, although adapted to the new circumstances.⁵¹ The government's failure to find a solution to the grievances of Guadalcanal people and to the underlying ethnic tension resulted in the creation of an armed group, initially called the Guadalcanal Revolutionary Army, and later the Isatabu Freedom Movement (IFM). This group violently harassed settlers and forced up to 20,000 people in and around Honiara to flee to other parts of the country.⁵² In 2000, the Malaita Eagle Force (MEF) was formed in response to the activities of the IFM.

The government proved to be inadequate to halt violence and foster peace talks and several summits and other attempts to establish peace agreements failed. On 5 June 2000, the MEF raided a police armoury in Honiara, seized the capital and overthrew the national government. Fifteen days later, a new

50 Solomon Islands Act 1978 (c.15).

51 Solomon Islands Truth and Reconciliation Commission, *Solomon Islands Truth and Reconciliation Commission: Final Report*, February 2012, Vol. 1, p. 55, available at: <http://pacificpolicy.org/files/2013/04/Solomon-Islands-TRC-Final-Report-Vol1.pdf>.

52 Amnesty International, *Solomon Islands: No Peace in Paradise*, NS 93 AI Index No: ASA 43/01/00, 2000.

government was elected. In October 2000, the national government, the MEF, the IFM and the various provincial governments signed the Townsville Peace Agreement, brokered by Australia and New Zealand. Malaita and Guadalcanal provinces were granted more autonomy. Nevertheless, after the Townsville Peace Agreement, there followed a long period of violence and lawlessness in Honiara and the surrounding area, which lasted until 2003.

Following the failure of a range of reconciliation activities to restore stability, the government requested military assistance from Australia, New Zealand and other Pacific Island countries through the Pacific Islands Forum, which arrived in the form of the Regional Assistance Mission to the Solomon Islands (RAMSI). RAMSI focused its efforts on restoring law and order, re-establishing the machinery of government and improving economic governance.⁵³ RAMSI completed its mandate in 2013 with a phased withdrawal of troops, the last units leaving Solomon Islands in September of that year.⁵⁴

In 2007, Derek Sikua was elected Prime Minister. In 2009, under his leadership, a Truth and Reconciliation Commission (TRC), based on the one established in post-Apartheid South Africa, was formed. The TRC published its report in 2012.⁵⁵ The Commission concluded that an internal armed conflict had occurred between 1 January 1998 and 23 July 2003 and developed through different stages, of which only the first (from 1998 to 5 June 2000) could be classified as “ethnic tension”. The Commission registered 5721 human rights violations, 200 deaths, 212 cases of abduction, 95 cases of illegal detention, 1413 cases of torture and ill treatment, 63 statements about sexual violence, 1882 testimonies of forcibly displaced families, and 1856 cases of property violation.⁵⁶ “The Tensions” also affected the provision of essential services such as health and education.⁵⁷

53 Regional Assistance Mission to Solomon Islands, *Rebuilding a Nation: Ten Years of the RAMSI-Solomon Islands Partnership*, 2013, p. 6, available at: <http://www.ramsi.org/wp-content/uploads/2014/07/Rebuilding-a-Nation-RAMSI-EBook-185ca1c0-4b11-4ea0-86ac-eb-0110e15b66-0.pdf>.

54 Regional Assistance Mission to Solomon Islands, *About RAMSI: Military participation in RAMSI*, available at: <http://www.ramsi.org/works/military>.

55 See above, note 51, available at: <http://pacificpolicy.org/2013/01/solomon-islands-trc-final-report>.

56 *Ibid.*, Vol. 3, p. 737, available at: <http://pacificpolitics.com/files/2013/04/Solomon-Islands-TRC-Final-Report-Vol-3.pdf>.

57 *Ibid.*, Vol. 3, p. 648.

The Commission found that there were a number of underlying and proximate causes for the outbreak of violence, “such as the colonial heritage, lack of national unity, disagreement over land issues, uneven development, mismanagement of successive governments, economic crisis, and/or the weakening of traditional authority structures and law enforcement mechanisms”.⁵⁸ However, one of the key causal factors was the growing resentment among the Guadalcanal people towards migrants from Malaita. This resentment had mounted as economic migration between the islands led to perceptions that Malaitans were over-represented in government and business, and that their immigration had increased pressure on housing and land in Guadalcanal.⁵⁹

In its report, the TRC made two sets of recommendations. The first referred to outstanding issues that had come about as a result of “the Tensions”, whilst the second urged the government to undertake institutional reforms of the governance system. Among the recommended institutional reforms, the TRC urged the government to undertake constitutional reform, land reform, and reform of the justice system (including the signature and/or ratification of the many international human rights treaties to which Solomon Islands is not yet state party). It also recommended that the government restore the law enforcement agencies, introduce programmes to address the consequences of the conflict on people’s health, restructure and reform the education system, and establish a system to effectively support the fight against corruption.⁶⁰

1.4 Government and Politics

As noted above, the Constitution of Solomon Islands was adopted in 1978; it was drafted by the colonial administration at the time of the country’s independence. In recent years, a number of proposed new Constitutions have been drafted, but to date, many remain unpublished and none has been adopted.

According to the 1978 Constitution, Solomon Islands is a constitutional monarchy, where the Monarch is represented by the Governor-General of the So-

58 *Ibid.*, Vol. 1, p. 58, available at: <http://pacificpolicy.org/files/2013/04/Solomon-Islands-TRC-Final-Report-Vol1.pdf>.

59 *Ibid.*, pp. 147–151.

60 *Ibid.*, Vol. 3, p. 796.

lomon Islands. The Constitution recognises the Queen as Head of State,⁶¹ and establishes the office of the Governor-General,⁶² to be appointed by the Head of State in accordance with an address from Parliament. The Governor-General exercises authority on behalf of the Head of State.⁶³ The Constitution mandates the Governor-General to act in accordance with the advice of the Cabinet or of a Minister acting under the general authority of the Cabinet, except where otherwise stated in the Constitution.⁶⁴

The Constitution further establishes the office of Prime Minister, to be elected by the National Parliament,⁶⁵ and allows for the establishment of further Ministries, which may be prescribed by the Governor-General, in accordance with the advice of the Prime Minister.⁶⁶ The Governor-General possesses the power to remove the Prime Minister from office in the event of a vote of no-confidence. In such circumstance, Members of Parliament are required to meet in order to elect a new Prime Minister.⁶⁷ In the event of the death of the Prime Minister, the Governor-General, after consultation with Ministers, possesses the power to appoint one of their number to perform the Prime Minister's functions, until a new person is elected to the office.⁶⁸

The Prime Minister and the other Ministers form the Cabinet of the Solomon Islands.⁶⁹ The Constitution mandates that the Cabinet advise the Governor-General in the government of the Solomon Islands and that it is responsible to the Parliament for any advice given.⁷⁰ The Governor-General may, in turn, acting in accordance with the advice of the Prime Minister, assign responsibility for any business of Government to the Cabinet.⁷¹ The Constitu-

61 Constitution of the Solomon Islands 1978, section 1.

62 *Ibid.*, section 27.

63 *Ibid.*, section 30(2).

64 *Ibid.*, section 31(1).

65 *Ibid.*, section 33(1).

66 *Ibid.*, section 33(2).

67 *Ibid.*, section 34(1).

68 *Ibid.*, section 34(5).

69 *Ibid.*, section 35(1).

70 *Ibid.*, section 35(2).

71 *Ibid.*, section 37.

tion also establishes the office of Attorney-General, who acts as legal advisor to the Cabinet.⁷²

The Constitution establishes a national legislature composed of a single chamber⁷³ and prescribes that Solomon Islands be divided into a number of constituencies, no less than thirty and no more than fifty,⁷⁴ each of which shall be represented by one Member of Parliament.⁷⁵ The current number of constituencies is fifty, the maximum.⁷⁶ The Constitution confers upon the Parliament the power to make laws⁷⁷ in the form of Bills which, when passed by the Parliament, are to be presented to the Governor-General for assent on behalf of the Head of State, in order to become law.⁷⁸ The Parliament may also, following certain procedures, pass a Bill for an Act of Parliament to alter certain provisions of the Constitution.⁷⁹ Such a Bill may not be passed unless it is supported on two separate readings in Parliament by the votes of at least three-quarters of the Members of Parliament.⁸⁰

In the most recent parliamentary elections, in November 2014, a total of six political parties secured representation in the national parliament, with the Democratic Alliance Party winning the largest number of seats – 7 out of 50. However, the move away from established political parties that had started in previous years continued, with independents and others collectively securing 32 parliamentary seats.⁸¹ As of January 2015, the Solomon Islands Election Commission had not published data on the total number of votes cast, the percentage of votes received by each party, or the turnout.⁸²

72 *Ibid.*, section 35(4).

73 *Ibid.*, section 46.

74 *Ibid.*, section 54(1).

75 *Ibid.*, section 47(2).

76 See Inter-Parliamentary Union, *Parline Database: Solomon Islands*, 2014, available at: http://www.ipu.org/parline/reports/2289_E.htm.

77 See above, note 61, section 59(1).

78 *Ibid.*, section 59(2).

79 *Ibid.*, section 61.

80 *Ibid.*, section 61(2).

81 See above, note 76; See also Solomon Islands Electoral Commission, *2014 National General Election Results*, available at: <http://www.siec.gov.sb/index.php/journalist/127-2014-national-general-election-results>.

82 Solomon Islands Electoral Commission, above, note 81.

Party	Seats
Democratic Alliance Party	7
United Democratic Party	5
People's Alliance Party	3
Solomon islands Party for Rural Advancement	1
Solomon Islands People First Party	1
Kadare Party of Solomon Islands	1
Independents and others	32
Total ⁸³	50

The political system is volatile, with new parties often forming ahead of elections and disbanding thereafter, as legislators switch allegiance. Political affiliation is driven largely by personality and clan identity rather than party loyalty.

Many current and former politicians have faced charges of corruption. In October 2012, former Prime Minister Danny Philip was found guilty of misconduct by the Leadership Code Commission for selling government property to his political supporter and Member of Parliament, Namson Tran.⁸⁴ Philip was fined 4,000 Solomon Islands dollars.

The highest court in the judiciary is the Court of Appeal. It has jurisdiction over appeals in civil and criminal matters and it is formed by a President, a number of Justices of Appeal appointed by the Governor-General, the Chief Justice and the judges of the High Court.⁸⁵ Beneath the Court of Appeal sits the High Court which hears appeals from lower courts but also has unlimited original jurisdiction in civil and criminal proceedings.⁸⁶ The lower courts comprise local courts (made up of community elders applying customary law and local by-laws, with limited civil and criminal jurisdiction),⁸⁷ magistrates'

⁸³ See above, note 76; see also Solomon Islands Electoral Commission, above note 81.

⁸⁴ Solomon Times Online, *Leadership Code Commission Fines Former PM*, *solomontimes.com*, 9 October 2012, available at: <http://www.solomontimes.com/news/leadership-code-commission-fines-former-pm/7305>.

⁸⁵ See above, note 61, section 85.

⁸⁶ *Ibid.*, section 77.

⁸⁷ Local courts are established under the Local Courts Act 1942 [Cap 19].

courts (with greater civil and criminal jurisdiction than local courts and with both original jurisdiction and appellate jurisdiction from local courts),⁸⁸ and the Customary Land Appeal Court⁸⁹ which hears cases relating to the use and ownership of indigenous customary land, on appeal from a local court.

Threats against judges and prosecutors have weakened the independence and rigour of the judicial system. Judges and prosecutors have also been implicated in scandals relating to corruption and abuse of power. A lack of resources has limited the government's ability to ensure lawyers for defendants and timely trials. Victims in rural areas have even less access to the justice system.

Chapter IX of the Constitution establishes an Ombudsman. Under Section 97, the Ombudsman is authorised to investigate the conduct of members of the public service, Police Force, Correctional Service, the government of Honiara City, provincial governments and such other bodies as provided for by Parliament, to ensure the elimination of arbitrary and unfair decisions.⁹⁰ Whilst the office has far-reaching powers to investigate complaints of official abuse and unfair treatment, it generally lacks funds to do so.

The human rights record of Solomon Islands is not good. In 2015, Freedom House rated Solomon Islands as only "partly free", with scores of 3 for civil liberties and 3 for political rights. Solomon Islands was, however, included on the Freedom House list of electoral democracies.⁹¹

88 Magistrates' courts are established under the Magistrates' Courts Act 1962 [Cap 20].

89 Allen, M., Dinnen, S., Evans, D., and Monson, R., *Justice Delivered Locally: Systems, Justice and Innovations in Solomon Islands*, The World Bank, Research Report, July 2013, available at: http://siteresources.worldbank.org/INTJUSFORPOOR/Resources/JDL_July_2013_Final_Online_Report.pdf.

90 See above, note 61, section 97.

91 Freedom House, *Freedom in the World 2015: A Return to the Iron Fist*, p. 8, available at: https://freedomhouse.org/sites/default/files/01152015_FIW_2015_final.pdf.

2. PATTERNS OF DISCRIMINATION AND INEQUALITY

This part of the report discusses the principal patterns of discrimination and inequality which affect people in Solomon Islands. It is based on original direct testimony collected from a wide range of individuals; interviews with academics and experts; analysis of existing research undertaken by international organisations, government bodies, non-governmental organisations and academics; news reports and statistical data.

This part does not seek to provide an exhaustive picture of all patterns of discrimination which prevail in Solomon Islands. Rather, it aims to provide an insight into what appear to be the most significant issues pertaining to those grounds upon which discrimination is most common, such as ethnicity, gender and disability. In respect of each ground, the report discusses the ways in which people experience discrimination and inequality in a range of areas of life, including as a result of discriminatory legislation; the actions of state actors; exposure to discriminatory violence and discrimination; and inequality in areas such as education, employment and access to goods and services.

The report discusses patterns of discrimination and inequality on grounds of, *inter alia*, **gender; ethnicity, wantok⁹² and language; place of origin; disability; sexual orientation; health status; citizenship; economic status;** and **religion or belief**. While there are clear differences between the problems experienced by those suffering discrimination and inequality on each of the grounds covered – and unique problems affecting some groups – the research identifies a number of common patterns and inter-relationships between the disadvantages experienced on different grounds.

A number of key themes can be identified as central to the patterns of discrimination which affect people in Solomon Islands. The first is the **pervasive influence of traditional cultural attitudes towards sex and gender** – including attitudes formed as a result of the conservative Christianity practiced by the overwhelming majority of the population – which results in restrictions limiting the ability of different groups to participate fully in society. Women, despite constituting half of the population of Solomon Islands, are largely invisible in public life, a reflection of the “bigman” model of social or-

92 The notion of shared linguistic and cultural heritage.

ganisation. A range of laws reflect patriarchal principles, discriminating directly against women. The high level of violence against women – and the social acceptability of such violence – demonstrate the dominating influence of patriarchal and sexist attitudes in Solomon Islands society. Traditional attitudes encourage women to stay in the home, with women’s participation in education and employment, as well as political life, negatively affected as a result. These attitudes have also meant that the criminalisation of same-sex sexual activity – even if unenforced in practice – faces little opposition, forcing lesbian, gay and bisexual people to hide their sexual orientation or risk facing stigma and prejudice.

The second key theme identified by this part of the report is the importance of group identification, in the form of both the **deeply-engrained wantok system** in which people identify by, and build relationships and networks based on, shared language, tradition and geographic origin, and in the form of identification by **place of origin**. The population of Solomon Islands tends to identify first and foremost by their *wantok*, then by their island or province, and finally – and most weakly – by their identity as a Solomon Islander. The *wantok* system pervades all areas of life, both public and private. There is evidence of preferential treatment by state and non-state actors of members of their own *wantok*, resulting in discrimination against others in education and employment. Identification by place of origin – that is, the island or province where a person or their parents were born – is connected to *wantok* and is another decisive factor in people’s experience and understanding of discrimination and inequality. The civil conflict and unrest commonly known as “the Tensions” which occurred between 1998 and 2003 had their origins in a complex combination of factors. However, one driver was the perception of disparities in treatment, investment and development between different islands which created animosity and eventually hostility between people from different islands. Whilst the violence which was commonplace during “the Tensions” has now ended, to some extent the underlying animosity between these different groups remains.

Another manifestation of the negative impact of traditional norms is found in the treatment of persons with disabilities. **Stigma and prejudice about disability** is a serious problem, with disability seen as a mark of shame and a tendency to focus on persons with disabilities as being in need of charity and care, rather than support to enable them to participate in society on an

equal basis with others. The application of a medical or “charitable” model to issues facing persons with disability, as opposed to a social model focused on removing barriers to access and participation, has profound effects on the lives of persons with disabilities. Few children with disabilities attend school, limiting their chances in later life significantly, and the government has made little, if any, effort to support persons with disabilities in employment, access to buildings and transport, or other areas of life.

2.1 Discrimination and Inequality affecting Women

Solomon Islands acceded to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) in 2002. As such, the state has obligated itself to “condemn discrimination against women in all its forms, [and] agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women”.⁹³ Nevertheless, discrimination against women in Solomon Islands is widespread, affecting the ability of women to participate on an equal basis in many areas of life. The clearest and most severe manifestations of this discrimination come in the form of laws which discriminate against women both directly and indirectly and in the high levels of gender-based violence, both of which are legitimised by deeply negative cultural attitudes and stereotypes about the role and position of women in society.

Cultural Attitudes and the Position of Women in Society

Negative cultural attitudes and traditions governing women’s place in society play a significant role in causing and perpetuating discrimination, including gender-based violence. In its 2013 report to the Committee on the Elimination of All Forms of Discrimination against Women (CEDAW Committee), the Government of Solomon Islands gave a frank assessment of the prevailing cultural perceptions of women in society:

In Solomon Islands tradition the domains of authority for men and women was defined. However, power and control largely rest with men. Women have restricted

93 Convention on the Elimination of All Forms of Discrimination against Women, G.A. Res. 34/180, 1979, Article 2.

roles in leadership and decision making processes at the family, tribal and community levels. Consequently, the developed stereotype is that leadership is the domain of men. This stereotyping is reflected in the current process of nomination and election of women to national leadership roles in National and Provincial legislatures. It is also reflected in other areas such as employment, education, health and justice systems.

Women in Solomon Islands are considered to have primarily domestic and productive roles while men have responsibilities outside the home (...) While roles of women are changing due to factors such as education and the cash economy, however, generally the role of women still tends to be domestic responsibilities.⁹⁴

As this indicates, communities in the Solomon Islands are highly patriarchal; men are heads of both households and communities.⁹⁵ The report produced by the Truth and Reconciliation Commission (TRC) which investigated “the Tensions” of 1998–2003 relates that society has traditionally been dominated by strong male figures, known as the “bigman”:

Traditional societies consisted of autonomous clan-based communities usually headed by a male leader who gained individual status by the personal acquisition and application of private wealth. The prototype of Melanesian politics is the “bigman”, a particularly influential member of a community who assumed leadership through ceremonial exchange and feasting. His position is not hereditary; he held no title and usually lacked any conspicuous display of social distinction, although everyone in the community was

94 Committee on the Elimination of Discrimination against Women, *Consideration of reports submitted by States parties under article 18 of the Convention: Initial to third periodic reports: Solomon Islands*, CEDAW/C/SLB/1-3, 2013, Paras 119–120.

95 Solomon Islands Truth and Reconciliation Commission, *Final Report*, 2012, Vol. 3, pp. 543-544, available at: <http://pacificpolitics.com/files/2013/04/Solomon-Islands-TRC-Final-Report-Vol-3.pdf>.

*fundamentally aware of the importance of this “invisible chieftaincy”.*⁹⁶

In contrast to the role of men as leaders and decision-makers, women have traditionally been largely responsible for the daily functions of household life, being involved in domestic duties, caring for children, food production and caring for the sick and elderly. Solomon Islands includes some communities which are matrilineal (land being inherited down the female line), though this does not translate into higher status for women. Men hold decision making power in relation to land use and development in both matrilineal and patrilineal societies.⁹⁷

Women were traditionally highly valued in communities and afforded status for the role that they played and the work that they did.⁹⁸ Today, women are more involved in political, civil, economic and church activities, but despite this, they continue to face discrimination in many aspects of life and are largely excluded from decision making processes. Gender roles are culturally structured and maintained, and positively reinforced from infancy, with children raised accordingly.⁹⁹

The Equal Rights Trust found evidence that in some cases, these traditional stereotypes about the respective roles of men and women translate into misogynistic views of women. For example, during a focus group discussion held by SPC-SI in Valesala, one participant commented on male attitudes towards women, summarising it as:

*You women are here on earth to give birth and work for us men, and we are your bosses; so do as we say.*¹⁰⁰

96 *Ibid.*, Vol. 1, p. 34, available at: <http://pacificpolitics.com/files/2013/04/Solomon-Islands-TRC-Final-Report-Vol1.pdf>.

97 *Ibid.*, Vol. 3, pp. 543–544.

98 *Ibid.*, Vol. 3, pp. 545–546.

99 Paina, D.T., “Peace-making in Solomon Islands: The Experience of the Guadalcanal Women for Peace” Movement, *Development Bulletin*, Issue 53, 2000.

100 Equal Rights Trust focus group, 15 June 2013, Valesala, Guadalcanal province.

Likewise, participants in a focus group in Kolomola, Isabel province, spoke of the way in which men treated women as “slaves” and “child-bearers”,¹⁰¹ whereas participants in Valesala, Guadalcanal stated that the violence and discriminatory treatment experienced by women and girls in their village was never reported because women believed that it is acceptable for men to treat them however they wished.¹⁰² A focus group of women in Hovikoilo, Isabel province, spoke of the view, held by some elders and chiefs, that violence against women is a form of correction and therefore permitted behaviour.¹⁰³ In the context of such deeply negative cultural attitudes towards women, discrimination against them, both in law and in practice, remains widespread.

Discriminatory Laws

As a state party to CEDAW, Solomon Islands is obligated to “embody the principle of the equality of men and women in their national constitutions or other appropriate legislation if not yet incorporated therein and to ensure, through law and other appropriate means, the practical realization of this principle”.¹⁰⁴ Yet the legal and policy framework in Solomon Islands does not provide effective protection from gender discrimination. Article 15 of the Constitution makes discrimination on the grounds of sex unlawful, but the provision is narrow in scope and subject to a number of exclusions which limit the extent of the protection which women enjoy.¹⁰⁵ There is no specific legislation prohibiting discrimination against women and no general, comprehensive anti-discrimination law.¹⁰⁶

Moreover, a number of laws enshrine patriarchal principles and contain provisions which discriminate both directly and indirectly against women. In its 2014 Concluding Observations, the CEDAW Committee noted, *inter alia*, that Solomon Islands retains discriminatory provisions against women in the

101 Equal Rights Trust focus group with women, 14 June 2013, Kolomola, Isabel province.

102 See above, note 100.

103 Equal Rights Trust focus group with women, 14 June 2013, Hovikoilo, Isabel province.

104 See above, note 93, Article 2(a).

105 See section 3.2.1 of this report for further discussion of the constitutional right to non-discrimination.

106 See section 3.2 of this report for further discussion of non-discrimination provisions in Solomon Islands law.

Penal Code, the Islander Divorce Act, the Affiliation, Separation and Maintenance Act, the Labour Act and the Citizenship Law.¹⁰⁷

The CEDAW Committee has asserted that state parties “should ensure that laws against family violence and abuse, rape, sexual assault and other gender-based violence give adequate protection to all women, and respect their integrity and dignity”.¹⁰⁸ In this light – and in particular in light of the high levels of violence against women which are discussed immediately below – section 136 of the Penal Code, which provides an excessively narrow definition of rape, is a cause for significant concern. It states that:

*Any person who has unlawful sexual intercourse with a woman or girl, without her consent, or with her consent if the consent is obtained by force or by means of threats or intimidation of any kind, or by fear of bodily harm, or by means of false representations as to the nature of the act, or in the case of a married woman, by impersonating her husband, is guilty of the felony termed rape.*¹⁰⁹

This definition does not appear broad enough to include certain forms of sexual violence against women which can constitute rape and therefore does not go far enough so as to preclude such acts of sexual violence as a form of discrimination against women. In particular, the definition appears to be limited to penetration by the penis,¹¹⁰ and does not explicitly prohibit marital rape, though this has been compensated for by recent jurisprudence on the application of the common law definition of rape.¹¹¹

107 Committee on the Elimination of Discrimination against Women, *Concluding observations on the combined initial, second and third periodic reports of Solomon Islands*, CEDAW/C/SLB/CO/1-3, 7 November 2014, Paras. 10(c) and 44.

108 Committee on the Elimination of Discrimination against Women, *General Comment 19: Violence against Women*, UN Doc. A/47/38 at 1, 1992, Para 24(b).

109 Penal Code 1978, section 136.

110 Christian Care Centre et al., *NGO Shadow Report on the Status of Women in Solomon Islands, Initial, Second and Third Report (2002-2012)*, 2012, p. 9, available at: <http://www2.ohchr.org/English/bodies/cedaw/docs/ngos/SolomonIslandsJointNGOCEDAWShadowReport.pdf>.

111 *Regina v Gua* [2012] SBHC 118; HCSI-CRC 195 of 2011 (8 October 2012). See discussion at section 3.4 of this report, below.

Section 158 of the Penal Code makes it an offence punishable by life imprisonment for a woman to attempt to procure her own miscarriage by any means.¹¹² Measures which prohibit abortion or unduly restrict women's access to it violate a number of international human rights provisions, including the right to non-discrimination on grounds of sex in access to healthcare.¹¹³

Section 58 of the Evidence Act governs the admission of evidence in relation to sexual experience in cases of "offences against morality".¹¹⁴ The removal of the corroboration rule, requiring victims of sexual violence to produce evidence, as well the creation of section 58(3), which makes clear that evidence of sexual experience cannot be used for the purpose of challenging a complainant's truthfulness, establishing their consent or for any other purpose not permitted by the court,¹¹⁵ were highlighted and praised by the UN Special Rapporteur on violence against women in 2012.¹¹⁶

However, under Section 58(2) of the Act, evidence of the "sexual experience" of a complainant can be introduced in proceedings where it "relates directly to the acts, events, or circumstances which constitute the offence" or where it "is of such direct relevance to facts in issue (...) that it would be contrary to the interest of justice to exclude it".¹¹⁷ This provision has been criticised by civil society organisations for allowing the continued use of the past sexual history of a complainant as evidence in sexual offence cases.¹¹⁸ The corroboration rule has not completely fallen out of use. In a recent judgement concerning rape, one judge reiterated that "there is no corroboration [when women report] because women tend to lie".¹¹⁹

112 See above, note 109, section 158.

113 For a detailed discussion of the international human rights framework as it relates to restrictions on abortion, see Knox, V., "Abortion in the Americas: Non-discrimination and Equality as Tools for Advocacy and Litigation", *The Equal Rights Review*, Vol. 9, 2012, pp. 25–33.

114 Evidence Act 2009, section 58.

115 *Ibid.*, section 58(3).

116 UN Human Rights Council, *Report of the Special Rapporteur on violence against women, its causes and consequences, Addendum: Mission to Solomon Islands*, 22 February 2013, A/HRC/23/49/Add.1, Para 43.

117 See above, note 114, section 58(2).

118 See above, note 110, p. 9.

119 *Ibid.*

Section 18(1) of the Islanders Divorce Act holds that a husband who has filed a petition for divorce or separation may claim damages from any person found to have committed adultery with the wife of the petitioner.¹²⁰ There is no corresponding provision in the legislation giving the same right to women whose husbands have committed adultery. Furthermore, such a provision arguably objectifies women, appearing to treat the wife as a part of the husband's property, in allowing him to claim damages in this way.

The Affiliation Separation and Maintenance Act provides, at section 13, for maintenance payments to be paid to a wife for the benefit of children committed to her custody.¹²¹ However, section 17 of the same Act allows a court to discharge such an order if the wife commits "an act of adultery."¹²² It appears then that women may have to "choose between retaining the payments and entering into another relationship".¹²³

As discussed in greater detail below, the Labour Act does not recognise certain female-dominated areas of employment, such as informal employment and employment as a domestic worker, as possessing full employment rights, thus indirectly discriminating against women and leaving them exposed to exploitation. In addition, section 39 of the Act prohibits the employment of women at night, notwithstanding several listed exceptions. Furthermore, section 40 of the Act explicitly prohibits the employment of women in mines. Such restrictions constitute unnecessary restrictions to work for women and undermine their freedom to choose employment, something which has been criticised by the CEDAW Committee in respect of other states.¹²⁴

The Citizenship Act 1978 contains numerous discriminatory provisions concerning the acquisition, transmission, retention and loss of nationality for women. Section 11(1) of the Act, as amended in 1986, states that:

120 Islanders Divorce Act 1960, section 18(1).

121 Affiliation Separation and Maintenance Act 1971, section 13.

122 *Ibid.*, section 17.

123 International Finance Corporation, *Solomon Islands, Gender and Investment Climate Reform Assessment*, January 2010, p. 12, available at: http://www.ifc.org/wps/wcm/connect/648b35804d7381d596a5b748b49f4568/IFC_GenderICReformAssessments_SolomonIslands.pdf?MOD=AJPERES.

124 See, for example, Committee on the Elimination of Discrimination against Women, *Concluding Observations: Tajikistan*, UN Doc. CEDAW/C/TJK/CO/4-5, 29 October 2013, Para 25.

[W]here a woman, who obtained citizenship by virtue of the provisions of section 7, is divorced under a decree of court, subsequently remarries a non-citizen, she shall be deemed to have renounced her citizenship, unless, on the date of the subsequent marriage she had ordinarily been resident in Solomon Islands for a period of ten years.

No such parallel provision exists for men upon remarriage of a non-citizen, and as such the provision constitutes direct gender discrimination. In addition, foreign women can apply for nationality after two years of marriage only with the consent of the husband.¹²⁵ Women cannot transmit their nationality to jointly adopted children¹²⁶ and only male spouses can apply on behalf of their children for acquisition of nationality through naturalisation.¹²⁷

Customary law also enshrines patriarchal norms, posing challenges for the realisation of women's rights. It has been noted that Solomon Islands, like many of its Pacific Island neighbours, faces the challenge of reconciling the competing notions of equality through human rights and custom, the latter often being "diametrically opposed" to the values underlying provisions designed to provide protection against discrimination.¹²⁸

Gender-based Violence

One of the most startling manifestations of negative cultural perceptions of women and their position in society is in the levels of gender-based violence and attitudes towards such violence. According to the report submitted to the CEDAW Committee by the Government of Solomon Islands:

The DHS [Demographic and Health Survey] demonstrated that both women and men accepted that partner violence was justified under some circumstances with 69% of women agreeing with at least one of the reasons asked as justification for violence against women.

125 Citizenship Act 1978, section 7(4)(b)(v).

126 *Ibid.*, section 6.

127 *Ibid.*, section 7(3).

128 Corrin Care, J., "Customary law and women's rights in Solomon Islands", *Development Bulletin*, no. 51, 2000, pp. 20-22.

This is compared to 65% of men who were of the view that partner violence is justified. For both men and women the most commonly accepted reason for domestic violence was neglecting the children (...) In 2009, the Solomon Islands Family Health and Safety Study: a study on violence against women and children (...) demonstrated a relatively high level of acceptability of violence against women. The majority of women (73%) believe that a man is justified in beating his wife under some circumstances, in particular for infidelity and disobedience. The study also demonstrated frequent use of physical punishment to discipline women who are seen as transgressing their prescribed gender roles.¹²⁹

Levels of violence against women in Solomon Islands are among the highest in the Pacific region.¹³⁰ More than half of all women have experienced sexual violence by an intimate partner and 64% of women aged between 15 and 49 have experienced violence in the home.¹³¹ Violence occurs in both the family and the wider community and includes physical violence, sexual violence and coercion.¹³² In 2011, the Equal Rights Trust interviewed women about their experiences of discrimination. Violence against women was a repeated theme: all but one of the women interviewed or trained by the Trust spoke of their experiences of physical and/or sexual violence from their partners as well as other men. The following extract from an interview with a woman in Marau, Guadalcanal province, is typical of this testimony:

As the time goes by, my husband started some of his abusive ways (...) this was after we had our second child.

129 See above, note 94, Paras. 132–3.

130 Solomon Islands National AIDS Council (SINAC), *Solomon Islands Global AIDS Response Progress Report 2014*, 2014, p. 21, available at: http://www.unaids.org/sites/default/files/country/documents/SLB_narrative_report_2014.pdf.

131 Rasanathan, J. and Bhushan, A., *Gender-based Violence in Solomon Islands: Translating Research into Actions on the Social Determinants of Health (Draft Background Paper)*, 2011, p. 1, available at: http://www.who.int/sdhconference/resources/draft_background_paper4_solomon_islands.pdf.

132 *Ibid.*, pp. 1–3; see also UN News Centre, *Solomon Islands must act to end violence against women, UN rights expert says*, 2012, available at: <http://www.un.org/apps/news/story.asp/html/story.asp?NewsID=41575&Cr=Violence#.Uq81fvRdVqM>.

He went with his friends (...) drinking alcohol. When he arrives I welcome him and tell him that food is there. I don't know what happened, he suddenly slapped and kicked me. I fell down on the floor, crying with pain. He always did this to me; he even chased me with knife and stick. He did this when he got drunk, my children and I always find shelter with different family at time he went out drinking (sic).¹³³

Another woman from Arakao, Malaita province, spoke of the sexual demands placed upon her by her husband:

Sometimes I refuse to have sex with my husband to avoid pregnancy every year, and this is where the husband gets frustrated and threatens me with all sorts of talking, swearing, chasing me etc., until I give in and as a result I am pregnant every year.¹³⁴

In 2013, other women reported their experiences of violence perpetrated by intimate partners or other family members to the Secretariat of the Pacific Community and Equal Rights Trust researchers. A 27 year old female from Makira province told the Equal Rights Trust that “[t]eenage pregnancy is prevalent, rape is also evident and domestic violence is everywhere”.¹³⁵ A 22 year old mother from Western province, D., noted that the father of her child left her but continues to intimidate and harass her.¹³⁶ G. from Lavangu, Rennell and Bellona province, stated that her husband was the breadwinner and so controlled everything. He often beat her when under the influence of alcohol.¹³⁷ Another woman, R., from Pamua, Makira-Ulawa province, told our researchers that her husband often hit her and harassed her because of his jealousy.¹³⁸

133 Equal Rights Trust interview with Janet, 12 June 2011, Marau, Guadalcanal province.

134 Equal Rights Trust interview with Modesta, 25 June 2011, Arakao, Malaita province.

135 Equal Rights Trust interview with X., 15 May 2013, Makira-Ulawa province.

136 Equal Rights Trust interview with D., 13 July 2013, Western province.

137 Equal Rights Trust interview with G., 24 July 2013, Lavangu, Rennell and Bellona province.

138 Equal Rights Trust interview with R., 14 July 2013, Pamua, Makira-Ulawa province.

Many interviewees spoke of the influence of alcohol on their husbands in cases of domestic violence. Our researchers interviewed Christina, a 43 year old woman from Honiara who spoke about her experiences of domestic violence and sexual abuse when her husband had been drinking. Christina believed that she could not go to the police, as she would be beaten further by her husband.¹³⁹ Similarly Rose, 26, and Veronica, 38, both told Equal Rights Trust that their husbands would beat them when they were under the influence of alcohol and in the case of Veronica, sometimes drugs.¹⁴⁰ Rose noted that no action would be taken when the violence was reported to the police, because of the *wantok* system.¹⁴¹ Testimony from Brita, who was interviewed by Equal Rights Trust researchers, highlighted the adverse and potentially damaging psychological effects that such treatment can have. Brita said that she had often been beaten and verbally abused by her husband in the years since they were married, and spoke of how she has, on several occasions, attempted suicide.¹⁴²

Equal Rights Trust researchers noted that domestic violence does not exclusively occur between husband and wife. Edith, from Honiara, spoke of being a victim of violence and unfair treatment by her father,¹⁴³ and Maria Pirule spoke of how at the age of 14 she had been sexually harassed by her step-father after the death of her mother.¹⁴⁴ V, a 15 year old girl, told us that she ran away from her family because of her shame that the man that she called her father indecently assaulted her. She told her mother about the abuse, and her mother reported it to their village elder. The elder advised her to move out and live with other relatives. The matter was not reported to the police. V. worried that other girls in her family might experience the same abuse.¹⁴⁵

Women also experience violence outside the home. In 2012, the Special Rapporteur on violence against women, its causes and consequences stated:

139 Equal Rights Trust interview with Christina, 16 May 2013, Wind Valley, capital territory.

140 Equal Rights Trust interview with Veronica, 2 May 2013, Rifle Range, capital territory.

141 Equal Rights Trust interview with Rose, 20 May 2013, Wind Valley, capital territory.

142 Equal Rights Trust interview with Brita, 20 May 2013, Rifle Range, capital territory.

143 Equal Rights Trust interview with Edith, 20 May 2013, Tikopia Settlement, capital territory,

144 Equal Rights Trust interview with Maria Pirule, 16 May 2013, Habuasi, Guadalcanal province.

145 Equal Rights Trust interview with V., 26 July 2013, Rennell and Bellona province.

[I] received allegations of incest, gang rape and sexual exploitation by foreign workers in the logging and fishing industries. The increasing influx into poor and isolated communities of men who are employed by logging and fishing companies and who have access to money, and other goods that are inaccessible to locals, has created a “market” for sexual services, and has also resulted in cases of sexual exploitation and abuse.¹⁴⁶

There have been reports of women being brought from mainland China, Indonesia, Malaysia and the Philippines to serve in prostitution, largely in and near logging camps.¹⁴⁷ Amnesty International has reported that women living in the slums of Honiara are at particularly high risk of both physical and sexual violence. These women often walk long distances to get to water or the toilet, usually walking through the bush. This places them at especially high risk when they collect water in the early evening and when they are bathing or using the toilet at night.¹⁴⁸

The Solomon Islands Family Health and Safety Study, published in 2009, found that violence against women has a significant negative impact on women’s health, although there is a tendency for women to downplay the impact of violence when making reports.¹⁴⁹ The study found that women who suffered physical or sexual abuse reported a range of injuries, consistent with the severity of the violence inflicted on them. For 12% of those interviewed, their injuries were serious enough to require health care.¹⁵⁰ In addition, the study found that high levels of emotional distress, suicidal thoughts, and suicidal attempts were also likely consequences of the physical and/or sexual violence suffered by

146 See above, note 116, Para 31.

147 US Department of State, *Trafficking in Persons Report*, July 2015, p. 307, available at: <http://www.state.gov/documents/organization/245365.pdf>.

148 Amnesty International, *Where is the Dignity in that? – Women in Solomon Islands Slums Denied Sanitation and Safety*, 2011, p. 10, available at: <http://www.amnesty.org.nz/files/SolomonIslandsWEB.pdf>.

149 Secretariat of the Pacific Community for Ministry of Women, Youth & Children’s Affairs, *Solomon Islands Family Health and Safety Study: A study on violence against women and children*, 2009, p. 106, available at: <http://www.pacificwomen.org/wp-content/uploads/SolomonIslandsFamilyHealthandSafetyStudy1.pdf>.

150 *Ibid.*, p. 108.

women.¹⁵¹ Women experiencing partner violence during pregnancy were more likely to report miscarriage, abortion, stillbirth and having a child who died.¹⁵² One key finding from the study was that there is a correlation between the experience of gender-based violence and the reporting of a “fair”, “poor” or “very poor” health status (as opposed to a “good” or “excellent”).¹⁵³ The study also found that gender based violence had a significant impact on women’s ability to carry out their daily activities, including caring for children.¹⁵⁴

Women experienced increased violence both within and outside of the home during “the Tensions”. A submission made by women to the TRC reported that a large number of women, including young women, were raped during “the Tensions”. The women’s stories included being raped at gunpoint and through the use of foreign objects.¹⁵⁵ Together with the resulting psychological and physical trauma, women also faced social consequences, including stigmatisation. Amnesty International was told by women leaders that a married woman could be required by cultural tradition to pay “compensation” to her husband’s family due to the shame that her rape brought upon the family.¹⁵⁶ The Special Rapporteur on violence against women, its causes and consequences, Ms Rashida Manjoo, visited the Solomon Islands in 2012. Following her visit, she highlighted the impact of “the Tensions”:

*“The Tensions” had an impact on the lives of women in many ways. Women were victims of sexual abuse, increased domestic violence, killing and torture. Many of them also suffered displacement, loss of property and of access to such services as education and health.*¹⁵⁷

The TRC which followed “the Tensions” dedicated a section of its final report to the impact of “the Tensions” on women, noting that:

151 *Ibid.*, p. 113.

152 *Ibid.*, p. 116.

153 *Ibid.*, p. 109.

154 *Ibid.*, p. 111.

155 See above, note 110.

156 *Ibid.*; see also Amnesty International, *Solomon Islands: Women Confronting Violence*, 2004, p. 28, available at: <https://www.amnesty.org/en/documents/asa43/001/2004/en>.

157 See above, note 116, Para 12.

*The violations and challenges that women experienced and survived were not isolated in the period of the conflict alone. The prevailing cultural and religious protocols and social conditions of Solomon Islands and the pre-existing established gender roles of males and females in society had a direct relationship to women's experiences of the conflict.*¹⁵⁸

Despite trials occurring as a consequence of “the Tensions” (often referred to as the “tension trials”) no prosecution for sexual violence has been brought.¹⁵⁹ Male relatives allegedly discouraged women from cooperating with prosecutors or reporting rape to the police.¹⁶⁰ Trust in the police is also problematic as many members of the current police force were previously militants.¹⁶¹ In its most recent State Report to the Universal Periodic Review, Solomon Islands stated that it is currently in the process of implementing a framework to give effect to the recommendations of the TRC, including guidance on judicial trials for perpetrators of violence.¹⁶²

The lack of progress in prosecuting the perpetrators of gender-based violence during “the Tensions” is symptomatic of a wider problem of poor legislative and policy response to gender-based violence more broadly. In 2012, the Secretariat of the Pacific Community concluded that the lack of an adequate legislative framework to protect women, together with broader social patterns of gender inequality, contributes to the high levels of gender-based violence.¹⁶³ This said, efforts to improve the legal and policy framework have recently progressed, following a period of inactivity during and in the after-

158 See above, note 95, Vol. 3, p. 540.

159 See above, note 110; see also Solomon Islands Truth and Reconciliation Commission, above note 95, Vol. 2, p. 499, available at: <http://pacificpolicy.org/files/2013/04/Solomon-Islands-TRC-Final-Report-Vol-2.pdf>.

160 Amnesty International, above note 156, p. 1.

161 See above, note 110, p. 8; see also Amnesty International, above note 156, p. 1.

162 United Nations Human Rights Council, Working Group on the Universal Periodic Review, *National Report: Solomon Islands*, UN Doc. A/HRC/WG.6/24/SLB/1, 30 October 2015, Para 55.

163 Secretariat of the Pacific Community, *Stocktake of the gender mainstreaming capacity of Pacific Island governments – Solomon Islands*, 2012, p. 8, available at: <http://www2008.spc.int/images/publications/en/Divisions/Hdp/solomon-islands-gender-stocktake.pdf>.

math of “the Tensions”.¹⁶⁴ A number of recent legal and policy reforms – the publication of a National Policy on Gender Equality and Women’s Development, the creation of a National Taskforce on the Elimination of Violence against Women and the enactment of the Family Protection Act 2014¹⁶⁵ – illustrate a commitment by the government to improve the framework for addressing violence against women. However, it is too early to say how effective these reforms, in particular the new Family Protection Act, will be in meeting the need.

Violence against women in the Solomon Islands is definitely underreported. According to the Solomon Islands Family Health and Safety Study, only 17.9% of women who experienced violence sought help and only 2.4% reported it to a court or sought legal advice.¹⁶⁶ A recent report to the CEDAW Committee posits that one of the reasons for the low rates of reporting by victims of gender-based violence is that domestic violence is seen as a private matter rather than a crime.¹⁶⁷ More broadly, as discussed above, some reports indicate that high proportions of both men and women believe that violence against women can be justified in certain circumstances:

In Solomon Islands, GBV [gender-based violence] has been largely normalized: 73% of men and 73% of women believe violence against women is justifiable, especially for infidelity and ‘disobedience,’ as when women do “not live up to the gender roles that society imposes.” For example, women who believed they could occasionally refuse sex were four times more likely to experience GBV from an intimate partner. Men cited acceptability of violence and gender inequality as two main reasons for GBV, and almost all of them reported hitting their female partners as a “form of discipline,” suggesting that women could improve the situation by “[learning] to obey [them].”¹⁶⁸

164 Australian Agency for International Development (AusAID), *Solomon Islands Country Supplement*, 2008, p. 142, available at: http://aid.dfat.gov.au/Publications/Documents/vaw_cs_solomon_islands.pdf.

165 See sections 3.2.2 and 3.3 in this report for discussion of these instruments.

166 See above, note 149, chapter 10.

167 See above, note 110, p. 8.

168 See above, note 131, p. 4.

Other reasons given for not reporting violence are shame, fear of reprisals, cultural taboos about discussing such matters and pressure from male family members.¹⁶⁹ Equal Rights Trust researchers spoke with S., an adult female from the Western province, who stated that she remained silent about being raped because of fear, shame and harassment from her community and family.¹⁷⁰ During a focus group held by the SPC-SI in Kolosori, two women shared their experiences with the group about victims of rape whom they counsel. They noted that often stepfathers act inhumanely and rape their step-daughters. In more general terms, they discussed how men believe that they play the role of “security provider” in the home, and therefore feel justified in doing what they want to the mother and her daughters, leaving women powerless.¹⁷¹

The aforementioned submission by women to the TRC stated that women may also choose not to report their experiences of violence in the interests of their family: depending on the type of abuse and the families involved, a report of violence may spark further violence when the victim’s relatives seek to avenge the violation.¹⁷² The Final Report of the TRC noted that the gender-based violence statistics it reported did not capture the full extent of the sexual violence that occurred during “the Tensions” because sexual violence was not always disclosed by victims for reasons including stigma and cultural taboo.¹⁷³ Indeed, some authors have argued that due to the prevailing cultural conventions on sexual violence, some of the TRC truth-telling methods may have acted as a barrier for some women to testify the violence suffered.¹⁷⁴

Another concern in the reporting of gender-based violence is that the police may not take domestic violence seriously; one NGO report found that police in Honiara blamed failures to respond to calls and provide a prompt response

169 United Nations Development Fund for Women, *Ending Violence against Women and Girls: Evidence, Data and Knowledge in the Pacific Island Countries*, August 2010, Para. 139, available at: <http://www.unicef.org/pacificislands/evaw.pdf>.

170 Equal Rights Trust Interview with S., 19 July 2013, Western province.

171 Equal Rights Trust focus group with women, 14 June 2013, Kolosori, Isable province.

172 Fangalasu, J., Maetala, R., Rodi, P., Vota, A. and Wickham, E. (on behalf of Stori Blong Mere Workshop participants), *Herem Kam: Stori Blong Mifala Olketa Mere. Women’s Submission to the Solomon Islands Truth and Reconciliation Commission*, 2011.

173 See above, note 95, p. 590.

174 See above, note 110.

on shortages of staff and transport.¹⁷⁵ This was corroborated by women who spoke to Equal Rights Trust researchers about the inadequate police response to reports of gender-based violence. R. from Rennell and Bellona province discussed women's difficulties in obtaining justice, noting that the system is corrupt and that few women report cases to the police.¹⁷⁶ Similarly, R. spoke about the poor standard of police work in communities which left women with disabilities in particular vulnerable to harassment, abuse, violence and rape both in the home and in the community.¹⁷⁷

A focus group of women in Hovikoilo, Isabel province, noted that despite the fact that domestic violence is commonplace, even when repeated incidents led to some cases being reported to village elders, action was never taken.¹⁷⁸ Sylvester, a 28 year old woman from Malaita province, spoke to the Equal Rights Trust about her experiences of sexual harassment and abuse which occurred when she wore "short pants". This led to an attempted rape, which was not taken seriously by the police; she said that police officers had accused her of provoking the assault by wearing those kinds of clothes.¹⁷⁹

The Special Rapporteur on violence against women, its causes and consequences has noted that women's access to justice is severely limited by a lack of human and financial resources, infrastructure and insufficiently qualified lawyers, judges and magistrates.¹⁸⁰ In 2009, changes were made to the Evidence Act to remove discriminatory rules of evidence which may result in a greater chance of justice for survivors of sexual assault.¹⁸¹ However, the approach of the courts is problematic. Courts are generally reluctant to imprison a male family member who may provide the sole source of income to his family, but this approach is only taken in relation to domestic violence against

175 See above, note 110, p. 8.

176 Equal Rights Trust interview with R., 4 July 2013, Rennell and Bellona province.

177 Equal Rights Trust interview with R., 13 July 2013, Kaunasugu, Makira-Ulawa province.

178 See above, note 103.

179 Equal Rights Trust interview with Sylvester, 15 May 2013, Malaita province.

180 See UN News Centre, above note 132.

181 UNIFEM, *CEDAW Success Stories: The Solomon Islands Removes Discriminatory Practices in Evidence Legislation*, 2009, available at: http://www.unifem.org/cedaw30/success_stories/index.html.

women and girls and not for other crimes.¹⁸² The emphasis of both the courts and informal village councils is on family reunification rather than criminal charges and accountability.¹⁸³

In its 2014 Concluding Observations, the CEDAW Committee noted the lack of services for women victims of violence, including medical treatment, psychological counselling, legal assistance, as well as shelters outside the capital.¹⁸⁴ The CEDAW Committee called on Solomon Islands to take measures to ensure that the police respond effectively to complaints regarding domestic violence by prosecuting the perpetrators and to discourage mediation and settlements under customary mechanisms. Furthermore, the state was urged to provide access to information to women, including women with disabilities, and to strengthen and support state and non-state services available to women victims of violence.¹⁸⁵

Marriage, Divorce and Pregnancy

In some parts of Solomon Islands, a “bride price” is traditionally given by the family of the groom to the family of the bride on marriage.¹⁸⁶ Traditionally, bride price involved the family of the groom giving shell money to the family of the bride, to compensate them for the loss of their daughter, and the practice was partly about building a relationship between the families. However, the practice has evolved in recent years as large cash payments are made, leading to a view that bride price gives a man “ownership” of his wife and the right to treat her as he pleases.¹⁸⁷ In its report to the CEDAW Committee, the Government of Solomon Islands described the impact of bride price on women’s freedom to choose and on their experience within marriage:

As a result of the introduction of the cash economy, in some instances the bride has become more of a com-

182 International Social Service Australia, *Solomon Islands, Social Welfare Needs Analysis*, 2012, p. 11, available at: <http://www.iss.org.au/wp-content/uploads/2012/06/Solomon-Islands-FINAL-Full-Doc.pdf>.

183 *Ibid.*

184 See above, note 107, Para. 24(c).

185 *Ibid.*, Para. 25.

186 See above, note 94, Para. 123.

187 See above, note 149, pp. 149–150.

*modity than a symbol of positive social relations. However, this does not take away the value that is attached to the giving of the bride by her family. This customary practice can take decision making out of the hands of women and in some instances raises issues of “ownership” of both the bride and any children born as a result of the marriage.*¹⁸⁸

A study on violence against women published by the Secretariat of the Pacific Community in 2009 found that women in marriages involving the payment of bride price were “significantly more likely” to experience violence from their intimate partner:

*Bride price was found to be a strong risk factor for women’s experiences of partner violence. Women whose bride price had not been fully paid were particularly at risk. They were more than two and a half times more likely to experience violence than women whose marriage did not involve bride price.*¹⁸⁹

The study found that almost 60% of women whose marriage involved the payment of bride price had experienced violence from an intimate partner; this figure rose to almost 81% of women whose bride price had not been fully paid.¹⁹⁰ There is also a view that a woman cannot leave a marriage if bride price has been paid. Among women who had never left a violent relationship, 9% reported that they stayed because the bride price had been paid, while 10% of women who left a violent relationship later returned because the bride price had been paid.¹⁹¹

In 2013, the Special Rapporteur on violence against women, its causes and consequences found evidence that the practice of bride prices was being used by foreign workers to effectively “purchase” women from their families:

188 See above, note 94, Para. 123.

189 See above, note 149, p. 149.

190 *Ibid.*, pp. 141–142.

191 *Ibid.*, pp. 149–150.

[I] was also informed of how young women were often “married off” by their families to men who would pay the families a bride price but then abuse the women and/or later abandon the women and children born of the union.¹⁹²

A focus group of girls interviewed by the Equal Rights Trust in Malaita province spoke of the discrimination that women face because of the practice of bride price. They spoke about how this high cost led to high expectations that the woman must meet, including bearing children for the man’s family, doing domestic chores and submitting to the husband’s will.¹⁹³ Rose, a 26 year old woman from Honiara, spoke about how the payment of bride price had limited her freedoms, stating that she was prevented from moving freely to visit family members and that her husband believed that he owned her.¹⁹⁴ Similarly, the participants of focus groups in Venga and Nemba, Temotu province, noted that cultural practices are extremely biased against women, who are seen as an “object of labour”, expected to work tirelessly and prepare food for the husband. Some women spoke of harsh punishments if such work was not done,¹⁹⁵ preventing them from being active in other ways, or taking part in other activities. Men, on the other hand, they noted, have the freedom to move, or to relax.¹⁹⁶

There is no minimum age for marriage in customary law. However, the Islanders Marriage Act provides that the minimum legal age for marriage is 15 years and that the consent of the child’s father is required for marriage of persons under the age of 18.¹⁹⁷ Both the CEDAW Committee and the Committee on the Rights of the Child (CRC Committee) have called on states to increase the minimum legal age for marriage to 18.¹⁹⁸ According to UNICEF, the

192 See above, note 116, Para. 30.

193 Equal Rights Trust focus group with girls, 14 May 2013, Malaita province.

194 See above, note 141.

195 Equal Rights Trust focus group with young men and women, 11 June 2013, Venga, Temotu province.

196 Equal Rights Trust focus group with women, 11 June 2013, Nemba, Temotu province.

197 Islanders’ Marriage Act 1945, section 10(3).

198 For a comprehensive list of such recommendations, see: Equality Now, *UN CEDAW and CRC Recommendations on Minimum Age of Marriage Laws around the World*, 2013, available at: www.equalitynow.org/childmarriage-report.

prevalence of child marriage among girls under 15 years of age is 3%, whilst it increases to 22% for the group of 15-18 years of age.¹⁹⁹ A 2009 report by the Protection Project, a human rights research institute, found that families were abusing the tradition of bride price – once used to secure the well-being of the bride – by using it as a pretext of selling underage girls into arranged marriage. Moreover, there were reports that loggers from Malaysia married girls aged as young as 13 and 14.²⁰⁰ Roda, a 16 year old girl from Kombe, Central province, told the Equal Rights Trust how she was forced into marriage with an older man and now lived in an environment of fear, in which she was constantly harassed and could not move freely or talk freely with others in the community.²⁰¹ According to Solomon Islands' most recent State Report for the Universal Periodic Review, the Law Reform Commission of Solomon Islands has been authorised to consult with stakeholders towards a review of the current marriageable age.²⁰²

In its review of Solomon Islands in 2014, the CEDAW Committee expressed concern over the low minimum age for marriage for both girls and boys and the absence of a minimum age for marriage under customary law.²⁰³ It urged Solomon Islands, *inter alia*, to prohibit the customary practice of bride prices and to establish legal safeguards to ensure that women are not forced to marry without their free and full consent.²⁰⁴

The Islander Divorce Act provides that divorce can be initiated by both spouses.²⁰⁵ However, women face greater difficulties than men in accessing courts to initiate proceedings, due to lack of financial resources. Obtaining a divorce involves the costs of travelling to a High Court in Honiara or elsewhere, as well

199 UNICEF, *Every Child Counts: The State of the World's Children 2014 in Numbers*, January 2014, available at: http://www.unicef.org/sowc2014/numbers/documents/english/SOWC2014_In%20Numbers_28%20Jan.pdf.

200 Protection Project, *A Human Rights Report on Trafficking in Persons, Especially Women and Children – Solomon Islands*, 2009, pp. 2-4, available at: <http://www.protectionproject.org/wp-content/uploads/2010/09/Solomon-Islands.pdf>.

201 Equal Rights Trust interview with Roda Pia, 7 May 2013, Kombe, Central province.

202 See above, note 162, Para 53.

203 See above, note 107, Para 44(a).

204 *Ibid.*, Para 45.

205 Islanders' Divorce Act 1960, section 5.

as the costs of hiring a lawyer. NGO reports to the CEDAW Committee indicated that financial difficulties, as well as the customary and religious stigma which still surrounds the idea of separation for women, restricts access to divorce.²⁰⁶ Furthermore, where women are able to initiate divorce proceedings, there is evidence of discrimination in the division of matrimonial property, as the law does not provide clear criteria, leaving the decision to the discretion of individual magistrates.²⁰⁷ Participants in an Equal Rights Trust - SPC SI focus group involving women in Malaita province noted the unfair treatment of men and women in divorce proceedings and spoke of discrimination faced by divorced women and about the effect on children of divorced parents, who may not benefit from equal shares of property.²⁰⁸

Several participants in interviews conducted by Equal Rights Trust researchers noted that there was a tendency for families to ostracise or treat unfairly girls and young women who become pregnant outside of marriage. Luisa, a 28 year old woman from Malaita province, told the Equal Rights Trust that she fell pregnant whilst she was in high school. She was harassed by her parents who became angry and did not want to help her, affecting Luisa emotionally and causing her distress. Luisa told our researchers that the child did not survive the birth.²⁰⁹ Our researchers also spoke to Diana, an 18 year old girl from Malaita province, who told Equal Rights Trust researchers how, after falling pregnant, she was subsequently harassed by her immediate family members to such an extent that she chose to leave home and move in with another family. She felt that there was unfair blame placed on girls, given that boys, she said, were never confronted or held responsible in any way when a girl becomes pregnant outside of marriage.²¹⁰

The view that there is a perceived lack of responsibility for men and boys in such situations was corroborated in part by the participants of a focus group with young men in Hoilava. They recalled how girls who have children outside of marriage are treated badly by their families, whereas boys are not. Moreover, girls, they felt, were often seen by their families as no longer be-

206 See above, note 110, p. 31.

207 *Ibid.*

208 Equal Rights Trust focus group with women, 11 June 2013, Malaita province.

209 Equal Rights Trust interview with Luisa, 15 May 2013, Malaita province.

210 Equal Rights Trust interview with Diana, 15 May 2013, Malaita province.

ing valuable after having had children.²¹¹ The problems for young women appear to be compounded by the fact that contraception is not readily available throughout Solomon Islands. A focus group of young women in Kokona spoke of teenage pregnancy, noting the difficulties for women and girls to access contraception or family planning, and the restrictions often faced because of their fear of talking about these issues with priests or counsellors.²¹²

Employment and Economic Participation

Article 11 of CEDAW requires Solomon Islands to take “appropriate measures to eliminate discrimination against women in the field of employment”, including in respect of employment opportunities, free choice of profession, the right to promotion, benefits and training and the right to equal remuneration.²¹³ Nevertheless, Solomon Islands does not have legislation which prohibits sex discrimination or sexual harassment in employment, or which provides for equal pay.²¹⁴ Moreover, as noted above, there are a number of discriminatory provisions in the Labour Act: section 39 places restrictions on women working at night, while section 40 states that women cannot work underground in mining. In addition, the exclusion of domestic workers and so-called “outworkers” (persons employed to clean, alter, finish or repair garments) from the application of the Act has a disproportionate impact on women, who are more likely to work in these occupations, and thus constitutes indirect discrimination.²¹⁵

In the context of a weak protective legal framework, women experience discrimination and disadvantage in all areas of employment. Statistical data indicates that women are significantly less likely to be employed, receive lower pay when in employment, and experience both vertical segregation (separation in occupational hierarchies) and horizontal segregation (separation across occupations) in employment. In 2013, 53.4% of women aged 15 years

211 Equal Rights Trust focus group with young men, 18 May 2013, Hoilava, Guadalcanal province.

212 Equal Rights Trust focus group with young women, 19 May 2013, Kokona, Guadalcanal province.

213 See above, note 93, Article 11.

214 For a detailed discussion of Solomon Islands’ laws providing protection from discrimination, see section 3.2 of this report.

215 See above, note 94, Paras. 249–250.

and older participated in the labour force, compared to 79% of men.²¹⁶ According to the report submitted by Solomon Islands to the CEDAW Committee in 2013, “[w]hile female participation in the labour force has increased, there are still significant gender gaps in participation rates, occupational levels and wages”.²¹⁷ Women’s ability to enter the work force is significantly affected by the lack of equal access to training and education.²¹⁸ Cultural expectations that women will remain in the home and undertake unpaid domestic work also limit women’s employment opportunities.²¹⁹

At the time of the 2009 Report on Economic Activity and Labour Force (part of the 2009 census), male participation in paid work for those aged 15 and over was 35%, twice as high as female participation, 17.5%.²²⁰ This result was similar to that in the 1999 census, which reported male participation at 32.2% and female participation at 15.1%.²²¹ The 2009 census identified that women made up 33% of the total employed population, with men constituting the remaining two thirds.²²² The 2006–2007 Demographic and Health Survey (DHS) produced by the Solomon Islands National Statistics Office (SINSO) reported that 42.1% of married women aged 15 to 49 years were employed during the 12 months prior to the survey date, compared to 87.1% of married men in the same age group.²²³

The Report on Economic Activity and Labour Force revealed regional disparities, identifying that 12.7% of women in rural areas were in paid employment, compared to 27.9% in urban areas.²²⁴ Honiara was home to

216 UN Women, *Progress of the World’s Women, 2015-2016*, p. 280, available at: http://progress.unwomen.org/en/2015/pdf/UNW_progressreport.pdf.

217 See above, note 94, Para. 254.

218 See above, note 163, p. 9.

219 See above, note 110, p. 25.

220 Solomon Islands National Statistics Office, *Report on Economic Activity and Labour Force – 2009 Population and Housing Census*, 2009, p. 35, available at: <http://www.spc.int/prism/solomons/index.php/sinso-documents?view=download&fileId=61>.

221 *Ibid.*

222 See above, note 94, Para. 256.

223 Solomon Islands National Statistics Office, Secretariat of the Pacific Community and Macro International Inc., *Solomon Islands Demographic and Health Survey 2006–2007*, 2009, p. 271, available at: <http://catalog.ihsn.org/index.php/catalog/2963>.

224 See above, note 220, p.34.

the highest proportion of women in work, with 60% working as employees, employers or in self-employment; other provinces were either below or slightly over 10%, while Western province was at just below 20% and Guadalcanal at around 15%.²²⁵ Overall, greater levels of participation were found in subsistence work.²²⁶

Participants in interviews conducted by Equal Rights Trust researchers gave examples of restrictions on women's abilities to move freely or work in a job of their choosing. Some participants raised issues related to traditional gender roles enforced by the husband's treatment of the wife. Such was the case of Hellen, a 26 year old woman from Kombe, Central province, who explained to the Equal Rights Trust how her husband assumed stereotyped family roles, not wanting her to work as a teacher but instead to stay at home and look after their children.²²⁷

Article 11(1)(d) of CEDAW specifically commits states parties to ensuring "the right to equal remuneration, including benefits, and to equal treatment in respect of work of equal value". However, there is evidence of significant disparities between male and female average income, pointing to the distinct possibility that equal remuneration obligations are not being fulfilled. According to UNDP statistics, the estimated average earned income in 2005 for men was US\$2,672, with women earning US\$1,345, close to half the average male income.²²⁸

The 2009 Report on Economic Activity and Labour Force provided statistics on the breakdown of paid employment between industry sectors, revealing significant horizontal gender segregation between fields of employment. Of 26,669 women reported to be in work, the majority were employed in agriculture (10,010), wholesale and retail trade (3,417), education (3,284), private

225 *Ibid.*, p.32.

226 *Ibid.*, pp. 31–32.

227 Equal Rights Trust interview with Hellen, 7 May 2013, Kombe, Central province.

228 Hedditch, S. and Manuel, C., *Solomon Islands, Gender and Investment Climate Reform Assessment*, 2010, p. 9, available at: http://www.ifc.org/wps/wcm/connect/0465238049fb0beca26eebd1a5d13d27/IFC_Gender+and+Inv+Climate+Reform+Assessments+_SolomonIslands.pdf?MOD=AJPERES.

household (1,951) and public administration and social security (1,659).²²⁹ More women than men were employed in accommodation and food services, health and social work and working in households.²³⁰ Solomon Islands' 2013 report to the CEDAW Committee stated that the "male dominated culture of Solomon Islands does not encourage women to enter into formal businesses", citing statistics from 2008 which show that of 772 new business names registered, only 4 were registered by women.²³¹

Vertical segregation in employment is also a significant problem. The 2013 report submitted by Solomon Islands to the CEDAW Committee presented evidence of a significant gender gap in senior positions, using the public service as an example. According to the report:

Women continued to dominate the lower administrative level of the public service workforce with very few women in senior management. (...) There are 13 position levels in the public service before 5 senior management levels. Most women in the public service in 2011 were employed in position levels one to five (with one being the lowest level).²³²

There is evidence that the government is taking steps to address gender discrimination and inequality in public service employment. Respondents at an Equal Rights Trust – SPC-SI consultation meeting in August 2014 stated that new employment contracts for Permanent Secretaries include an outcome on gender mainstreaming, against which they are assessed.²³³ In addition, the Human Resource Management Strategy used by the Public Service includes indicators related to addressing discrimination in employment and zero tolerance on workplace harassment.

Article 11(2) of CEDAW requires states to *inter alia* "introduce maternity leave with pay or with comparable social benefits without loss of former

229 See above, note 220, p. 42.

230 *Ibid.*, p. 41.

231 See above, note 94, Para 265.

232 *Ibid.*, Para 259.

233 Equal Rights Trust focus group with key stakeholders, 15 August 2014, Central Territory.

employment, seniority or social allowances”.²³⁴ While the Labour Act provides for maternity leave, certain categories of workers, including domestic workers, are excluded from the application of the Act and thus are unable to claim this right.²³⁵ In addition, the Act only provides for 12-week maternity leave after birth, during which period women receive 25% of pay.²³⁶ Due to the already low wages in Solomon Islands, many women cannot afford to take 12 weeks off work at 25% of their pay.²³⁷

Women also face discrimination and disadvantage in other areas of economic life, as illustrated by a 2008 study which found a number of barriers which prevented women from starting their own businesses.²³⁸ Women perceived the attitude of both male and female staff in the registry to be that “women are not meant to do business”.²³⁹ The wait to obtain a license for a business was reported to be several months for women and several weeks for men; women reported that they felt disadvantaged because, unlike men, they did not pay bribes for faster processing. Similarly, it was reported that women faced long waits to obtain credit and were required to have a male guarantor although they met eligibility requirements.²⁴⁰ Women wishing to sell goods in the market reported harassment by drunken men and favoritism in allocation of a limited number of stalls to men selling betel nut. This favoritism led to women selling goods out in the streets, where they had safety concerns.²⁴¹ These examples appear to indicate a failure on the part of the state to meet its obligations under Article 11(c) and Article 13 of CEDAW. Article 11(c) obligates states to ensure equal enjoyment of the “right to free choice of profession and employment” while Article 13 commits states to “take all appropriate measures

234 See above, note 93, Article 11(2)(b).

235 Labour Act 1960, section 2. For further discussion of these provisions, see above note 94, Para 245.

236 Labour Act 1960, section 42(3).

237 See above, note 110.

238 Hutchens, A., *Women in Business in Solomon Islands, Key Findings from April 2008 Scoping Mission*, 2008, available at: <http://unpan1.un.org/intradoc/groups/public/documents/apcity/unpan038189.pdf>.

239 *Ibid.*, p. 4.

240 *Ibid.*, p. 3.

241 *Ibid.*, p. 6.

to eliminate discrimination against women in other areas of economic and social life”, including the right to “bank loans, mortgages and other forms of financial credit”.

Interviews conducted by the Equal Rights Trust and SPC-SI found evidence of restrictions on women’s ability to undertake other economic activities, apparently arising from discrimination by state actors. Equal Rights Trust researchers interviewed Nelly, a 40 year old farmer from Mukiki, Choiseul province, who spoke of her difficulties in obtaining seeds and plants, and the lack of help from the government in doing so. She said that such help was only given to men, and as a widow, she had difficulty accessing such services.²⁴² Similarly, participants at a focus group with young people in Kole stated that women could not access funding for projects, unlike men, who were often given funding for fishing projects, or given materials such as fishing gear or seeds for farming. Participants stated that this was often facilitated by their member of parliament, and was seen by them as discriminatory on the basis of sex.²⁴³

The cumulative impact of these aspects of discrimination and disadvantage in employment and economic life is that women are disproportionately affected by poverty. According to the 2010 report by Solomon Islands on the UN Millennium Development Goals (MDG), 22.7% of the population lived on less than US \$1/day,²⁴⁴ and the majority of people living in poverty were women and children.²⁴⁵ In 2007, over 56% of married women reported earning no income at all, while an additional 10% of women reported earning all or part of their income in-kind.²⁴⁶

In its 2014 Concluding Observations, the CEDAW Committee underlined the lack of measures to promote equal employment opportunities for women in the formal economy and urged the state to seek technical assistance to im-

242 Equal Rights Trust interview with Nelly, 31 May 2013, Mukiki, Choiseul province.

243 Equal Rights Trust focus group with young men and women, 7 May 2013, Kole, Central province.

244 UNDP, *Millennium Development Goals Progress Report For Solomon Islands 2010*, p. 58, available at: http://www.undp.org/content/dam/undp/library/MDG/english/MDG%20Country%20Reports/Solomon%20Islands/2010%20Final_SI_MDG.pdf.

245 See above, note 110, p. 25.

246 See above, note 223, Table 14.1, p. 271.

prove women's access to the labour market and to ensure their rights to maternity leave and maternity benefits.²⁴⁷

Land Use

The logging industry is the most significant economic sector in Solomon Islands. Indeed, up to 50% of the entire workforce of Solomon Islands may be associated directly or indirectly with the forest sector.²⁴⁸ Whilst the size of the industry means that it is a major source of employment, our research identified a series of negative effects which seem to disproportionately affect women. Women interviewed by the Equal Rights Trust indicated that they are excluded from decision-making relating to land or logging. Participants in focus groups in Verahue, Guadalcanal province, said that men made decisions about logging and so gained the financial benefits from logging licenses.²⁴⁹ Leah, from Choiseul, Choiseul province, explained that cultural norms and practices are barriers to women's participation in leadership roles and decision-making: she felt that she could not talk about land issues within their family when logging was discussed.²⁵⁰ Similarly, during a focus group with women in Hovikoilo, participants noted that as women were not allowed to make decisions on logging arrangements, there was an unfair distribution of royalties. Of the 10 participants in this focus group, two women who were heads of their families in the matrilineal system claimed that their brothers ignored them and invited loggers to exploit their resources, which made the soil infertile and unsuitable for gardening.²⁵¹ Participants in one focus group stated that women who are not part of the decision-making process and do not receive royalties have been coerced into a marriage with older loggers against their will.²⁵²

247 See above, note 107, Paras 34–35.

248 The United Nations Collaborative Programme on Reducing Emissions from Deforestation and Forest Degradation in Developing Countries, *Solomon Islands*, available at: http://www.un-redd.org/NationalProgrammes/Solomon_Islands/tabid/6898/Default.aspx.

249 Equal Rights Trust focus group with mixed participants, 20 May 2013, Verahue, Guadalcanal province.

250 Equal Rights Trust interview with Leah, 31 May 2013, Choiseul, Choiseul province.

251 Equal Rights Trust focus group with women, 16 June 2013, Hovikoilo, Isabel province.

252 Equal Rights Trust focus group with young men and women, 21 May 2013, Katsatai-Kovema, Guadalcanal province.

The situation appears similar concerning the distribution of royalties from other such industries. Participants of one focus group in Guadalcanal noted that the unfair distribution of royalties from mining development in their area caused a lot of tension within the family, often leading to a domestic environment which is not safe for the children.²⁵³

Education

Article 10 of CEDAW commits states to take all appropriate measures to eliminate discrimination and ensure equal rights in the field of education. Unlike in the area of employment however, Solomon Islands has made considerable progress in addressing substantive inequalities between male and female children.

Primary school education was made free by the government in 2009, in part in an effort to increase the number of girls enrolled.²⁵⁴ As a result, there is little difference between primary school enrolment levels for girls and boys.²⁵⁵ The Ministry of Education and Human Resources Development Performance Assessment Report recorded a net attendance at primary level that was slightly higher for males than females. The same is true at secondary level for years 10–13.²⁵⁶ The 2009 national census reported that differences in enrolment levels for children aged 6 to 14 years were insignificant, though enrolment rates were higher for males from age 15 upwards.²⁵⁷ The number of children aged 5 to 14 enrolled in primary school education increased from below 60% in the 1999 census to around 80% in the 2009 census and the gap between male and female enrolment rates decreased in the same time period.²⁵⁸

253 Equal Rights Trust focus group, 15 June 2013, Katetahana, Guadalcanal province.

254 See above, note 182, p. 14.

255 See above, note 223, p. 26.

256 Ministry of Education and Human Resource Development, *Performance Assessment Report, 2006–2013*, pp. 23–25, available at: http://www.spc.int/prism/images/EducationDigests/SOLOMON%20ISLANDS/PAF_Report_2006_-_2013.pdf.

257 Solomon Islands National Statistics Office, *2009 Population & Housing Census: National Report*, Vol. 2, p. 91, available at: <http://www.spc.int/prism/solomons>.

258 *Ibid.*, p. 95. Children of the same age group may be attending school across a range of grade levels. For example, children aged 12 were attending classes at a range of levels, from pre-primary to form 3.

This said, Solomon Islands' report to the CEDAW Committee expresses concern about the transition and completion rates of females compared to males, recognising its failure to discharge its obligations under Article 10(f) of the Convention to reduce "female drop-out rates". The report states that "the transition rate of females into higher levels of education are much lower than males", citing a range of factors including lack of parental support, lack of female dormitories, financial hardship, teachers' conduct and attitude and culture as contributing factors.²⁵⁹ The report also highlights higher drop-out rates among girls, with 13% of girls dropping out of secondary school, compared with 8% of boys.²⁶⁰ Due to societal gender norms boys education is prioritised, with girls further inhibited by a lack of transport and facilities.²⁶¹

Equal Rights Trust research found that gender stereotypes play a significant role in limiting girls' participation in education. The Trust spoke with Viola, a 25 year old woman from Poroporo, Choiseul province, who described how, against her wishes, her parents prevented her from attending school, making her stay at home to help her mother, whilst her brothers were free to attend school.²⁶² A focus group with women in Magakiki expressed similar experiences of inequality at home, stating that for fathers, the priority was not for girls to go to school, and as a result only boys managed to attend. They stated that this often leads to a situation where women are illiterate and this increases discrimination.²⁶³

Older research by Amnesty International had reached similar conclusions, finding that the cost of education, lack of facilities and cultural attitudes towards women's role in society all prevented women and girls from accessing and completing education. Families commonly withdrew girls, rather than boys, from school when fees could not be met.²⁶⁴ Cultural views that women belong at home also contributed to the lack of educational opportunities

259 See above, note 94, Para 213.

260 *Ibid.*, Para 214.

261 Secretariat of the Pacific Community, *Beijing +20: Review of progress in implementing the Beijing Platform for Action in Pacific Island countries and territories*, February 2015, p. 30, available at: <http://reliefweb.int/sites/reliefweb.int/files/resources/Beijing20.pdf>.

262 Equal Rights Trust interview with Viola, 31 May 2013, Poroporo, Choiseul province.

263 Equal Rights Trust focus group with women, 19 May 2013, Magakiki, Guadalcanal province.

264 See above, note 156, p. 16.

available to women and girls. Amnesty's research indicates that older girls were kept at home to help care for younger siblings.²⁶⁵

There is also evidence that gender stereotyping is reflected in gendered areas of study: more women than men study nursing, education and administration and finance, while men dominate in the study of areas involving industry and resources.²⁶⁶

As a result of historic inequalities in school enrolment and completion, significant disparities remain between adult males and females in levels of educational attainment. The 2006-2007 DHS found that a higher percentage of males had completed education at three of the five levels assessed (some primary, completed primary, some secondary, completed secondary and more than secondary), with the exception being the completion of secondary education, where the completion rate was just 0.1% for both males and females. The survey found that more females than males had no school education: 26.9% of females compared to 22.8% of males.²⁶⁷ The 2009 census recorded 21% of females and 11% of males as having no completed schooling.²⁶⁸ The census also found that only 3% of women had tertiary education, compared to 6% of men.²⁶⁹ The overall literacy rate for those aged 5 and above, as reported in the 2009 census, was 80% for men and 74% for women.²⁷⁰ The gap between men and women literacy rates was greater for those aged 20 and over; in the 45 to 49 age group, around 79.2% of women were literate compared to nearly 88.9% of men.²⁷¹

In its 2014 Concluding Observations, the CEDAW Committee expressed concern about the high drop-out rates of girls at the secondary level of education, citing the inadequacy of educational infrastructure, the lack of safe transport for girls and the resulting exposure of pupils to risks of violence as factors preventing the

265 *Ibid.*

266 See above, note 163, p. 9.

267 See above, note 223, pp. 26–28.

268 See above, note 257, p. 97.

269 *Ibid.*, p. 98.

270 *Ibid.*, p. 99

271 *Ibid.*, p. xxiv.

effective enjoyment of women's right to education.²⁷² The Committee also noted the negative impact of early pregnancy on women's educational opportunities and urged the state to promote education on sexual and reproductive health to prevent such pregnancies, and to take measures to retain girls in education, including pregnant girls. Furthermore, the Committee called on Solomon Islands *inter alia* to make primary education compulsory, to increase the spending on education in order to improve school infrastructure and facilities, and to reduce indirect costs for education with a view to eliminating them.²⁷³

Health

As in the areas of employment and education, CEDAW gives rise to specific obligations for Solomon Islands in respect of eliminating gender discrimination in the field of healthcare.²⁷⁴ In addition to these general obligations, the Convention requires specifically that states "ensure to women appropriate services in connection with pregnancy, confinement and the post-natal period, granting free services where necessary, as well as adequate nutrition during pregnancy and lactation".²⁷⁵

As noted in Part 1 above, inadequate access to health services is a general problem affecting large parts of the population of Solomon Islands, especially those residing in the rural areas.²⁷⁶ Exacerbating this problem for women, gender disparities in the area of health remain prevalent. According to the 2006–2007 DHS, women of reproductive age are more likely to be affected by conditions caused by malnutrition, such as anaemia, and sexually transmitted diseases, than other parts of the population. Moreover, young pregnant women have a heightened risk of suffering from malaria, which is the lead cause of morbidity and mortality in Solomon Islands.²⁷⁷

With regard to sexual and reproductive health, the majority of women reported having a relatively high level of sexual autonomy, though a number of

272 See above, note 107, Para. 32.

273 *Ibid.*

274 See above, note 93, Article 12(1).

275 *Ibid.*, Article 12(2).

276 See above, note 223, p. 58.

277 *Ibid.*

women stated a view that they could not refuse sex with their husband under any circumstances.²⁷⁸ Additionally, research shows that women who are not in an equal position with their husbands when making decisions in the marriage are less likely to use contraceptives, and to have access to prenatal, delivery and post-natal healthcare.²⁷⁹ Men also have better access to contraceptives than women: 81% of men stated that they knew where to get condoms, in comparison to just 49% of women.²⁸⁰ It has been reported that women, particularly pregnant women aged between 15 and 24, are at the highest risk of contracting HIV. According to the Secretariat of the Pacific Community research, this vulnerability is primarily caused by gender inequality arising through sexual violence, cultural sanctioning of male infidelity, early marriage and unequal negotiating power in respect to sexual relations.²⁸¹

As noted above, section 158 of the Penal Code makes abortion illegal, with a penalty of life imprisonment for anyone who intentionally “procure[s] the miscarriage of a woman”, including the woman herself. There is an exception however, in that abortion is legal before the foetus “is capable of being born alive” and where it is necessary to save the life of the woman.²⁸² Recommendations and signatures of two physicians are required, as well as consent of the spouse or next of kin.²⁸³ In its 2014 Concluding Observations, the CEDAW Committee expressed concerns for, *inter alia*, the criminalisation of abortion, which forces women to resort to unsafe abortion.²⁸⁴

Public Participation

Article 7 of CEDAW commits Solomon Islands to take all appropriate measures to eliminate discrimination against women in “political and public life”, including *inter alia* the right to vote and be eligible for election, to participate in the formulation and implementation of government policy

278 *Ibid.*, p. 298.

279 *Ibid.*, p. 296.

280 *Ibid.*, p. 252.

281 See above, note 163, p. 8.

282 Penal Code 1963, section 221.

283 *Ibid.*

284 See above, note 107, Para. 36.

and to hold public office. In Solomon Islands law, women were afforded the right to vote and to stand for parliament in 1974, during the preparations for independence.²⁸⁵

However, women play a limited role in public life in the country. A statement delivered by Ms. Rashida Manjoo, the UN Special Rapporteur on Violence against women, its causes and consequences, at the conclusion of her visit to Solomon Islands in March 2012, provided an insight into the participation of women in political life:

*While there is no single homogenous society in this culturally diverse and geographically widespread country, Solomon Islanders share some traditional and religious values which largely shape the roles that women play in the family and in society. Women are mainly viewed as mothers and home-makers and their participation in public and political life is extremely limited. The lack of female role models in positions of authority is evident in the fact that there are no women currently in the Parliament or in the Executive, which reinforces such traditional perspectives and also reflects the dominant views regarding women's status and value.*²⁸⁶

Indeed, since independence in 1978, only three women have served in the 50-seat parliament of Solomon Islands.²⁸⁷ Hilda Kari served from 1989 to 2001, after which no women served in the Parliament again until August 2012. In the national elections in 2010, 25 women stood as candidates (out of a total of 509 persons standing for election) but none were elected; the single female Member of Parliament won a by-election in 2012.²⁸⁸ In the elections in 2014, a

285 See above, note 156.

286 Office of the High Commissioner for Human Rights, *Special Rapporteur on Violence against women finalises country mission to Solomon Islands*, 16 March 2012, available at: <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=11968&LangID=E>.

287 See above, note 94, Para. 161; see also Tamsitt, M., "Solomon Islands needs a Parliament that will deliver results", *The Interpreter*, 25 November 2014, available at: <http://www.lowyinterpreter.org/post/2014/11/25/Solomon-Islands-needs-a-parliament-that-will-deliver-results.aspx?COLLCC=3959330201&>.

288 See above, note 94, Para. 163.

total of 26 women stood for election, with just one – Frea Soria Comua – being elected; the only woman elected to the 2010-14 parliament, Vika Lusibaea, was not re-elected.²⁸⁹

At the provincial level, women are similarly under-represented. Of the nine Provincial Assemblies, six have no female representatives. Two (Rennell and Bellona province and Western province) have a single female representative and one (Isabel province) has two female representatives. There is also a single female representative on the Honiara Town Council. In total, in 2015, just five of the 183 elected representatives at the provincial level (2.7%) were women.²⁹⁰

Wood has noted that there are several factors that determine the low competitiveness of women in national elections in Solomon Islands, noting that none of these are directly related to strong voter preference for male candidates.²⁹¹ In fact, in a 2013 survey conducted in collaboration with the University of the South Pacific, 89% of 3405 respondents thought that National Parliament should include female MPs, whilst 80% supported the idea of reserved seats for female candidates.²⁹² Wood finds that there are structural obstacles preventing women from running for and being elected to Parliament, including the tendency of candidates and campaigns to use gendered stereotypes and prejudices against women candidates to weaken their credibility before voters as well as the propensity of campaign funders to direct funding towards male candidates. This latter factor gives a significant advantage to male candidates who can draw votes from the population by licit or illicit means, such as vote buying, which is allegedly common in Solomon Islands. Finally, women face another important challenge in finding influential brokers to support their candidacy: brokers are usually male community leaders such as heads of families, clans, villages or churches,

289 See Tamsitt above, note 287.

290 See above, note 94, Paras 45–46.

291 Wood, T., “Why Can’t Women Win? Impediments to Female Electoral Success in Solomon Islands”, *Australian National University*, Discussion Paper 2014/01, available at: <http://cdi.ips.cap.anu.edu.au/sites/default/files/CDI%20DP%202014-01%20Wood-ONLINE.pdf>.

292 Regional Assistance Mission to Solomon Islands, ANU Edge, *People’s Survey*, 2013, p. 6, available at: <http://www.ramsi.org/wp-content/uploads/2014/07/FINAL-Peoples-Survey-2013-1-final-111900c1-79e2-4f41-9801-7f29f6cd2a66-0.pdf>.

who tend to prefer male candidates. An NGO shadow report to the Committee on Economic, Social and Cultural Rights (CESCR) noted that corruption favours men and enables male dominance of politics to continue.²⁹³ According to the state report of Solomon Islands' to the CEDAW Committee, cultural attitudes and discrimination in other areas of life act as barriers to female participation in public life:

*[D]ecision-making is a male domain, a "first past the post" electoral system that disadvantages women, and discrimination against women in education and employment are contributing factors to the lack of women in parliament at national and provincial levels (...) Other factors cited as barriers include the assumption that a woman would not have the appropriate qualities to be a good leader. Disincentives include the high cost of campaigning, or the tendency for wives to be regarded as outsiders in their husband's community so not to be well supported in their home electorates.*²⁹⁴

An assessment of efforts to increase women's participation in local (*suco*) councils and of leadership training provided to elected women found a number of positive impacts from women's involvement.²⁹⁵ These included an increase in the women's confidence to speak up both in the council and at home and increased respect for the women from their husbands, leading to less violence and conflict in the family. Some of the women were able to raise issues of domestic violence, family planning, vaccinations and school facilities before the councils.²⁹⁶

The low levels of female participation found in electoral politics is also typical of the judiciary. In 2015 the highest positions in the top two levels of the High and magistrate courts were held by men, with only one female mag-

293 See above, note 110, p. 11.

294 See above, note 94, Para. 167.

295 See above, note 164, p. 140

296 *Ibid.*

istrate, in Honiara.²⁹⁷ Furthermore, there are no women in the position of local court presidents, vice-presidents or judges.²⁹⁸

A 2015 report by the Asian Development Bank found that the lack of female representation in the legal system may have contributed to “attitudinal bias”.²⁹⁹ In the sentencing decision following *Regina v Gua*,³⁰⁰ a case which established that a man can be found guilty of raping his wife, the sentencing judge stated that:

*This is (...) a case which has occurred as a result of domestic problems between a husband and his wife. It is not an offence that has been committed to gratify one’s own sexual desires. There is an underlying cause for the commission of the offence – the termination by the victim of her marriage to the accused. Hence, the accused is not solely to be blamed for this incident. The complainant must also share the blame.*³⁰¹

Whilst the sentence was eventually extended by the Court of Appeal,³⁰² the sentencing judge’s statement indicates the need for greater female participation in the judiciary.

In its Concluding Observations on Solomon Islands’ report on the implementation of the International Covenant on Economic, Social and Cultural Rights (ICESCR), the CESCR expressed concern:

297 Asian Development Bank, *Solomon Islands: Country Gender Assessment*, 2015, p. 12, available at: <http://www.adb.org/sites/default/files/institutional-document/176812/sol-country-gender-assessment.pdf>.

298 Allen, M., Dinnen, S., Evans, D., and Monson, R., *Justice Delivered Locally: Systems, Justice and Innovations in Solomon Islands*, The World Bank, Research Report, July 2013, available at: http://siteresources.worldbank.org/INTJUSFORPOOR/Resources/JDL_July_2013_Final_Online_Report.pdf.

299 See above, note 297, p. 12.

300 See sections 3.1.5 and 3.4.2 of this report for further discussion of this case.

301 *Regina v Gua* [2013] SBCA 2; CAC 37 of 2012 (26 April 2013), Para 12.

302 *Ibid.*

[A]bout the inadequate representation of women at all levels of decision-making bodies of the State party and the persistence of patriarchal attitudes in the society.³⁰³

A similar concern was expressed more recently by the CEDAW Committee, which also noted that the 10% minimum quota set by the Political Parties Integrity Act is low and that the Act lacks enforcement mechanisms.³⁰⁴

Conclusion

Women in Solomon Islands experience severe discrimination and inequality in all areas of life governed by law. Our research indicates that these problems are directly connected to deep-rooted gender stereotypes which portray women as weaker and of lesser value than men. These cultural attitudes create an environment in which domestic and other forms of violence against women are tolerated and where levels of violence are alarmingly high. They also help to legitimise the continuing existence in force of laws which discriminate against women and influence decision-making regarding women's participation in employment and economic life, education and public life. The cumulative impact is a society in which women cannot participate on an equal basis with men in almost any area of life.

2.2 Discrimination and Inequality on the Basis of Ethnicity

Solomon Islands succeeded to the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) in 1982. As a party to the Convention, Solomon Islands undertakes "to pursue by all appropriate means and without delay a policy of eliminating racial discrimination in all its forms".³⁰⁵ "Racial discrimination" is defined by the ICERD as including any:

[D]istinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin

303 Committee on Economic, Social and Cultural Rights, *Concluding Observations of the Committee on Social, Economic and Cultural Rights, Solomon Islands*, E/C.12/1/Add.84, 19 December 2002, Para. 6.

304 See above, note 107, Para. 28.

305 International Convention on the Elimination of All Forms of Racial Discrimination, Article 2(1).

which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life”³⁰⁶

On one level, as the national census states, Solomon Islands has “a very homogenous population composition” in terms of ethnic origin. The census indicates that the population is composed almost entirely of members of three ethnic groups: the overwhelming majority, approximately 95.3%, is Melanesian with some small minority populations including Polynesians (3.1%) and Micronesians (1.2%).³⁰⁷ However, the census data masks a complex system of cultural and social group identifications that constitute ethnic identities within the meaning of the ICERD definition.

The Statistics Division of the United Nations, in providing guidance on data collection on the basis of ethnicity, is keen to stress that what constitutes an ethnic group should be defined on a country-by-country basis and that there can be no single, universal set of criteria for defining an ethnic group:

The specific ethnic and/or national groups of the population which are of interest in each country are dependent upon individual national circumstances. Some of the criteria by which ethnic groups are identified are ethnic nationality (i.e., country or area of origin, as distinct from citizenship or country of legal nationality), race, colour, language, religion, customs of dress or eating, tribe or various combinations of these characteristics. (...) The definitions and criteria applied by each country investigating ethnic characteristics of the population must, therefore, be determined carefully and with the involvement of or consultation with representatives of the groups which it desires to categorize. By the nature of this topic, these categories and their definitions will vary widely from country to

306 *Ibid.*, Article 1(1).

307 *Ibid.*

*country; therefore, no internationally accepted criteria are possible.*³⁰⁸

Taking this approach – in particular looking at the tendency of people in Solomon Islands to self-identity on the basis of place of origin and shared customs – it is clear that, far from being an ethnically homogenous state, Solomon Islands is in fact home to myriad ethnic groups. A proper understanding of ethnicity – and therefore of ethnic discrimination – in Solomon Islands requires an appreciation of the history of social organisation in the country and the ways in which Solomon Islanders have defined their group identity. As a state, Solomon Islands was “created” from a large group of different islands which themselves were home to multiple distinct cultures and communities. This had the effect of both grouping together communities which were historically separate and even in conflict and of artificially dividing those which were closely tied. As Evans has argued:

*[The] cultural diversity of pre-colonial Solomon Islands effectively made it so drawing a straight line anywhere within the territory would bisect something of importance, so the division completed by the British administration inevitably divided and joined areas of cultural or linguistic variance.*³⁰⁹

As the report of the TRC asserts, this history is reflected in the ways in which people in Solomon Islands identify themselves:

Nations, like states, have to be made; they do not exist naturally. Post-colonial societies often face the challenge that nationhood has to be created out of statehood, rather than the other way round; a challenge which in Solo-

308 United Nations Department of Economic and Social Affairs, Statistics Division, *Principles and Recommendations for a Vital Statistics System*, Revision 2, ST/ESA/STAT/SER/M/19/Rev.2, 2001, Para 186.

309 Evans, K., “The Solomon Islands ‘ethnic’ conflict – considering the Malaitan and Gwale identities”, *Euroacademia International Conference Identities and Identifications: Politicized Uses of Collective Identities*, 2013, p. 4, available at: http://euroacademia.eu/wordpress/wp-content/uploads/2013/04/Kyle_Evans_The_Solomon_Islands_Ethnic_Conflict%E2%80%93Considering_the_Malaitan_and_Gwale_Identities.pdf.

mon Islands is complicated by the cultural, historical and linguistic diversity which undermines efforts to construct an imaginary community of common national interests and values. Creating an “imagined community” in the Solomons, with no shared common language other than Pijin, no unifying ideology and no countrywide leadership, is not an easy task. Three times Prime Minister Solomon Mamaloni’s famous portrayal of the Solomons as a “nation conceived but never born” gives evidence of this difficulty.³¹⁰

With many inhabited islands and over 120 languages spoken, Solomon Islands is home to many different cultures and groups. The existence of distinct and disconnected communities, and of tensions between these different groups have been recognised for many years, as illustrated by the following assertion from a 1914 history book:

There are several distinct cultural regions in these islands, with great differences in the mode of social organisation and in the way of counting relationship. In the larger islands of the Solomons there are two distinct populations, the people inhabiting the coast and those of the interior, who may be spoken of as the coast and bush people respectively. These people are hostile to one another...³¹¹

As historians have noted, even at the time of its independence from the United Kingdom in 1978, Solomon Islands had no unified populace:

There was little sense of shared political community in Solomon Islands (...) capable of uniting the peoples of the newly independent state. Living predominantly in rural communities, bonds of kinship, shared (local) language and ties to ancestral land, along with Chris-

310 See above, note 95, Vol.3, p. 46

311 Rivers, W.R.R., *The History of Melanesian Society, Vol. I*, Cambridge: Cambridge University Press, 1914, p. 232.

*tianity, provided the basis for individual identities and allegiance, rather than abstract notions of “citizenship” or membership of the modern state. Localism prevailed over nationalism in virtually every sphere of social, political and economic activity.*³¹²

Little has changed since independence. Tarcisius Tara Kabutaulaka has noted that “[n]ational consciousness is often only skin deep”, with the result that most people have “allegiances to a particular *wantok* or ethnic group”;³¹³ most people carry competing identities between their island and their country. Mabeuta and Spence have asserted that the isolation and remoteness of Solomon Islands – which has posed challenges in ensuring effective delivery of services, local government and economic development throughout the country – contributed to the difficulties in creating a sense of national identity.³¹⁴ They argue that, during the colonial period, development of the islands was focused largely on a few coastal areas rather than throughout the islands,³¹⁵ while Kabutaulaka goes further, arguing that development was tightly focused on the area immediately around Honiara:

*Apart from issues of nationalism, the British left behind a group of islands largely undeveloped and an economy dependent almost entirely on the exploitation of natural resources by foreign multinational companies. Infrastructural development was concentrated around Honiara, the national capital, located on the northern coast of Guadalcanal and built out of the remains of a former World War II US Air Force base.*³¹⁶

312 Dinnen, S., “A Comment on State-building in Solomon Islands”, *The Journal of Pacific History*, Vol. 42, No. 2, 2007, p. 259.

313 Kabutaulaka, T.T., “Beyond Ethnicity: The Political Economy of the Guadalcanal Crisis in Solomon Islands”, *State, Society and Governance in Melanesia Project*, Working Paper 1, available at: <https://digitalcollections.anu.edu.au/bitstream/1885/41949/1/tarcisiusworkingpaper.htm>.

314 Mabeuta, J. and Spence, R. with Wienders, I. and O’Loughlin, M., *Reflecting on Peace Practice Project: Cumulative Impact Case Study: Attempts at Building Peace in the Solomon Islands: Disconnected layers*, December 2009, p. 3, available at: <http://www.cdacollaborative.org/media/53192/Attempts-at-Building-Peace-in-the-Solomon-Islands-Disconnected-layers.pdf>.

315 *Ibid.*

316 See above, note 313.

Following independence, the benefits of development were unevenly distributed with the poorer islanders in the remote parts of the country becoming even poorer.³¹⁷ Rural livelihoods were further constrained by irregular transportation services and communication; large numbers of people, particularly in rural areas and outside Guadalcanal, struggled to meet their basic needs, access education and healthcare, and participate in social, civil and political life. These factors combined to create a feeling of injustice and not receiving a “fair share”.³¹⁸ The uneven distribution of the benefits of development, combined with the traditional *wantok* system which is based upon strong local ties, have made creating a shared national identity a task beyond the ability of governments past and present. Indeed, as Liloquila has noted:

*While educated people may understand the benefits of being one nation, the vast majority of Solomon Islanders see it as a threat to their resources, their cultural identity and culture, their environment and the basis of their sustained community living.*³¹⁹

Thus, while different authors posit different causes, it is clear that the cultural, political and social history of Solomon Islands is such that people do not have a strong sense of shared national identity. In place of national identity, people in Solomon Islands self-identify in ethnic groups based on common area of origin and shared culture and traditions. This section of the report examines two important patterns of ethnic self-identification: one at the geographical level, in the form of people’s tendency to identify with others originating from a particular island, and the other at the community level, in the form of the *wantok* system. Our research has identified evidence of both discrimination and substantive inequality arising on the basis of both aspects of ethnicity.

317 See above, note 314.

318 *Ibid.*

319 Liloquila, R. “Understanding the conflict in Solomon Islands as a practical means to peace-making”, *State, Society and Governance in Melanesia Project Discussion Paper 00/7*, 2000, p. 3 (quoted in Mabeuta, J. et al., above note 314).

2.2.1 Discrimination and Inequality on the Basis of Place of Origin

Solomon Islands is divided into nine provinces – each containing one or more islands – and the capital territory.³²⁰ As noted above, many people in Solomon Islands identify strongly with their island of origin, considering themselves and others as people of a particular island before, or instead of, as people of Solomon Islands. As a result, the perception – whether grounded in fact or not – of disparities between different islands in terms of development, investment and services, is a cause for significant concern when assessing the existence of ethnic division and inequality.

Taking the approach set out by the Statistics Division of the United Nations, the tendency of people in Solomon Islands to identify strongly with a particular island, and to stress a sense of shared history and culture with others from that island, creates a strong case for considering identification with a particular island as a form of ethnic grouping. However, significant questions have been raised by academics about the extent to which these are genuinely distinct ethnic groups. Evans, for example, has questioned the extent to which one's purported identity – “Malaitian” – can be seen as ethnic group, given that the province of Malaita includes not only the island of Malaita but a number of other, quite different islands, and the fact that a number of distinct communities traditionally inhabited the main island of Malaita. As she states:

*[T]he boundaries of the province of Malaita administratively tied the islands of Ontong Java, Sikaiana, Maramasike (sometimes called South Malaita) and Malaita (...) despite traditional rivalries, trade connections and customary cultural differences (...) The historical differences, just within the island of Malaita would make the categorization and classification of a Malaitan ethnicity difficult as it lacks a unified common historical trajectory.*³²¹

320 The nine provinces are Central, Choiseul, Guadalcanal, Isabel, Makira-Ulawa, Malaita, Rennell and Bellona, Temotu, and Western. In this part of the report, “provinces” will be used to describe the nine provinces *and* Honiara capital territory.

321 See above, note 309, p. 5.

Discussing the causes of “the Tensions” of 1998-2003, Kabutaulaka also expresses concern about the tendency to define people from particular islands or provinces as a distinct ethnic group, arguing against the “notion of constructing a homogenous ethnic identity - even where there was initially none”.³²² He argues that any explanation of “the Tensions” as simply the result of inherent “primordial” ethnic differences is “a lazy shorthand explanation that divorces the crisis from contemporary socio-economic contexts”.³²³ Nevertheless, both authors cautiously conclude that the tendency of people to self-identify by reference to a particular island, coupled with other factors, is evidence of ethnic identification. Thus, Evans concludes that “if the island itself is understood as the boundary, the potential for Malaitan to be accurately described as an ethnicity is possible” on the basis that people from the island have a “common homeland, common descent and common history”.³²⁴ Kabutaulaka concludes that, while any assessment of the causes of “the Tensions” “need[s] to look beyond ethnicity as the only cause of the crisis”:

*In a way, there is legitimacy in many of the issues raised by Malaitans, Guadalcanal and others who are involved. Ethnicity has become an avenue through which peoples’ frustrations become manifested.*³²⁵

The Tensions

As Kabutaulaka intimates, there is a long history of inequalities between islands in Solomon Islands, and of corresponding grievances between ethnic groups. These grievances sparked into violent conflict in 1998, leading to hundreds of deaths, widespread displacement and the creation of a violent, lawless atmosphere in the region around Honiara which lasted until the early 2000s.

As noted above, during the colonial period in the first half of the twentieth century, development of Solomon Islands focused on certain coastal areas and, in particular, the island of Guadalcanal. When Honiara (which is in Guadalcanal)

322 See above, note 313.

323 *Ibid.*

324 See above, note 309, p. 7.

325 See above, note 313.

was made the capital city in 1952, many people from other islands started to migrate to the city. Economic activity became ever more concentrated on Guadalcanal and migration increased. In particular, Malaitans became a significant portion of the labour force in Guadalcanal and by the 1990s, there were a number of Malaitan settlements on the northern and western parts of Guadalcanal.³²⁶

According to Mabeuta and Spence, Guadalcanal islanders increasingly felt that they were being culturally and economically marginalised on their island of origin as they received inadequate benefits from the investments that had taken place in the island; it was the Malaitians, not the Guadalcanal islanders, who had exploited the economic opportunities such as jobs and services on the island.³²⁷

These two authors have used what they refer to as the “success to the successful” paradigm, which is described as follows:

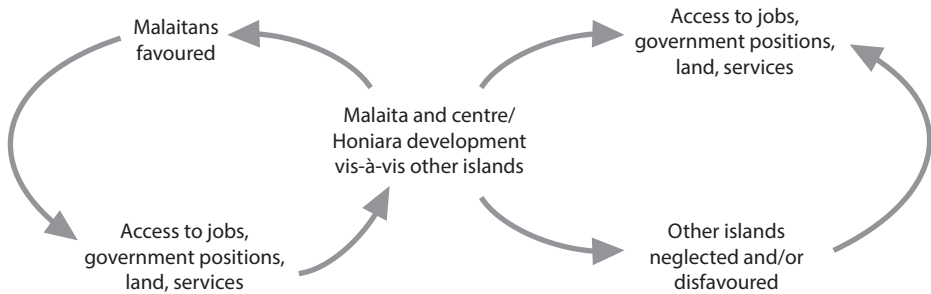
*Those who have influence, relative wealth, or access are able to gain additional resources and increase their success, while those who lack those advantages remain trapped or actually become poorer.*³²⁸

Mabeuta and Spence argue that it is both the perception and the reality that Malaitans and others in and around Honiara had benefitted in the post-colonial period whilst those on other islands had not. In this paradigm, as Malaitans on Guadalcanal benefited from development, the other islands were neglected, allowing Malaitans to access jobs, land and important government positions. They then exploited this advantage to increase development for themselves. Correspondingly, those on other islands had fewer opportunities and less access to the better jobs and land, fewer positions in government, and were thus unable to exert any influence which would lead to a more equitable distribution of the benefits of development. (See Figure 1).

326 See above, note 314, p. 6.

327 *Ibid.*

328 *Ibid.*, p. 7.

Figure 1: Success to the Successful in the Solomon Islands

Foukona, on the other hand, has argued that one major catalyst for violence leading to “the Tensions” was the government’s inadequate and inconsistent approach to dealing with disputes which were, at least in part, ethnically sensitive.³²⁹ In particular, Foukona highlights the executive’s apparently inconsistent approach to awarding compensation in a number of sensitive legal cases, thus calling into question the integrity of the government.³³⁰ In 1989, the government paid compensation to the Malaita province, in response to a claim that a defamatory statement had been written by a Polynesian person which caused offence to Malaitans and led to a violent demonstration.³³¹ Despite there being no legal process or police investigation, SBD\$200,000 (US\$2,470) was paid in compensation, something which Foukona suggests “reflected a further eroding of the due process of law in Solomon Islands”.³³² This perception of the unfair and inadequate functioning of the state institutions was exacerbated when, in 1998, the government failed to establish any legal process or investigation into a claim of rape, ignoring demands for compensation.³³³

329 Foukona, J.D., “State powers and institutions in Solomon Islands’ developing democracy”, *The Foundation for Development Cooperation*, pp. 7-8, available at: http://www.researchgate.net/publication/255663810_State_powers_and_institutions_in_Solomon_Islands'_developing_democracy.

330 *Ibid.*

331 *Ibid.*, p. 6.

332 *Ibid.*, pp. 7–8.

333 *Ibid.*, p. 7.

Foukona argues that:

[T]he unfair and biased approach used by the Executive to deal with (...) demands (...) became the catalyst for Guadalcanal Province resubmitting their self-determination demands in 1998 (...) the Government had already confused the ways in which State powers and institutions operated to the extent that these gradually became less and less functional.³³⁴

The author concludes that this lack of functionality was a factor in creating frustration which boiled over into criminal activity. People from Guadalcanal began to harass, and cause damage to properties of Malaitans living on the outskirts of Honiara, displacing them from the area. The lack of investigation, compensation, and criminal prosecution resulting from these actions only compounded the situation, as the Malaitans took a “justice before peace” stance.³³⁵ Trust in the institutions, especially among those who had been displaced, was lost. The latter, mostly Malaitans, instead took the matter into their own hands, forming the Malaitan Eagle Force (MEF) and taking control of the government in a coup of 5 June 2000.

While there is debate over the underlying and proximate causes of “the Tensions”, there is consensus that disparities between provinces in terms of wealth, development and access to basic services played an important role, not least in being a factor in the movement of people from islands with fewer resources or poorer infrastructure to those with more. This point was highlighted by the TRC in the conclusions to its report. The Commission concluded that “the Tensions” had three distinct phases, the first of which was overtly ethnic in nature:

The first stage (...) included the eviction of settlers, mostly Malaitans, from Guadalcanal by the GRA/IFM [Guadalcanal Revolutionary Army / Isatabu Freedom Movement] and the retaliation of the Malaita Eagle Force. During this stage, the driving force of the con-

³³⁴ *Ibid.*, p. 8.

³³⁵ *Ibid.*, p. 9.

flict was ethnicity (...) most of the killings had an ethnic background (...)

The definition of the conflict as “ethnic tension”, which has been popularized to describe the whole period between 1998 and 2003, strictly speaking, applies only to this first stage.

The TRC is aware that some analysts reject the term “ethnic tension” altogether. The Commission agrees that ethnicity does not, sui generis, cause people to do things and must always be understood in political and economic contexts. Ethnic antagonism does not explain why the tension happened. The roots of ethnic conflicts may in fact not be ethnic at all. But the mere fact that ethnicity could be activated as a political weapon and channelled towards violence shows the inherent conflict-generating potential of ethnic stereotyping.³³⁶

Equal Rights Trust field research identified a number of examples of prejudice against people from particular islands or parts of the country, which indicates that the conditions in which “ethnicity could be activated” persist to date, more than a decade after the end of “the Tensions”. The Trust’s research has also identified evidence of disparities in the distribution of investment, resources and services between the different provinces of Solomon Islands, and of apparent discrimination on the basis of place of origin from different islands. For example, Benjamin, a man from Malaita married to a woman from Isabel, stated that his family is prejudiced against him and that he had been excluded from family discussions about land or other issues.³³⁷ Kingsley, from Western province, also married to a woman from Isabel, stated that his brothers in law would refer to him as “black” and tell him to go back to his place of origin if he argued with them or his wife.³³⁸ Murphy, also from Western province but living on Malaita, described similar experiences, stating that people referred to him as “black”.³³⁹

336 See above, note 95, Vol. 3, p. 733.

337 Equal Rights Trust interview with Benjamin, 14 June 2013, Kolomola, Isabel province.

338 Equal Rights Trust interview with Kingsley, 14 June 2013, Kolosori Isabel province.

339 Equal Rights Trust interview with Murphy, 16 May 2013, Malaita province.

Access to Resources and Services

As a party to the International Covenant on Economic, Social and Cultural Rights (ICESCR), Solomon Islands is obligated to ensure the enjoyment of a wide range of economic, social and cultural rights without distinction on a number of specified grounds, including “national origin”, which the Committee on Economic, Social and Cultural Rights (CESCR) has stated includes “place of origin”.³⁴⁰ Under the ICERD, Solomon Islands is required to guarantee to everyone the enjoyment of various economic and social rights “without distinction as to race, colour, or national or ethnic origin”.³⁴¹ In addition, in its General Comment No. 20, the CESCR interpreted Article 2(2) of the ICESCR as prohibiting discrimination on grounds of place of residence. Elaborating on the implications of this for states parties, the Committee has said:

*The exercise of Covenant rights should not be conditional on, or determined by, a person’s current or former place of residence; e.g., whether an individual lives or is registered in an urban or a rural area, in a formal or an informal settlement, is internally displaced or leads a nomadic lifestyle. Disparities between localities and regions should be eliminated in practice by ensuring, for example, that there is even distribution in the availability and quality of primary, secondary and palliative health care facilities.*³⁴²

Equal Rights Trust research and analysis indicates that there are significant disparities between the different provinces in Solomon Islands in ac-

340 International Covenant on Economic, Social and Cultural Rights, Article 2; Committee on Economic, Social and Cultural Rights, *General Comment No. 20: Non-discrimination in economic, social and cultural rights*, UN Doc. E/C.12/GC/20, 2009, Para 24, which states: “National origin’ refers to a person’s State, nation, or place of origin.”

341 International Convention on the Elimination of all Forms of Racial Discrimination, Article 5(e) which lists the following rights: (i) the rights to work, to free choice of employment, to just and favourable conditions of work, to protection against unemployment, to equal pay for equal work, to just and favourable remuneration; (ii) the right to form and join trade unions; (iii) the right to housing; (iv) the right to public health, medical care, social security and social services; (v) the right to education and training.

342 See above, note 340, Para 34.

cess to basic services, many of which are essential to the enjoyment of social rights which the state is required to guarantee without discrimination. These disparities do not correlate to population size, thus giving rise to substantive inequalities in access to essential infrastructure and services between different islands. While these disparities do not, in themselves, evidence discrimination on the basis of ethnicity, they are nevertheless a cause for concern as potential violations of the right to equality and as indicators of the potential presence of directly or indirectly discriminatory decision-making.

Each province in Solomon Islands contains one or more islands, with significant variation between the provinces in terms of size and population. Table 1 below shows the total population of each province, together with the percentage of the population in each province which is classed as residing in urban areas.

Table 1: Provinces of Solomon Islands³⁴³

Province	Population	Percentage of Population in Urban Areas (%)
Choiseul (CHO)	26,372	3.1
Western (WES)	76,649	12.7
Isabel (ISA)	26,518	3.7
Central (CEN)	26,051	4.8
Rennell-Bellona (REN)	3,041	0.0
Gudalcanal (GUA)	93,613	16.5
Malaita (MAL)	137,596	3.7
Makira-Ulawa (MAK)	40,419	5.1
Temotu (TEM)	21,362	9.3
Honiara (HON)	64,609	100.0
Total	515,870	19.8

343 Solomon Islands National Statistical Office, *Report on 2009 Population & Housing Census – Basic Tables and Census Description*, 2009, Vol.1, Summary of main Indicators, Solomon Islands: 2009, p. vi, available at <http://www.spc.int/prism/solomons/index.php/sinso-documents?view=download&fileId=60>.

Data from Solomon Islands, however, shows that the enjoyment of various social rights varies significantly between urban and rural areas and between the different provinces. These two ways of analysing data (urban versus rural and by province) are largely overlapping. As can be seen in Table 1, Honiara is entirely urban whereas the nine provinces are overwhelmingly rural. Only Guadalcanal and Western provinces have any sizeable urban population, and even there, the urban population only accounts for 16.5% and 12.7% of the total population.

Standard of Living

Article 11(1) of ICESCR protects the right of everyone “to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions”. One key factor in determining the standard of living in Solomon Islands – where large numbers of people rely on subsistence farming – is access to land. Women from the Kiribati ethnic group informed the Equal Rights Trust that they had been deprived of rights to access land for which they had purchased title and that where disputes had arisen, the police had not assisted them, citing their ethnicity as the causal factor in both cases.³⁴⁴

The CESCR, in interpreting Article 11(1), has found that it entails the provision of various resources and services, including, for example, the right to water.³⁴⁵ In Solomon Islands, there are large disparities in access to improved drinking water sources, as can be seen in Table 2.

344 Equal Rights Trust focus group with women of Kiribati origin, 20 May 2013, Honiara.

345 Committee on Economic, Social and Cultural Rights, *General Comment No. 15: The Right to Water (Arts. 11 and 12 of the Covenant)*, 20 January 2003, E/C.12/2002/11, Para 3.

Table 2: Drinking Water Sources and Access to Improved Drinking Water Sources by Province (2009) (%)³⁴⁶

Water Source	CHO	WES	ISA	CEN	REN	GUA	MAL	MAK	TEM	HON	Total
Metered (SIWA)	0.0	0.3	0.4	0.5	0.0	6.3	1.6	0.4	0.1	75.4	9.2
Communal Stand-pipe	30.1	30.2	64.4	39.4	0.0	26.6	45.4	49.9	38.5	3.9	35.1
Household Tank	24.1	33.4	10.2	18.6	79.5	5.0	5.1	3.3	10.4	9.6	12.5
Communal Tank	17.8	17.6	11.2	17.6	13.4	7.4	7.6	8.4	24.2	1.5	10.6
Well (protected)	0.3	0.3	0.8	1.2	0.7	6.6	1.8	0.5	1.9	0.5	2.1
Well (unprotected)	0.0	0.1	0.4	0.3	1.5	5.6	0.4	0.3	5.8	2.6	1.8
River / Stream	25.1	14.3	10.7	18.3	0.1	37.8	33.1	34.3	7.8	4.7	24.5
Bottled Water	0.4	0.6	0.2	1.6	2.6	0.4	0.6	0.2	0.2	1.0	0.6
Other	2.1	3.2	1.6	2.5	2.2	4.1	4.5	2.6	11.1	0.8	3.6
Total access to improved drinking water sources	72.8	82.4	87.3	78.9	96.2	52.4	62.0	62.9	75.3	91.9	70.1

While the overwhelming majority of Honiara and Rennell and Bellona inhabitants have access to improved drinking water sources (91.9% and 96.2% respectively), the figure is as low as 52.4% and 62% in other provinces (Guadalcanal and Malaita respectively). Whereas only a small proportion of inhabitants of Honiara and Rennell and Bellona still rely on rivers and streams for their drinking water (4.7% and 0.1% respectively), in some provinces (Guadalcanal, Malaita and Makira-Ulawa), a third or more of the residents continue to do so.

CESCR has made clear that Article 11(1) (as well as other provisions of ICE-SCR and international human rights law more generally) include a right to

³⁴⁶ See above, note 343, Vol. 1, H6: Number of private households by main source of drinking water by province (converted to percentages), p. 198. "Total access to improved drinking water sources" refers to the total proportion of dwellings whose source of drinking water is metered (Solomon Islands Water Authority), a communal standpipe, a household tank or a communal tank.

adequate sanitation in the context of the right to water.³⁴⁷ As with access to improved drinking water, however, there are large disparities in access to improved sanitation facilities, as can be seen in Table 3.

Table 3: Access to Improved Sanitation Facilities by Province (2009) (%)³⁴⁸

CHO	WES	ISA	CEN	REN	GUA	MAL	MAK	TEM	HON	Total
15	31	42	10	98	44	53	14	9	97	43

Again, whilst the overwhelming majority of Honiara and Rennell and Bellona's inhabitants have access to sanitation facilities (97% and 98% respectively), the figure is far lower in all other provinces, particularly in Temotu (9%), Central (10%), Makira-Ulawa (14%) and Choiseul (15%). A similar picture can be seen in the data in Table 4 of the proportion of dwellings which have no toilet facilities.

Table 4: Proportion of Dwellings with no Toilet Facilities (2009) (%)³⁴⁹

CHO	WES	ISA	CEN	REN	GUA	MAL	MAK	TEM	HON	Total
72	44	1	75	0	31	21	49	80	1	33

Whilst in three provinces, a very small proportion of dwellings have no toilet facilities (Isabel, Rennell and Bellona and Honiara), in others the figure is over 70% (Choiseul, Central and Temotu).

Healthcare

Article 12 of the ICESCR protects the right of everyone to “the highest attainable standard of physical and mental health”. In Solomon Islands, a number of indicators reveal that this right is not enjoyed equally across the different provinces. For example, there are notable disparities in life expectancy in the different provinces.

³⁴⁷ See above, note 345, Para 29.

³⁴⁸ See above, note 343, Vol. 2, Summary of main Indicators, p. xxi.

³⁴⁹ *Ibid.*, Figure 22, p. 142.

Table 5: Life Expectancy at Birth and at Age 20 for Men and Women (2009) (years)³⁵⁰

	CHO	WES	ISA	CEN	REN	GUA	MAL	MAK	TEM	HON	Total
Life Expectancy at Birth (all)	66.7	69.0	69.0	65.2	65.2	69.6	67.3	70.7	69.6	71.3	69.6
Life Expectancy at Birth (men)	63.5	65.7	65.7	62.0	61.0	66.2	64.0	67.3	66.2	67.9	66.2
Life Expectancy at Birth (women)	70.1	72.5	72.5	68.5	69.6	73.1	70.7	74.3	73.1	74.9	73.1
Life Expectancy at age 20 (all)	50.8	52.3	52.3	49.7	49.8	52.8	51.1	53.6	52.8	54.1	53.3
Life Expectancy at age 20 (men)	48.4	49.8	49.8	47.4	46.8	50.2	48.7	51	50.2	51.4	50.2
Life Expectancy at age 20 (women)	53.3	55	55	52.1	52.9	55.5	53.7	56.4	55.5	56.9	56.5

Thus, it can be seen that life expectancy for a girl born in 2009 in Solomon Islands was 73.1 years, though this could range from 68.5 for a girl born in Central province to 74.9 for a girl born in Honiara. For boys born in 2009, life expectancy was 66.2 years, with a range from 61.0 (Rennell and Bellona) to 67.9 (Honiara).

Another means by which the availability and quality of healthcare can be assessed is through infant (under 1 year old) mortality rates. Article 12(2)(a) of the ICESCR requires states parties to take steps necessary for “the provision for the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child”.

³⁵⁰ *Ibid.*, Summary of main Indicators, p. xxv.

Table 6: Infant Mortality Rates (2009) (per 1,000)³⁵¹

	CHO	WES	ISA	CEN	CEN	GUA	MAL	MAK	TEM	HON	Total
Infant mortality rate (all)	33	23	23	32	32	22	26	20	22	19	22
Infant mortality rate (boys)	37	22	22	40	40	23	26	22	18	22	24
Infant mortality rate (girls)	28	24	24	23	23	20	25	18	27	16	20

Significant differences can be seen both between province and between genders within provinces. The infant mortality rate in Choiseul (33) and Central (32) is far higher than in Makira-Ulawa (20) and Honiara (19). The gender differences make the gaps even more pronounced. A boy born in Central province is two-and-a-half times more likely to die before his first birthday than a girl born in Honiara.

Education

Article 13(1) of the ICESCR provides the right of everyone to education. As noted in Part 3 of this report, Solomon Islands maintains a reservation to Article 13(2)(a) (the requirement for the states parties to provide compulsory and free education), which corresponds to the fact that significant numbers of children are not enrolled in primary school. The proportion of children enrolled in school varies greatly by province. Whilst only three quarters of 6 to 12 year olds in Malaita are enrolled in primary school, almost all children in this age bracket are enrolled in Rennell and Bellona.

351 *Ibid.*, p. xxv.

Table 7: School Enrolment Rates (Children Aged 6 to 12 Years) (2009) (%)³⁵²

	CHO	WES	ISA	CEN	REN	GUA	MAL	MAK	TEM	HON	Total
Total	92.0	90.6	88.5	86.5	97.3	80.5	75.3	87.2	87.8	86.4	83.3
Boys	90.9	89.5	87.2	85.9	95.9	80.5	74.9	86.2	87.5	86.1	82.8
Girls	93.1	91.7	89.9	87.2	98.9	80.5	75.8	88.4	88.2	86.7	83.9

Whilst this data only indicates the presence of significant disparities between different provinces and therefore between the ethnic groups which predominate in these areas, our research also identified evidence of ethnic discrimination in education, particularly in the allocation of scholarships which are a necessary precondition for most Solomon Islanders to participate in education. Women of Kiribati origin living in Honiara told the Equal Rights Trust that there were few opportunities for their children to access scholarships, because of perceptions that they are foreign.³⁵³ People originating from Tikopia island in the Temotu province told the Trust that there was evidence of discrimination in allocation of scholarships for tertiary education, arguing that these were disproportionately awarded to the larger, most populous province – Malaita.³⁵⁴ They stated their belief that this was a result of discrimination on the basis of their ethnicity and place of origin.

Summary

An analysis of available data on the disparities in investment and services between the different provinces presents a complicated picture. While two provinces, Rennell and Bellona and Honiara, have better results in respect of two indicators related to standard of living – access to water and sanitation – this pattern is not consistent with data on healthcare and education. Honiara has the best life expectancy statistics in the country, but amongst the worst school enrolment rates; conversely, Rennell-Bellona has amongst the worst life expectancy, but the best school enrolment rates. At the other end of the spectrum, the picture is equally unclear. Ranking the provinces by out-

³⁵² *Ibid.*, p. xxiii.

³⁵³ See above, note 344.

³⁵⁴ Equal Rights Trust focus group with people from Tikopia, 20 May 2013, Temotu province.

come across the six data sets, one province – Central province – has amongst the worst outcomes in four different areas: access to sanitation, toilet facilities, life expectancy and infant mortality. Two other provinces, Choiseul and Malaita, had amongst the worst three outcomes when measured against three of the four indicators – access to sanitation and toilet facilities and life expectancy for Choiseul, and access to drinking water, infant mortality and school enrolment rates for Malaita.

Thus, it is difficult to reach a firm conclusion about whether the disparities in investment, employment and services between different islands which were commonly cited as the reasons for internal migration and the resulting tension are real or not. Certainly, examining this data, there is not a clear pattern of advantage and disadvantage between the different regions as one finds in other countries where ethnic groups are concentrated in particular regions. In Kenya, for example, a clear and consistent pattern of deprivation in respect of infrastructure, investment, employment and access to education and health services can be found in the north and east of the country, areas which are dominated by particular marginalised ethnic groups.³⁵⁵

Conclusion

It is difficult to reach a firm conclusion about the relative importance of place of origin in determining patterns of discrimination and disadvantage in Solomon Islands. It seems clear that perceptions about disparities in investment and services between the country's different provinces – and therefore between different ethnic groups – was a factor in driving migration between the islands. Similarly, the perception that one ethnic group – Malaitians – had benefitted disproportionately from development in Honiara was clearly a central factor in “the Tensions” which beset the country between 1998 and 2003. However, as the analysis above indicates, an examination of available data on the levels of basic services in the different regions of the country does not identify a consistent pattern of advantage or disadvantage for Malaita or for Honiara.

355 See the Equal Rights Trust, *In the Spirit of Harambee: Addressing Discrimination and Inequality in Kenya*, 2012, chapter 2.2, pp. 52–64.

2.2.2 Discrimination and Inequality on the Basis of *Wantok*

Wantok has been described both as “a term used to express patterns of relationships and networks that link people in families and regional localities and (...) a reference to provincial, national and sub-regional identities”³⁵⁶ and also as:

*[T]he set of relationships (or a set of obligations) between individuals characterized by some or all of the following: (a) common language (wantok = one talk), (b) common kinship group, (c) common geographical area of origin, (d) common social associations or religious groups, and (e) common belief in the principle of mutual reciprocity.*³⁵⁷

The TRC (1998-2003) defined *wantok* as “the set of obligations between people related to each other by a common language (‘one talk’), ethnicity, and/or district or provincial boundaries”.³⁵⁸ Others have described *wantok* as a traditional social system including “kinship, clan, ethnicity and language”³⁵⁹ with the most fundamental social group being the extended family,³⁶⁰ responsible for subsistence, wealth, social stability and relations with the ancestors and the environment.³⁶¹ In recent decades, the *wantok* family and social structure has become more complex with modern institutions such as churches, unions, sports clubs and other forms of social groupings. From a purely familial structure, the *wantok* system now extends to business dealings and intersects

356 Nanau, G.L., “The Wantok System as a Socio-economic and Political Network in Melanesia”, *OMNES: The Journal of Multicultural Society*, 2011, Vol. 2, No. 1, p. 32, available at: <http://www.omnesjournal.org/upload/public/pdf/10/1.pdf>.

357 Renzio, P. “Women and Wantoks: Social Capital and Group Behaviour in Papua New Guinea (WIDER)”, *Project Meeting, Group Behaviour and Development*. The United Nations University, Helsinki, 1999, p. 19.

358 See above, note 95, Vol. 3, p. 35, available at: <http://pacificpolicy.org/files/2013/04/Solomon-Islands-TRC-Final-Report-Vol-3.pdf>.

359 See above, note 314, p. 4.

360 Moore, C., *Happy isles in crisis: The historical causes of a failing state in Solomon Islands*, 1998-2004, Canberra: Asia Pacific Press, 2004.

361 See above, note 314, p. 4.

with political alliances at the local, provincial and national level.³⁶² *Wantok* is closely linked to the concept of *kastom*: cultural practices such as reciprocal gift giving, and traditional forms of social organisation through which *wantok* relationships are enacted and embodied.³⁶³

As a system of social organisation, the *wantok* system can be considered beneficial, in that it encourages individuals to look after relatives and neighbours. On the other hand however, there is evidence it has been associated with nepotism, through the use of an individual's personal connections with members of their *wantok* to obtain public sector employment at the expense of equal opportunities.³⁶⁴

Discrimination by State Actors

There is evidence of state agents discriminating against those from other *wantoks*, or favouring members of their own *wantok*. The United States State Department has cited assertions that the police have been more loyal to their *wantok* than to the country as a whole,³⁶⁵ with implications for the fair administration of justice. For example, Connie, a young man from Choiseul province, told Equal Rights Trust researchers that government assistance funds were not equitably distributed, as the local MP ensured that funds went only to those who had voted for him from his *wantok*.³⁶⁶ Other people also interviewed by the Trust included Mebia, a 38 year old man from Nemba in Temotu province, who spoke of his difficulties in obtaining assistance following the tsunami in 2013 and how relief supplies were not equally distributed amongst those who needed them but were distributed on the basis of the *wantok* system.³⁶⁷ Julia Ima from Venga in Temotu province told a similar story, stating that the government had not provided tsunami relief supplies to her, both because of her *wantok* and her disability.³⁶⁸

362 *Ibid.*

363 See above, note 356, vol. 2 No 1, pp. 31–35.

364 *Ibid.*, Vol. 2 No. 1, p. 35.

365 United States State Department, *Country Reports on Human Rights Practices for 2013: Solomon Islands*, 2014.

366 Equal Rights Trust interview with Connie, 31 May 2013, Poroporo, Choiseul province.

367 Equal Rights Trust interview with Mebia, 11 June 2013, Nemba, Temotu province.

368 Equal Rights Trust interview with Julia Ima, 12 June 2013, Venga, Temotu province.

Employment

A number of those interviewed by the Equal Rights Trust and SPC-SI expressed concerns about discrimination in favour of family members or members of a particular *wantok* group in employment. For example, participants in focus groups in Wasu, Salisapa and Buala stated that the practice of favouring members of a particular *wantok* group made it difficult to get jobs and to receive equal treatment in employment.³⁶⁹ Five men from Buala spoke to our researchers about discrimination in a logging firm, where decisions were made by those from a particular *wantok* and royalties were not distributed fairly.³⁷⁰ Participants at a focus group with young men in Honiara stated that Malatian and Isabelian employers tended to recruit members of their *wantok* group, thus favouring those of the same ethnic origin.³⁷¹

The Equal Rights Trust interviewed Ellen Buta, a 40 year old woman from Auki, the capital of Malaita province, who spoke of her experience applying for a cleaning job and being rejected. Ms Buta believed that the employers had relatives of the same *wantok* group and chose to hire them rather than those from a different *wantok* group.³⁷² A number of other persons who spoke to the Equal Rights Trust also referred to the *wantok* system as a key factor in their difficulties in obtaining employment. For example, Jimmy, a 29 year old man from Poroporo in Choiseul province, told our researchers that he had applied for a position in his local provincial offices, only to discover that the position had been filled before the advertisement was published.³⁷³

Education

The education system in Solomon Islands is governed by the Education Act, under which education is neither free nor compulsory. Established at the beginning of 2009, the government's "Fee Free Education" policy funds schools'

369 Equal Rights Trust focus groups; 6 May 2013, Salisapa, Central province; 14 June 2013, Buala, Isabel province; 15 July 2013, Wasu, Makira-Ulawa province.

370 Equal Rights Trust focus group, 14 June 2013, Buala, Isabel province.

371 Equal Rights Trust focus group with young men, 20 May 2013, Rifle Range, capital territory.

372 Equal Rights Trust interview with Ellen Buta, 15 May 2013, Malaita province.

373 Equal Rights Trust interview with Jimmy, 31 May 2013, Poroporo, Choiseul province.

operational costs for all students in Years 1 to 9.³⁷⁴ As only operational costs are covered, schools are able to ask parents for contributions. These contributions are not monitored and schools impose contributions as they see fit. A child's ability to obtain education is therefore inextricably linked to their parents' resources, though the island on which they reside also has an impact. For example, in Honiara, there are several secondary schools, meaning that the parents of local students are able to avoid the higher fees charged by boarding schools.

Moreover, while scholarships are available, many of those interviewed for this report asserted that these were distributed on the basis of the applicant's *wantok* group. A young man from Makira-Ulawa province told the Equal Rights Trust that, "[n]owadays, to get into higher education, I see the *wantok* is the only way, to get scholarship or further studies".³⁷⁵ Another young man, Lawrence, from Mukiki, Choiseul province, said that he was awarded a scholarship to study overseas, but the opportunity was taken away and given to the son of a member of parliament.³⁷⁶ Roselyn, from Poroporo, Choiseul province, stated that the education system is "corrupted, full of *wantok*"; because of *wantok*, her son who had achieved grades similar to others from his class was unable to progress to grade 7 alongside them.³⁷⁷ Similarly, Susan, a 37 year old teacher from Malaita, spoke of how the education system is corrupt with opportunities only given to people of the same *wantok* as those in charge. As a result, she was not permitted to undertake further studies as a teacher, whilst approval was given to another applicant who was less qualified.³⁷⁸

Conclusion

The evidence gathered by the Equal Rights Trust has identified a clear pattern of concern about corruption based on *wantok*, which, if verified, would constitute discrimination on the basis of ethnicity within the meaning of ICERD.

374 Solomon Islands Times, "Launch of Fee Free Education: An educated populace is the foundation to a vibrant society and nation", *Solomon Islands Times*, 16 January 2009, available at: <http://www.solomontimes.com/news/launch-of-fee-free-education/3406>.

375 Equal Rights Trust interview with Y, 14 June 2013, Makira-Ulawa province.

376 Equal Rights Trust interview with Lawrence, 31 May 2013, Mukiki, Choiseul province.

377 Equal Rights Trust interview with Roselyn, 31 May 2013, Poroporo, Choiseul province.

378 Equal Rights Trust interview with Susan, 15 May 2013, Malaita, Malaita province.

The Trust has found a consistent pattern of allegations of unfavourable treatment on the basis of *wantok* in the areas of employment, education and delivery of services by state actors, which indicate the presence of a systemic problem with discrimination on this basis.

2.3 Discrimination and Inequality on the Basis of Disability

The legal regime in Solomon Islands provides very little protection from discrimination on the basis of disability. The 1978 Constitution does not prohibit discrimination on the basis of disability and, despite years of debate, a draft Bill to provide protection from discrimination on grounds of disability has still not been enacted.³⁷⁹ Solomon Islands signed the Convention on the Rights of Persons with Disabilities (CRPD) in 2008, though it has yet to ratify it, despite the government's commitment during the Universal Periodic Review in 2011 that it would do so.³⁸⁰ According to its 2015 report to the UPR, the country is improving infrastructure and accessibility as "pre-emptive steps to ratifying the CRPD".³⁸¹ Whether or not it does so, Solomon Islands is party to ICESCR, which the CESCR has interpreted as giving rise to an obligation to prohibit discrimination on the basis of disability in the enjoyment of all economic, social and cultural rights.³⁸² Our research has identified significant problems of discrimination affecting persons with disabilities, in particular in respect to the enjoyment of rights protected by ICESCR, thus putting the state in violation of its obligations under that treaty.

Cultural Attitudes and the Position of Persons with Disabilities in Society

Estimates of the number of persons with disabilities in Solomon Islands vary widely. According to the 1999 census, there were 11,107 persons with disabilities in the country.³⁸³ The 2009 census, however, reported a substantially

379 For detailed discussion of the Persons with Disability (Equal Opportunities, Protection of Rights and Full Participation) Bill 2006, see section 3.2.3 of this report.

380 Solomon Islands Country Statement, *Solomon Islands Response to HRC-UPR WG 115 Recommendations, Wednesday 21st September 2011*, p. 3, available at: http://www.upr-info.org/sites/default/files/document/solomon_islands/session_11_-_may_2011/solomonislandplenarystatement2011.pdf.

381 See above, note 162, Para 95.

382 See above, note 340, Para 28.

383 Solomon Islands Nationwide Disability Survey 2005, p. 7.

higher figure. The report stated that “about 14% of the total population” reported a disability.³⁸⁴ The question posed “concerned whether a person had any difficulties or health problems in seeing, hearing, walking, and/or remember or concentrating”.³⁸⁵ It should be noted that this methodology is open to question because it does not reflect internationally recognised standards on the definition of disability.³⁸⁶ The World Health Organisation estimates that in 2004, 2.9% of the world population was severely disabled and 12.4% was moderately disabled,³⁸⁷ which if consistent with the Solomon Islands population would mean a total population of 68,200 persons with moderate or severe disabilities in the country.

Significant stigma is attached to disability in Solomon Islands, with severe and serious impacts on the opportunity of persons with disabilities to participate in life on an equal basis with others. Interviews conducted by the Equal Rights Trust found a number of examples of negative attitudes towards persons with disabilities even within their families. Jessica, a girl with physical disability from Salisapa, Central province, told our researchers that she felt treated differently compared to girls of the same age and that, while the rest of the family was playing games or telling stories, she was sent to wash dishes, cook and do other menial work.³⁸⁸ John, a young man who fell in love with a woman with a disability in the province of Malaita, reported that he was prohibited by his parents to marry the woman.³⁸⁹ Lynda, a young girl with disability from Malaita province, told our researchers that persons with mental disability can experience rejection and degrading treatment by the community.³⁹⁰

384 See above, note 257, p. 84.

385 *Ibid.*

386 See, for example, the broad definition of “disability” provided in Article 1 of the Convention on the Rights of Persons with Disabilities as including “those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others”.

387 World Health Organisation, *Global Health Risks: Mortality and burden of disease attributable to selected major risks*, 2004, p. 34, available at: http://www.who.int/healthinfo/global_burden_disease/GlobalHealthRisks_report_full.pdf.

388 Equal Rights Trust interview with Jessica Nume, 7 May 2013, Salisapa, Central province.

389 Equal Rights Trust interview with John, 15 May 2013, Malaita, Malaita province.

390 Equal Rights Trust interview with Lynda, 15 May 2013, Malaita, Malaita province.

Some commentators have argued that negative cultural attitudes towards disability stem, in part, from the particular interpretation of Christianity practiced in Solomon Islands and other countries in the region:

Pacific customs mixed with religions such as Christianity can often be exclusionary, despite preaching tolerance and respect as core values. Literal preaching from Deuteronomy in the Old Testament depicts disability as a curse from God. Combined with customary beliefs that disability is punishment for a family's wrongdoing, this results in many people being ashamed of and fearing people with disabilities.³⁹¹

Further, there is evidence that traditional attitudes towards disability in the region are based on a belief that persons with disabilities cannot be expected to take a full and active part in community life and should be cared for by others. The NGOs Foundation for Marist Solidarity International and Franciscans International, for example, have reported that this “charity” or “welfare” approach leads to parents keeping children with disabilities at home rather than sending them to school.³⁹²

Discriminatory Laws

A number of provisions in the Constitution of Solomon Islands and other laws discriminate, or create conditions for discrimination, against persons with disabilities, including in particular against persons with mental or intellectual disabilities. For example, section 5(1) of the Constitution which states that “[n]o person shall be deprived of his personal liberty save as may be authorised by law” includes a number of specified exceptions to the right, permitting the restriction of liberty, *inter alia*:

[I]n the case of a person who is, or is reasonably suspected to be, of unsound mind, addicted to drugs or alcohol,

391 Flynn, K, “The challenges faced by disabled girls in the Solomon Islands”, *The Guardian*, 5 July 2011, available at: <http://www.theguardian.com/journalismcompetition/the-challenges-faced-by-disabled-girls-in-the-solomon-islands>.

392 Foundation for Marist Solidarity International and Franciscans International, *Joint Submission to the Universal Periodic Review for Solomon Islands*, November 2010, p. 2.

*or a vagrant, for the purpose of his care or treatment or the protection of the community.*³⁹³

This would appear to contradict Article 14(6) of the CRPD which provides that:

States Parties shall ensure that persons with disabilities, on an equal basis with others (...) are not deprived of their liberty unlawfully or arbitrarily, and that any deprivation of liberty is in conformity with the law, and that the existence of a disability shall in no case justify a deprivation of liberty.

Similarly, section 8 of the Constitution which provides the right to protection from deprivation of property states that:

*Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section (...) to the extent that the law in question makes provision for the taking of possession or acquisition of (...) property of (...) a person of unsound mind.*³⁹⁴

The term “unsound mind” is not defined in the Constitution. However, in the absence of such a definition, it is clear that such restrictions could discriminate against persons with mental or intellectual disabilities, potentially violating Article 12(5) of the CRPD which provides that:

States Parties shall take all appropriate and effective measures to ensure the equal right of persons with disabilities to own or inherit property, to control their own financial affairs and to have equal access to bank loans, mortgages and other forms of financial credit, and shall ensure that persons with disabilities are not arbitrarily deprived of their property.

393 Constitution of Solomon Islands 1978, section 5(1)(i).

394 *Ibid.*, section 8(2)(b)(ii).

The Labour Act provides for a minimum wage in Solomon Islands,³⁹⁵ but section 36(1) of the Act allows the Commissioner of Labour to issue permits of exemption to “infirm or disabled persons” which allows for their employment at less than the minimum wage. Whilst such a provision may be well-intentioned, it nevertheless constitutes direct disability discrimination, in violation of Articles 2(2) and 7 of the ICESCR. As the CESCR has stated:

*Disabled workers may not be discriminated against with respect to wages or other conditions if their work is equal to that of non-disabled workers. States parties have a responsibility to ensure that disability is not used as an excuse for creating low standards of labour protection or for paying below minimum wages.*³⁹⁶

Education

While it has not ratified the CRPD, Solomon Islands through its signature has committed to its provisions, which require states parties to “ensure an inclusive education system at all levels,” and to “ensure that persons with disabilities are not excluded from the general education system on the basis of disability”.³⁹⁷ The Convention on the Rights of the Child (CRC), which Solomon Islands has ratified, contains an extensive right for all children to education in Article 28 which must be ensured without discrimination on grounds of disability as required by Article 2(1) of the Convention. In addition, Article 23 recognises the particular needs of children with disabilities and requires states parties to extend assistance to children with disabilities to ensure that:

[T]he disabled child has effective access to and receives education, training, health care services, rehabilitation services, preparation for employment and recrea-

395 The minimum wage is currently SBD\$3.20 (US\$0.39) in the agriculture plantations and the fishing sector and SBD\$4.00 (US\$0.49) in all other sectors by virtue of Legal Notice No. 31/2008.

396 Committee on Economic, Social and Cultural Rights, *General Comment No. 5, Persons with disabilities*, U.N. Doc E/1995/22 at 19, 1995, Para 25.

397 Convention on the Rights of Persons with Disabilities, G.A. Res. A/RES/61/106, 2006, Articles 24(1) and 24(2)(a).

*tion opportunities in a manner conducive to the child's achieving the fullest possible social integration and individual development, including his or her cultural and spiritual development.*³⁹⁸

Furthermore, as illustrated above, as a party to the ICESCR, Solomon Islands is obligated to ensure the enjoyment of the right to education without discrimination on the basis of disability. As the CESCR has stated, ensuring the enjoyment of Covenant rights without discrimination on the basis of disability entails an obligation to make reasonable accommodation where necessary to ensure the equal enjoyment of Covenant rights.³⁹⁹ Dealing specifically with education, the Committee has stated that:

*States should ensure that teachers are trained to educate children with disabilities within regular schools and that the necessary equipment and support are available to bring persons with disabilities up to the same level of education as their non-disabled peers.*⁴⁰⁰

Despite repeated attempts, Solomon Islands is yet to enact a law providing protection from discrimination on the basis of disability, while the legislative framework governing education in Solomon Islands, the Education Act, contains no provisions on children with disabilities. However, the National Policy on Disability 2005–2010 contained a number of measures which aimed to improve the situation. Objective 5 of the Policy was to:

*Review education and training policies to ensure that they give opportunity to boys and girls with disabilities, improve their access and their equal right to education, and provide compulsory special education modules in all teacher training courses.*⁴⁰¹

398 Convention on the Rights of the Child, G.A. Res. 44/25, 1989, Article 23(3).

399 See above, note 340, Para 28.

400 See above, note 396, Para 35.

401 Ministry of Health and Medical Services, *Solomon Islands National Policy on Disability 2005 - 2010*, November 2004, p. 8, available at: <http://www.mindbank.info/item/1563>.

The National Policy on Disability was reviewed in 2013–2014 but, as of May 2015, Cabinet endorsement has not yet been sought. No budget or implementation measures have been planned by the Ministry of Health, and no time-scale for endorsement has been drawn up.⁴⁰²

In 2010, the government of Solomon Islands promised to ensure that “all Solomon Islanders have equal access to quality education”.⁴⁰³ Despite this promise, international obligations and the government’s policy commitments, access to education for children with disabilities remains poor. In 2002, the Committee on the Rights of the Child (CRC Committee) expressed its concern that children with disabilities “have no access to education”.⁴⁰⁴

One of the factors which limit access to education for children with disabilities is that great stigma is attached to disability, even by the parents of young people with disabilities. For example, Edith, a woman with disabilities from Honiara, told the Equal Rights Trust that her education was interrupted because she could no longer tolerate schoolmates’ verbal abuses targeting her disability.⁴⁰⁵ A 2010 report produced by UNICEF found that:

The cultural attitude to children with disabilities in Solomon Islands depends on various factors such as the part of the country, the type of disability and the levels of awareness of disability issues. While some parents actively seek help for their CWD (children with disabilities), others hide them as there is still a feeling of shame and embarrassment. The perception that having a CWD is a punishment or curse is still strong. There is some fear of PWD, especially those with epilepsy. Many believe that CWD are incapable and do not encourage them to

402 People with Disabilities Solomon Islands, *Submission to the Universal Periodic Review for Solomon Islands*, May 2015, available at: <http://uprdoc.ohchr.org/uprweb/downloadfile.aspx?filename=2288&file=EnglishTranslation>.

403 National Coalition for Reform and Advancement (NCRA), *Government Policy Statement*, Office of the Prime Minister, October 2010, Para 4.2.5, available at: <http://www.lowyinterpreter.org/file.axd?COLLCC=3112814889&file=2010%2F10%2FNCRAPolicy+Document.pdf>.

404 United Nations Committee on the Rights of the Child, First Session Report, *Concluding Observations: Solomon Islands*, UN Doc. CRC/C/15/Add.208, 2 July 2003, Para 38.

405 See above, note 143.

*seek education or to learn to live an independent life. Parents with CWD are often very protective and do not want their children to attend school for fear of ridicule or teasing.*⁴⁰⁶

In addition, while children with disabilities are not prevented from attending mainstream schools, in reality, inadequate facilities and lack of reasonable accommodation – both a consequence of limited resources – make attendance impossible for many.⁴⁰⁷ Those who do attend school tend only to stay for a short time. Children with physical disabilities are not always able to access transportation to take them to school, and long distances to the nearest school may render attendance impossible.⁴⁰⁸

Outside the mainstream education system, as of 2014, there are two educational facilities which specialise in education for children with disabilities in Solomon Islands. The first, the Red Cross Centre for Children with Disabilities, is supported almost entirely by the International Committee of the Red Cross.⁴⁰⁹ The Centre provides basic care, education and training to children with disabilities from the age of six months to 20 years; as of 2011, it had 155 students. The Centre aims to integrate some children into the mainstream schooling system where it believes this is possible and has had some success in doing so.⁴¹⁰ The second facility, the San Isidro Care Centre, caters for children with hearing impairments aged 14 and over, many of whom have progressed from the Red Cross Centre.⁴¹¹ The San Isidro Centre provides training in agriculture, carpentry, cooking, sewing and life-skills, with an emphasis on income-generating activities; as of 2011, it had 37 students.⁴¹²

406 UNICEF, *A Report for UNICEF Pacific's 2010 Mid-Term Review: Pacific Children with Disabilities*, 2012, p33.

407 UNDP, *Pacific Sisters with Disabilities: at the Intersection of Discrimination*, 2009, p. 20, available at: <http://wwda.org.au/wp-content/uploads/2013/12/pacificsisters1.pdf>.

408 See above, note 406, p. 34.

409 United States State Department, *2013 Country Reports on Human Rights Practices: Solomon Islands*, 2014.

410 *Ibid.*

411 See above, note 408.

412 *Ibid.*

Reliable figures on how many children with disabilities are in education are difficult to obtain. The government's statistics from 2009 reported that just 2% of children in primary schools had "special needs" indicating that significant numbers of children with disabilities were not attending primary school at all.⁴¹³ The corresponding figures for children in junior secondary schools and senior secondary schools were 1% and less than 1% respectively, suggesting that children with disabilities were even less likely to attend secondary school than primary school.⁴¹⁴ A report produced by UNDP in the same year suggested that only 18% of girls with disabilities were attending school, while 39% of women with disabilities had obtained primary education.⁴¹⁵

Employment

Although not yet ratified by Solomon Islands, Article 27 of the CRPD requires States parties to recognise "the right of persons with disabilities to work, on an equal basis with others; this includes the right to the opportunity to gain a living by work freely chosen or accepted in a labour market and work environment that is open, inclusive and accessible to persons with disabilities". Further, as a party to the ICESCR, Solomon Islands has obligations to ensure the enjoyment of economic, social and cultural rights without discrimination on grounds including disability. The CESCR, in addressing the obligation to ensure that persons with disabilities enjoy the "right of everyone to the opportunity to gain his living by work which he freely chooses or accepts" arising under Article 6, has stated that:

[P]ersons with disabilities, whether in rural or urban areas, must have equal opportunities for productive and gainful employment in the labour market (...) For this to happen it is particularly important that artificial barriers to integration in general, and to employment in particular, be removed. (...) Governments should also

413 Government of Solomon Islands, Ministry of Education and Human Resources Development, *Performance Assessment Framework 2007 - 2009*, December 2010, pp. 24-25, available at: https://www.spc.int/PRISM/images/EducationDigests/SOLOMON%20ISLANDS/Final_endorsed_PAF_2007-2009_ver8Dec2010.pdf.

414 *Ibid.*

415 See above, note 407.

*develop policies which promote and regulate flexible and alternative work arrangements that reasonably accommodate the needs of disabled workers.*⁴¹⁶

There are no statistics which confirm the number of persons with disabilities in employment in Solomon Islands. Indeed, in its report to the Universal Periodic Review process in 2011, the government of Solomon Islands stated that the Labour Division of the Ministry of Commerce, Employment and Industries does not collect data on the number of persons with disabilities in employment, nor does it collect any information on discrimination against persons with disabilities in recruitment, promotion and other aspects of employment.⁴¹⁷ This failure to collect data is itself a failure to comply with the clear recommendation of the CESCR that states monitor:

*[B]oth the steps taken and the results achieved in the elimination of discrimination (...) us[ing] appropriate indicators and benchmarks, disaggregated on the basis of the prohibited grounds of discrimination.*⁴¹⁸

Moreover, it indicates a lack of concern with the participation of persons with disabilities which is deeply problematic.

There is a single disability centre in Honiara which assists persons with disabilities in finding employment, but the high level of unemployment in the economy as a whole, combined with the absence of any laws requiring reasonable accommodation, mean that most persons with disabilities are unable to find work outside of the family structure; this is particularly the case in rural areas.⁴¹⁹

Health

Article 25 CRPD requires that “States Parties recognize that persons with disabilities have the right to the enjoyment of the highest attainable standard of

416 See above, note 396, Para 22.

417 See above, note 162, Para 52.

418 See above, note 340, Para 41.

419 See above, note 409.

health without discrimination on the basis of disability”. Similarly, as in the areas of employment and education, as a party to the ICESCR, Solomon Islands has a specific obligation to ensure the enjoyment of the right to the highest attainable standard of physical and mental health without discrimination on grounds which include disability. The CESCR has clarified that meeting the obligation of ensuring “accessibility” of health services which arises under the Covenant entails four overlapping dimensions: non-discrimination, physical accessibility, economic accessibility and information accessibility. It has recognised that physical accessibility “includes adequate access to buildings for persons with disabilities”.⁴²⁰

The Equal Rights Trust spoke with a number of people with disabilities about problems of discrimination, inaccessibility and lack of reasonable adjustment in the area of healthcare. Jessica, a woman with physical disability from the Central province, told our researchers that she had difficulties in accessing healthcare services because of the distance of her village from the nearest clinic and the lack of nurses conducting home visits.⁴²¹ Similarly, Peter, a man with disability from Lambi Tasiloki, Guadalcanal province, stated that he remained unable to access healthcare services located in Honiara due to the long distance and the lack of government support or assistance.⁴²² Interviewees also expressed concerns that staff in healthcare services lack the necessary training to deal with the healthcare needs of persons with disabilities. Meleu, a man with a hearing impairment living in Venga, Temotu province, stated that persons with hearing impairments can have difficulty in accessing suitable healthcare because nurses cannot communicate effectively with them.⁴²³

Access to Buildings, Infrastructure and Transport

The CRPD, which Solomon Islands has signed but not ratified, includes “accessibility” among its general principles, while Article 9 requires that:

420 The United Nations Committee on Economic, Social and Cultural Rights, *General Comment 14, The right to the highest attainable standard of health*, U.N. Doc. E/C.12/2000/4, 2000, Para 12(b).

421 See above, note 388.

422 Equal Rights Trust interview with Peter Uduseni, 19 May 2013, Lambi Tasiloki, Guadalcanal province.

423 Equal Rights Trust interview with Meleu, 11 June 2013, Venga, Temotu province.

[S]tates Parties shall take appropriate measures to ensure to persons with disabilities access, on an equal basis with others, to the physical environment, to transportation, to information and communications, including information and communications technologies and systems, and to other facilities and services open or provided to the public.

The CESC, recalling the World Programme of Action Concerning Disabled Persons, has stated that “[d]isability policies should ensure the access of [persons with disabilities] to all community services”. In Solomon Islands, however, the Disability Rights Fund has said that:

[A]ccessibility for people with disabilities is a barrier in public buildings. In addition, access to services and transport in the outer islands is virtually non-existent.⁴²⁴

This finding was corroborated by Equal Rights Trust field research. Prisilla Tutuga, a woman with disability living in Central province, told the Trust’s researchers that persons with disability are not guaranteed equal access to government services.⁴²⁵ Meleu, a man with hearing impairment living in Venga, Temotu province, told the Trust that, after the tsunami, the government did not provide him with the necessary supplies and he was left dependent on his parents.⁴²⁶ According to a coalition of Solomon Islands’ NGOs in a shadow report to the CEDAW Committee, women with disabilities have no or little access to services, education and employment; they are the most vulnerable to abuses and to diseases including HIV.⁴²⁷

424 Disability Rights Fund, *Strengthening Voices of Persons with Disabilities*, 2011, p. 1, available at: http://www.disabilityrightsfund.org/files/pwdsi_solomon_islands.pdf. The Disability Rights Fund is a collaboration between donors and the disability community to advance the Convention on the Rights of Persons with Disabilities through building capacity in various countries.

425 Equal Rights Trust interview with Prisilla Tutuga, 7 May 2013, Salisapa, Central province.

426 See above, note 423.

427 Solomon Islands NGO CEDAW Coalition Group, *NGO Shadow Report on the Status of Women in Solomon Islands: Initial, Second and Third Report (2002-2014)*, 2014, p. 11, available at: http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/SLB/INT_CEDAW_NGO_SLB_18377_E.pdf.

Conclusion

As this evidence makes clear, persons with disabilities in Solomon Islands are unable to participate in many areas of life on an equal basis with others. Significant social stigma attached to disability creates conditions for exclusion and mistreatment in the home and direct discrimination in society at large. A paternalistic approach to disability focused on “charity” and “welfare” rather than rights, a lack of reasonable accommodation and the limited resources of persons with disabilities together limit the capacity of persons with disabilities to participate in education and employment and to access healthcare and other services. The result is that persons with disabilities are marginalised and disadvantaged in many areas of life.

2.4 Discrimination and Inequality on the Basis of Sexual Orientation

While sexual orientation is not explicitly included as a protected ground of discrimination in any of the human rights instruments to which Solomon Islands is party, it is now a well-recognised principle that sexual orientation is a characteristic analogous to those which are explicitly protected.⁴²⁸ UN treaty bodies have recognised the specific obligation to prohibit discrimination on the basis of sexual orientation that arise under a number of international human rights treaties to which Solomon Islands is party. The CESCR has recognised sexual orientation as a form of “other status” as protected under Article 2(2) of the ICESCR, meaning that states are obligated to ensure the enjoyment of economic, social and cultural rights guaranteed under the Covenant without discrimination on this basis.⁴²⁹ In addition, the CEDAW Committee and CRC Committee have made clear that states party to the CEDAW and the CRC are obligated to protect women and children respectively from discrimination on the basis of sexual orientation.⁴³⁰

428 In addition to the international human rights treaties discussed here, see also: Equal Rights Trust, *Declaration of Principles on Equality, Principle 5*, London, 2008, p. 6 and the Yogyakarta Principles.

429 See above, note 340, Para 32.

430 See, respectively, Committee on the Elimination of Discrimination against Women, *General recommendation No. 28 on the core obligations of States parties under article 2 of the Convention on the Elimination of All Forms of Discrimination against Women*, U.N. Doc. CEDAW/C/GC/28, UN Doc. CEDAW/C/GC/28, 16 December 2010, Para 18, and Committee on the Rights of the Child, *General Comment No. 4: Adolescent health and development in the context of the Convention on the Rights of the Child*, UN Doc. CRC/GC/2003/4, 2003, Para 2. See also Principle 5 of the *Declaration of Principles on Equality* (see above, note 428), and Yogyakarta Principles.

Nevertheless, Solomon Islands does not prohibit discrimination on the basis of sexual orientation. Indeed, it law directly discriminates against lesbians and gay and bisexual men, through criminalising same-sex sexual activity between persons of the same sex.

Discriminatory Laws

Same-sex sexual activity between men is a criminal offence in Solomon Islands. Section 160 of the Penal Code criminalises “unnatural offences” (buggery) with up to fourteen years’ imprisonment, while section 161 criminalises attempts to commit “unnatural offences” as well as indecent assault against a man, with up to seven years’ imprisonment. The relevant sections read:

Unnatural offences

160. Any person who-

(a) commits buggery with another person or with an animal; or

(b) permits a male person to commit buggery with him or her,

shall be guilty of a felony, and shall be liable to imprisonment for fourteen years.

Attempts to commit unnatural offences

161. Any person who attempts to commit any of the offences specified in the last preceding section, or who is guilty of any and assault with intent to commit the same, or any indecent assault upon any male person shall be guilty of a felony, and shall be liable to imprisonment for seven years.

The Penal Code (Amendment) Act 1990 replaced section 162, “Indecent practices between males” with a new offence criminalising “gross indecency” between two persons of the same sex, whether male or female, with up to five

years' imprisonment. Although "gross indecency" is not defined, the Law Reform Commission has stated that it includes touching another person's genitals with one's hands, oral sex and masturbation.⁴³¹ Section 162 reads:

Indecent practices between persons of the same sex

162. Any person who, whether in public or private –

(a) commits any act of gross indecency with another of the same sex;

(b) procures another of the same sex to commit any act of gross indecency; or

(c) attempts to procure the commission of any act of gross indecency by persons of the same sex,

shall be guilty of a felony and be liable to imprisonment for five years.

In 2008, the Law Reform Commission proposed repealing the provisions criminalising consensual same-sex sexual activity.⁴³² At Solomon Islands' Universal Periodic Review in 2011, recommendations were made to decriminalise same-sex sexual activity by France, Norway, Slovenia and Spain.⁴³³ However, the government of Solomon Islands stated that it had no intention of repealing the relevant provisions of the Penal Code, arguing that "the cultural context of society did not condone same-sex relationships" and that "there had not been any submissions to the Law Reform Commission in their review of the Penal Code to repeal those sections".⁴³⁴ In its Second Interim Report on

431 Solomon Islands Law Reform Commission, *Review of the Penal Code and Criminal Procedure Code: Sexual Offences – Sentencing Research Paper*, 2011, Para 3.19, available at: <http://www.lawreform.gov.sb/files/publications/Sexual-Offences-Sentencing-Research-Report.pdf>.

432 Solomon Islands Law Reform Commission, *Review of Penal Code and Criminal Procedure Code: Issues Paper 1*, November 2008, Paras 6.91–6.96.

433 United Nations Human Rights Council, Universal Periodic Review, *Report of the Working Group on the Universal Periodic Review: Solomon Islands*, 11 July 2011, UN Doc. A/HRC/18/8, Paras 36 and 80.38 (Norway), 39 and 81.49 (France), 81.50 (Slovenia), and 81.51 (Spain).

434 *Ibid.*, Para 26.

Sexual Offences published in June 2013, the Law Reform Commission made no proposals to repeal or amend sections 160 to 162.⁴³⁵

According to the Law Reform Commission in 2011, there had been only two prosecutions under section 160 in the period since 2003, both involving adults who sexually abused children under the age of 18 years without their consent.⁴³⁶ Although the Law Reform Commission stated in the same year that there had only been two prosecutions under section 162, in both cases involving male adults and children,⁴³⁷ in 2004, a woman was charged under section 162 and remanded in custody, though there are no reports of the case's outcome.⁴³⁸ Despite the criminalisation of same-sex sexual activity between women, there is anecdotal evidence of women living in same-sex relationships throughout Solomon Islands.⁴³⁹

Cultural Attitudes and Discrimination

As a consequence of both criminalisation and social stigma, few lesbian, gay and bisexual people in Solomon Islands are open about their sexual orientation, making it difficult to gather evidence about discrimination in practice against people on the basis of their sexual orientation. However, evidence gathered through interviews and focus groups in Solomon Islands indicates high levels of stigma and prejudice against people on the basis of their actual or perceived sexual orientation. Participants at a focus group with women from Malaita stated that being gay is unacceptable because marrying persons of the same sex is forbidden by the bible and by local culture. S., a 22 year old man from Malaita, told our researchers that people laugh, joke and verbally abuse him because they believe him to be gay.⁴⁴⁰ K., a 25 year old man from

435 Solomon Islands Law Reform Commission, *Review of the Penal Code and Criminal Procedure Code: Second Interim Report: Sexual Offences*, June 2013, available at: https://web.archive.org/web/20140918234117/http://www.lawreform.gov.sb/files/reports/Final-sexual_offences_report_2013_v4_12_June.pdf.

436 See above, note 431, Para 3.19.

437 *Ibid.*, Para 3.22.

438 Gay and Lesbian Archives of the Pacific Northwest, "Mother Remanded on Lesbian Charge", *glapn.org*, 8 December available at: http://www.glapn.org/sodomylaws/world/solomon_islands/sinews001.htm.

439 See above, note 427, p. 15, citing: *Regina v Piko* [2012] SBHC 89, 14 Aug 2012.

440 Equal Rights Trust interview with S., 15 May 2013, Malaita province.

Temotu, told an Equal Rights Trust interviewer that he had been “abused by certain people from the public or in the village” because of his sexual orientation.⁴⁴¹ C., a 25 year old man from Malaita interviewed by Equal Rights Trust, reported verbal abuse and concerns about his safety in public.⁴⁴² C. spoke of sexual abuse he had suffered, including sexual assault, which had taken place on public transport, in buses or taxis. He stated that he had decided not to report these incidents to the police as other gay men he knew had been harassed by police officers and so felt unable to trust or confide in them.

As noted above, the CESCR has stated that states parties to the ICESCR have an obligation to ensure the enjoyment of Covenant rights – including the rights to work and to education – without discrimination on the basis of sexual orientation.⁴⁴³ Whilst difficult to prove in the absence of other evidence, a number of the gay men interviewed by the Trust believed that their sexual orientation had resulted in discrimination in education and employment. C. and J., both from Malaita, believed that being gay resulted in discrimination in receiving scholarships, something which is vitally important in a country where education is not widely or freely available. J. told the Trust:

*I feel discriminated because other students who are in my group have been awarded with scholarships in the past years while I still wait, though our grades are more or less the same.*⁴⁴⁴

C. also spoke of how he had struggled to find employment as a result – he believed – of his sexual orientation. He said:

*I feel that getting a highly paid job is hard unless the government and the other sectors recognised our rights, just like other normal men and women. For example, my class mate and I applied for the same job, and they chose my friend to work as a teller in that bank.*⁴⁴⁵

441 Equal Rights Trust interview with K., 19 July 2013, Temotu province.

442 Equal Rights Trust interview with C., 19 July 2013, Malaita province.

443 See above, note 340, Para 32.

444 Equal Rights Trust interview with J., 19 July 2013, Malaita province.

445 Equal Rights Trust interview with C., 19 July 2013, Malaita province.

Conclusion

Lesbian, gay and bisexual persons in Solomon Islands are criminalised and subject to severe social stigma, resulting in very few people ready to be open about their sexual orientation. The small number of openly lesbian, gay and bisexual persons in Solomon Islands presents challenges for the collection and assessment of information on the extent of discrimination on the basis of sexual orientation. Nevertheless, testimony gathered for this report indicates the existence of harassment and discriminatory violence and with discrimination in both employment and education.

2.5 Discrimination and Inequality Affecting Persons Living with HIV

As with sexual orientation, neither HIV status in particular, nor the broader category of health status, is listed as a protected characteristic under the international human rights instruments to which Solomon Islands is party. However, the CESCR has concluded that it is a protected characteristic as a form of “other status” within Article 2(2) and recommended that “[s]tates parties should ensure that a person’s actual or perceived health status is not a barrier to realizing the rights under the Covenant”.⁴⁴⁶ Yet, research for this report has identified evidence of discrimination on the basis of HIV status, which limits the enjoyment of the economic, social and cultural rights guaranteed by the ICESCR.

UNAIDS has classified the Solomon Islands as a low HIV prevalence country, with an estimated 0.002% of the population living with HIV.⁴⁴⁷ According to a 2015 report prepared by the Solomon Islands National AIDS Council (SINAC)⁴⁴⁸, a total of 25 people had been diagnosed with HIV between the first reported case in 1994 and December 2014, of whom 10 had died.⁴⁴⁹ Of the 15

446 See above, note 340, Para 33.

447 Solomon Islands National AIDS Council (SINAC), *Solomon Islands Global AIDS Response Progress Report 2015*, 2015, p. 24, available at: http://www.unaids.org/sites/default/files/country/documents/SLB_narrative_report_2015.pdf.

448 SINAC was established in 2005 by the Solomon Islands Cabinet to act as the overarching authority for the national HIV response. Its role is to provide guidance, approval for HIV policies and prevention, treatment and care programmes.

449 See above, note 447, p. 19.

persons living with HIV, 11 were women and four were men.⁴⁵⁰ It should be noted that the Ministry of Health and Medical Services considers that:

*[B]ecause of the high number of STIs, low access to testing, and known risk behaviours in some populations, the number of people infected with HIV is thought to be significantly higher than the recorded cases.*⁴⁵¹

It is not unlawful to discriminate on the grounds of HIV or AIDS status in the Solomon Islands. The Constitution – the only legal instrument prohibiting discrimination in the country – makes discrimination unlawful only on the grounds of sex, colour, creed, race, place of origin or political opinion. SINAC’s 2014 report indicates that it considers legal protections for vulnerable groups to be very weak and is concerned that there are no specific protections for persons living with HIV or people assumed to have HIV on the basis of their membership of a vulnerable group.⁴⁵² In 2010 and 2011, policies and legislation relating to HIV were reviewed and a working group was established to draft an HIV bill.⁴⁵³ However, by early 2015, the draft Cabinet paper in relation to the bill had not yet been put before the Cabinet and a 2014 SINAC report noted that “[p]olitical leadership, media coverage and public advocacy efforts in support of the HIV response waned in 2013”.⁴⁵⁴ Indeed, the 2014 report notes that:

*National level political changes, internal capacity gaps, and a reduction in the involvement of civil society stakeholders due to lack of funding and donor support, has eroded the effectiveness of SINAC, and has adversely impacted on the progress and performance of the national HIV response.*⁴⁵⁵

450 *Ibid.*, p. 12.

451 See above, note 130, p. 6.

452 *Ibid.*, p. 11.

453 *Ibid.* See also Solomon Islands National AIDS Council (SINAC), *Solomon Islands Global AIDS Response Progress Report 2012*, 2012, p. 22, available at: [http://www.unaids.org/sites/default/files/en/dataanalysis/knowyourresponse/countryprogressreports/2012countries/ce_SB_Narrative_Report\[1\].pdf](http://www.unaids.org/sites/default/files/en/dataanalysis/knowyourresponse/countryprogressreports/2012countries/ce_SB_Narrative_Report[1].pdf).

454 See above, note 456, p. 7.

455 *Ibid.*, p. 9.

However, the government has taken steps to tackle the spread of HIV, including through the reduction of stigma and discrimination, which it recognises as a barrier to effective prevention and treatment. In 2004, a National Multi-Sectoral Strategic Plan for HIV and AIDS 2005-2010 was developed. The Plan identified the development of an environment that enables a reduction in stigma and discrimination in order to promote prevention and care as one of its five key results areas.⁴⁵⁶ The Plan was reviewed during 2010 and 2011 in order to develop a plan for 2011–2015, but as of December 2013 the draft Plan had still not been finalised.⁴⁵⁷ A new draft Solomon Islands National Strategic Plan for HIV and Sexually Transmitted Infections (STI) 2014–2018 has been developed but has not yet been endorsed by Cabinet.⁴⁵⁸ The new draft Plan has “identified legal and policy reform as a national response priority for the period 2014–2018”.⁴⁵⁹

The SINAC has stated that “stigma and discrimination persist in Solomon Islands and PLHIV [people living with HIV] perceive significant fear and risk if their HIV status is known”.⁴⁶⁰ The report also indicates that stigma and discrimination are among the primary barriers to persons living with HIV obtaining care, treatment and support; two individuals were reported as not taking antiretroviral treatment due to fear of stigma and discrimination.⁴⁶¹

The DHS undertaken by the SINSO and others in 2006 and 2007 concluded that “intervention strategies are needed to reduce the stigma associated with HIV and AIDS”.⁴⁶² Participants in the study were asked four questions in relation to their attitudes towards persons living with HIV. Approximately 57% of male respondents and 36% of female respondents stated that they would be willing to care for a family member with AIDS in their home; approximately 54% of men and 36% of women stated that they would buy vegetables from a

456 Solomon Islands National AIDS Council (SINAC), *National HIV Policy and Multisectoral Strategic Plan 2005-10*, 2005, p. 5, available at: http://www.aidstar-one.com/sites/default/files/prevention/resources/national_strategic_plans/Solomon%20Islands%202005-2010-tagged.pdf.

457 See above, note 130, p. 10.

458 See above, note 447, p. 22.

459 *Ibid.*

460 See above, note 130, p. 22.

461 *Ibid.*, p. 7.

462 See above, note 223, p. 233.

shopkeeper with AIDS; 20% of men and 16% of women agreed that a female teacher with AIDS should be allowed to continue teaching; whilst 72% of men and 66% of women would not want to keep secret that a family member had contracted AIDS. Overall, only 10% of men and 5% of women expressed acceptance of persons living with HIV or AIDS in relation to all four of the questions asked.⁴⁶³ The same study highlighted differences in knowledge and attitudes about HIV and AIDS between men and women and across different levels of education and wealth. The study found that misconceptions about the transmission of HIV were higher among those in lower wealth quintiles and those with no education.⁴⁶⁴ The study also found that comprehensive knowledge of HIV and AIDS (encompassing prevention, misconceptions and knowledge of contraction and transmission) was lower in women with little or no education and in those from the lowest wealth quintile.⁴⁶⁵

Research by the Equal Rights Trust found some evidence that stigma and prejudice associated with HIV acted as a barrier preventing access to health services. A., a 35 year old woman from Guadalcanal living with HIV, told the Trust that she had experienced significant stigma when her status was first disclosed: her immediate family and others in the community would not accept her at first, though she was later accepted. However, she reported that nurses were still scared of her because of her HIV status, meaning that it was difficult for her to access treatment at the clinic.⁴⁶⁶

No recent national studies have been undertaken to identify groups at higher risk of HIV infection. However, the SINAC stated in its 2014 report that “[v]iolence against women in Solomon Islands is amongst the highest in the Pacific region and contributes to HIV and STI vulnerability of women and girls.” The report also identified certain groups of adolescents and young boys and girls as being more vulnerable to HIV and AIDS.⁴⁶⁷ A 2010 report by UNICEF noted a number of factors that increase the level of vulnerability of young people including transactional sex, substance abuse, sexual violence and a lack of

463 *Ibid.*, pp. 233–235.

464 *Ibid.*, pp. 224–225.

465 *Ibid.*, pp. 225–229.

466 Equal Rights Trust interview with A., 20 May 2013, Guadalcanal province.

467 See above, note 130, p. 21.

knowledge about safe sex.⁴⁶⁸ At the completion of SINAC's report in 2014, there were no health facilities providing services to marginalised groups at higher risk of HIV exposure.⁴⁶⁹

Conclusion

The number of people identified as living with HIV in Solomon Islands is small and as a result documenting patterns of discrimination and inequality on the basis of HIV status is difficult. However, both the National Aids Council and the Demographic and Health Survey have identified evidence of stigma and prejudice associated with the condition. Indeed, the stated views of respondents to the Demographic and Health Survey raise serious concerns about the potential for direct discrimination in access to basic goods and services. Research conducted by the Equal Rights Trust bears this out, indicating that persons living with HIV have experienced discrimination in access to health-care as a result of ignorance and stigma.

2.6 Discrimination and Inequality on the Basis of Economic Status

The CESCR has recognised economic status as a protected characteristic under Article 2(2) of the ICESCR, noting that economic status, for those living in poverty:

[M]ay result in pervasive discrimination, stigmatization and negative stereotyping which can lead to the refusal of, or unequal access to, the same quality of education and health care as others, as well as the denial of or unequal access to public places.⁴⁷⁰

Solomon Islands experienced severe economic stagnation and contraction during “the Tensions”, but since their end in 2003, economic growth has been strong and consistent, with a peak growth of 10.7% in 2011 and subsequent

468 UNICEF, *Bad Sickness Rubbish Sicki, Understanding HIV and AIDS Risk and Vulnerability among Solomon Islands Youth*, 2010.

469 See above, note 130, p. 22.

470 See above, note 340, Para 28.

growths of 4.8% and 2.9% in 2012 and 2013 respectively.⁴⁷¹ However, there are ongoing and serious economic problems and the country remains relatively poor. Less than a quarter of the population are in paid work, with the majority of the population participating in subsistence and cash crop agriculture.⁴⁷² A 2006 household income and expenditure survey measured inequality (on the basis of annual expenditure) as represented by the Gini coefficient at 0.361.⁴⁷³

Evidence suggests that those in lower income groups experience inequality in access to basic public services. A 2009 report prepared by the Secretariat of the Pacific Community for the Ministry of Women, Youth and Children's Affairs noted that:

*According to the most recent estimates, extreme hardship is experienced by Solomon Islanders at the bottom end of the income spectrum. Low-income families in urban areas and young people are emerging as the first generation of Solomon Islanders living in absolute poverty.*⁴⁷⁴

Research for this report indicates that relative poverty acts as a barrier in access to basic services limiting the enjoyment of economic and social rights, thus violating Solomon Islands' obligation to ensure the enjoyment of these rights without discrimination on the basis of economic status.

Education

There is evidence of *de facto* inequalities between income groups in access to education. These are sharper in respect to opportunities for secondary and tertiary education, where financial limitations restrict access to a select

471 Australian Government, Department of Foreign Affairs and Trade, *Solomon Islands Country brief*, updated 2015, available at: http://www.dfat.gov.au/geo/solomon_islands/solomon_islands_brief.html.

472 *Ibid.*

473 Solomon Islands Statistics Office, Department of Treasury and Finance, *Household Income and Expenditure Survey 2005/6, National Report (Part One)*, 2006, p. 42.

474 See above, note 149, p. 26.

few.⁴⁷⁵ While there is little difference at the primary school level resulting from free primary education,⁴⁷⁶ a 2006-7 DHS produced by the SINSO and others noted that:

*The likelihood of completing secondary and 'more than secondary' level education increases as a household's wealth quintile increases. For example, among females, only 7.9% of those from the poorest households would have some secondary education while 29% of females from the wealthiest households would have some secondary schooling. Similar differences by wealth are also large among males; only 8% of males from the poorest households have 'some secondary' compared with 32% from the wealthiest households.*⁴⁷⁷

As indicated in section 2.2.1 above, place of residence is a related factor in determining access to education. Those in rural areas have a higher level of primary education than those in urban areas, but this trend is reversed for secondary education: people in rural areas attend school for fewer years (median of 3 years of attendance) than those in urban areas (median of 5 years).⁴⁷⁸

Health

Poverty is also considered to impact on the ability to access health services,⁴⁷⁹ with health problems consistent with both a high fertility rate and relative poverty.⁴⁸⁰ Interviews conducted for this report found that poverty had an adverse impact on people's ability to travel and thus access health services. The Equal Rights Trust interviewed Vahine, a 23 year old female from Tavamangu, who spoke about being unable to take her children to a clinic when they were ill, due to the distance to health facilities and high cost of transport.

475 See above, note 182, p. 14.

476 See above, note 223, p. 26.

477 *Ibid.*, p. 27.

478 *Ibid.*, p. 26.

479 *Ibid.*, p. 7.

480 See above, note 149, p. 26.

She suggested that mobile nurses should travel to villages to treat those who are most vulnerable, such as children and the elderly.⁴⁸¹ Grace, a woman from Lavangu, Rennell and Bellona province, spoke of similar difficulties in obtaining medical help due to the high cost of transport to Honiara or Tinggoa.⁴⁸²

Intersections with Other Grounds of Discrimination

There is some evidence to suggest that poverty and gender discrimination are mutually reinforcing. The results of the DHS highlight clear gaps between males and females in educational attainment: as noted above, a higher percentage of males had completed education at each of the various levels assessed (some primary, completed primary, some secondary, more than secondary), with the exception of the level of completion of secondary education, which was 0.1% for each sex.⁴⁸³ More females than males had no school education: 26.9% of females compared to 22.8% of males. For those in the lowest wealth quintile, 38.1% of females compared to 32.3% of males had no school education.⁴⁸⁴ More recent statistics from the 2006-2013 Performance Assessment Report (for the year 2013) show a higher transition rate for males than females at all levels except between primary and secondary education, where the transition rate was equal.⁴⁸⁵ A study from 2008 found that girls were more commonly withdrawn from school rather than boys when a family could not afford to pay school fees.⁴⁸⁶ In a 2004 report on violence against women in the Solomon Islands, Amnesty International stated that:

The consequences of discrimination have been aggravated by poverty and lack of economic opportunities in a subsistence economy which hinders the education of

481 Equal Rights Trust interview with Vahine, 26 July 2013, Tavamangu, Rennell and Bellona province.

482 Equal Rights Trust interview with Grace, 24 July 2013, Lavangu, Rennell and Bellona province.

483 See above, note 149 pp. 26–28.

484 *Ibid.*

485 See above, note 256, p.25.

486 Hutchens, A., *Women in Business in Solomon Islands: Key Findings from April 2008 Scoping Mission*, 2008, p. 3, available at: <http://unpan1.un.org/intradoc/groups/public/documents/apc-ity/unpan038189.pdf>.

*girls, by internal displacement resulting from the conflict, and a failing health system.*⁴⁸⁷

Ethnicity and economic status also overlap. “The Tensions” of 1998-2003 are sometimes considered to be solely a result of ethnic conflict between people from the islands of Malaita and Guadalcanal. However, as a report from the International Centre for Transitional Justice indicated, economic disparities between the different islands (and hence ethnic groups) were key:

*Benefits from development and the wealth from exploitation of natural resources were not (and are still not) evenly distributed across the country. These helped bring an influx of people to Guadalcanal in search of economic opportunity, many of them from Malaita. The disproportionate representation of Malaitans in government and the private sector contributed to perceptions that Malaitan settlers benefited unduly at the expense of indigenous people from Guadalcanal. Limited housing caused squatter communities to spring up around Honiara, and some people from Guadalcanal argued that settlers were occupying their customary land without proper permission or paying customary compensation. Differences in culture increased the confusion and the disagreements.*⁴⁸⁸

Conclusion

Our research indicates that poverty is both a cause of discrimination and disadvantage and an exacerbating factor for those experiencing discrimination on other grounds. Solomon Islands has a low level of human development and high levels of unemployment and poverty. There is evidence that poverty restricts access to education and health services, and when poverty intersects with gender and ethnicity, it has increased the vulnerability of groups subject to discrimination on these grounds.

487 Amnesty International, *Solomon Islands: Women Confronting Violence*, 2004, p. 2.

488 International Center for Transitional Justice, *Transitional Justice Mechanisms in Solomon Islands*, 2011, available at: <http://www.ictj.org/sites/default/files/ICTJ-SolomonIslands-Fact-Sheet-2011-English.pdf>. See also Braithwaite, J., Dinnen, S., Allen, M., *Pillars and Shadows: Statebuilding as Peacebuilding in Solomon Islands*, Australian National University E Press, 2010, p. 19.

2.7 Discrimination and Inequality on the Basis of Citizenship

A number of treaties to which Solomon Islands is party guarantee the enjoyment of rights without discrimination on the basis of citizenship or nationality. In its 2008 General Comment on non-discrimination, the CESCR stated that “the ground of nationality should not bar access to Covenant rights”.⁴⁸⁹ Similarly, whilst ICERD contains an exception for differences between citizens and non-citizens through Article 1(2)⁴⁹⁰, CERD has stated that this stipulation “must be construed so as to avoid undermining the basic prohibition of discrimination”, advising that while some rights, such as those concerned with participation in the political process, may be limited to citizens, “human rights are, in principle, to be enjoyed by all persons”.⁴⁹¹ The CEDAW Committee has also clarified that the prohibition on discrimination in CEDAW applies to all women, including both citizens and non-citizens.⁴⁹²

Non-citizens in Solomon Islands face a number of legal restrictions under the Constitution and other pieces of legislation. Whilst some of these are consistent with the exceptions set out by the CERD in its consideration of the rights of non-citizens under the ICERD, others are not and constitute unjustified discrimination contrary to the Convention. Section 14(3)(c) of the Constitution sets out an exception to the right to freedom of movement providing for the “imposition of restrictions on the movement or residence within Solomon Islands of any person who is not a citizen of Solomon Islands or the exclusion or expulsion from Solomon Islands of any such person”. The International Covenant on Civil and Political Rights (ICCPR) – which Solomon Islands is not party to – recognises that states may restrict freedom of movement for persons not lawfully within the territory of a state, so it can be argued that limitations on freedom of movement for some classes of non-citizens might be permissible. As set out in the Constitution, however, this blanket limitation is excessively broad to be justified.

489 See above, note 340, Para 30.

490 It reads: “This Convention shall not apply to distinctions, exclusions, restrictions or preferences made by a State Party to this Convention between citizens and non-citizens.”

491 Committee on the Elimination of Racial Discrimination, *General Recommendation No. 30: Discrimination against Non-citizens*, U.N. Doc. CERD/C/64/Misc.11/rev.3, 2004, Paras 2–4.

492 Committee on the Elimination of Discrimination against Women, *General Recommendation No. 30 on women in conflict prevention, conflict and post-conflict situations*, U.N. Doc. CEDAW/C/GC/30, 18 October 2013, Para 2.

Of even greater concern is that section 15(5)(a) of the Constitution excludes the application of the right to non-discrimination to laws concerning “persons who are not citizens of Solomon Islands”. As argued in section 3.2.1 of this report, none of the treaties to which Solomon Islands is party permit the restriction of the right to non-discrimination to citizens alone, and as such this general exception is in clear violation of Solomon Islands’ international legal obligations. The Constitution also makes non-citizens ineligible to stand for and vote in elections,⁴⁹³ though these restrictions are arguably justified within international human rights law: the CERD has noted that the “right to participate in elections, to vote and to stand for election, may be confined to citizens”.⁴⁹⁴

Only Solomon Islanders are entitled to hold or to acquire perpetual title to land under the Land and Titles Act.⁴⁹⁵ “Solomon Islanders” is defined in the Act in a manner even more restrictive than being a citizen: a person must be both born in Solomon Islands and have two grand-parents who were members of a group, tribe or line indigenous to Solomon Islands.⁴⁹⁶ Although the National Parliament is permitted to prescribe what other person or persons may hold or acquire perpetual title to land, it has not done so. Indeed, with effect from 31 December 1977, the Land and Titles Act converted all perpetual estates and fixed-term estates with more than 75 years remaining held by non-Solomon Islanders to fixed-term estates of 75 years’ duration.⁴⁹⁷ As noted above, the CERD has examined in detail the question of how states can limit or restrict the enjoyment of rights under the ICERD for non-citizens. It is noteworthy that, while the Committee specifically identified certain political rights as being open to such limitation, it made no reference to the limitation of civil rights such as the right to own property, which is guaranteed without discrimination under Article 5(d)(v) of the ICERD. Instead, the Committee recognised that “human rights are, in principle, to be enjoyed by all persons” and that:

493 Constitution of Solomon Islands, sections 48(a) and 55(1)(a).

494 See above, note 491, Para 3.

495 Land and Titles Act (Cap 133), section 112(3). See also Constitution of Solomon Islands, Article 110.

496 Land and Titles Act (Cap 133), section 2.

497 *Ibid.*, sections 100 and 101.

[D]ifferential treatment based on citizenship or immigration status will constitute discrimination if the criteria for such differentiation, judged in the light of the objectives and purposes of the Convention, are not applied pursuant to a legitimate aim, and are not proportional to the achievement of this aim.⁴⁹⁸

In view of the above, it seems unlikely that the Committee would consider the restriction of rights to purchase or hold land to citizens to be justified as pursuant to a legitimate aim when judged in light of the objectives and purposes of the Convention, in particular when the excessively restrictive definition of “Solomon Islander” used in the Act is taken into consideration.

Conclusion

Non-citizens in Solomon Islands experience a number of disadvantages as a result of discriminatory laws. While some restrictions on the rights of non-citizens are permissible under international law, broad limitations on the rights to freedom of movement and non-discrimination, as found in Solomon Islands’ Constitution, are unlikely to be so justified. Similarly, legal provisions which prevent non-citizens from acquiring title to land are in conflict with Solomon Islands’ obligations to ensure the enjoyment of rights without discrimination on the basis of citizenship.

2.8 Conclusion

The research for this report has found compelling evidence of discrimination on the basis of **gender, ethnicity, disability, sexual orientation, health status, economic status** and **citizenship**. Whilst Solomon Islands is not party to the ICCPR, Article 26 of which gives rise to an obligation to prohibit discrimination on a wide-ranging list of grounds in all areas of life regulated by law, it nevertheless has binding obligations to eliminate many forms of discrimination on each of these grounds. As a party to CEDAW the state has committed to eliminate all forms of discrimination against women, and as a party to ICERD it has undertaken to eliminate all forms of discrimination on the basis of race and ethnic origin. As a party to ICESCR, the state has obligations

⁴⁹⁸ See above, note 491, Para 4.

to ensure the enjoyment of economic, social and cultural rights without discrimination on many grounds including disability, sexual orientation, health status, economic status and nationality. Our research indicates that the state is failing to meet these obligations.

One key factor underlying many of the patterns of discrimination identified in this Part of the report is the **persistence of negative cultural norms** which appear to be deeply rooted in Solomon Island society. One striking example is the persistence of the notion of the “bigman”, whereby communities look to a male figure of personal power and authority for leadership. The inherently sexist notion of the “bigman” is one among a set of wider patriarchal norms which sanction violence against women and limit women’s opportunities in education, employment and public life. Another example is the *wantok* system of community kinship and organisation which, while in some senses providing a valuable social support network, also provides a basis for nepotism, corruption and discrimination between different ethnic groups. Discrimination against persons with disabilities – seen by many either as “cursed” or as objects of charity, and against persons of different sexual orientation is similarly linked to stigma and prejudice rooted in traditional norms.

Another key finding is that Solomon Islands’ **geography and history** have played a key role in creating inequalities which in turn has fuelled resentment between different groups. As a nation state, Solomon Islands is a largely artificial construct, and a relatively recent one at that: a product of colonialism which brings together under one flag a group of disparate islands, many of which are home to multiple distinct ethnic groups. In general, Solomon Islanders have a stronger affiliation to their island of origin or to their *wantok* group than to the state. At the same time, the country’s limited economic resources and the difficulties of providing and maintaining infrastructure across a large number of islands result in significant disparities in access to employment, education, healthcare and basic services. These inequalities translate into differences between ethnic groups, which in turn foster resentment leading to discrimination and, in some cases, violence.

This report finds that **women** in Solomon Islands experience severe discrimination and inequality in all areas of life governed by law. Our research indicates that these problems are directly connected to deep-rooted gender stereotypes which portray women as weaker and of lesser value than men.

These cultural attitudes create an environment in which a high proportion of both men and women believe that domestic violence can be justified and where levels of domestic and other forms of violence against women are exceptionally high. Women are victims to a large number of discriminatory laws and laws which create the conditions for discrimination, ranging from the Evidence Act to the Citizenship Act. Patriarchal stereotypes influence decision-making regarding women's participation in many areas of life, including education, employment, family life and public life. Levels of unemployment are higher among women than men and there is evidence of both vertical and horizontal segregation in the labour market. Women are severely under-represented in public life: there have only been three female MPs in the country's history. The cumulative impact is a society in which women cannot participate on an equal basis with men in any area of life.

Whilst Solomon Islands' national census states the country is "very homogenous" in its ethnic composition, this belies significant cultural diversity. Our research indicates that far from being an ethnically uniform country, people in Solomon Islands self-identify with ethnic groups based on common area of origin and shared culture and traditions. Thus, the report examines evidence of discrimination and inequality arising on the basis of two important patterns of ethnic self-identification: one at the geographical level, in the form of people's tendency to identify with others originating from a particular island, and the other at the community level, in the form of the *wantok* system. Solomon Islanders tend to identify more strongly with their **place or island of origin** than with the nation. As a result, differences in levels of investment, infrastructure and services between islands or provinces acquire an ethnic dimension. Perceptions about disparities between the country's different provinces – and therefore between different ethnic groups – was a factor in driving migration between islands. Similarly, the perception that one ethnic group – Malaitians – had benefitted disproportionately from development in Honiara was clearly a catalyst for "the Tensions" which beset the country between 1998 and 2003. However, our analysis finds a more complex picture: available data on the levels of basic services in the different regions of the country does not identify a consistent pattern of disadvantage for Malaita or a consistent pattern of advantage for Honiara. Thus, the report concludes that while there are significant disparities between different regions and ethnic groups, a single, clear pattern of discrimination disadvantaging certain islands cannot be identified.

In contrast, Equal Rights Trust research found evidence of discrimination on the basis of *wantok*, a social system in which people identify by, and build relationships and networks based on, shared language, tradition and geographical origin. Our research has identified worrying evidence of corruption and nepotism based on *wantok*, which, if verified, would constitute discrimination on the basis of ethnicity. The report finds a consistent pattern of allegations of unfavourable treatment on the basis of *wantok* in the areas of employment, education and public services, which indicate the presence of a systemic problem with discrimination on this basis.

Persons with disabilities in Solomon Islands suffer significant disadvantage and are unable to participate in many areas of life on an equal basis with others. Disability is highly stigmatised, seen as either a “curse” or as an object of pity and charity. This stigma can result in social exclusion, mistreatment by the family and direct discrimination in society at large. Our research found evidence of both direct discrimination and failure to make reasonable accommodation in education, employment, healthcare and other services, with the result that persons with disabilities cannot participate in many areas of life on equal basis with others.

Lesbian, gay and bisexual persons suffer severe discrimination, which is legitimised by the continued criminalisation of same-sex conduct between both males and females. Criminalisation, coupled with stigmatisation of homosexuality, results in the prevailing lack of openness about sexual orientation. The small size of the openly lesbian, gay and bisexual population presents challenges for the collection and assessment of information on the extent of discrimination on the basis of sexual orientation. Nevertheless, testimony gathered for this report indicates the existence of harassment and discriminatory violence and discrimination in both employment and education.

The report finds evidence of significant social stigma directed towards the small population of **persons living with HIV** in Solomon Islands. As with lesbian, gay and bisexual persons, the small number of persons living with HIV creates challenges in documenting discrimination against them, but the Trust found evidence giving cause for significant concern. The views stated by respondents to the government’s Demographic and Health Survey raise serious concerns about the potential for direct discrimination in access to basic goods and services by people acting out of fear or prejudice. Testimony

collected for this report bears this out, indicating that persons living with HIV can experience discrimination in access to healthcare as a result of ignorance and stigma.

In addition to these patterns of discrimination, our research found evidence of discrimination and inequality arising on the basis of **economic status** and **citizenship status**. In respect of the first, the report identifies poverty as both a cause of discrimination and disadvantage and a factor exacerbating discrimination on the basis of gender and/or ethnicity. In respect of the latter, the report highlights a number of legal provisions which differentiate between citizens and non-citizens in ways which cannot be justified in international law.

In sum, our research finds extensive evidence of discrimination and inequality in Solomon Islands. Many patterns of discrimination and disadvantage identified in the report can be linked back to cultural stereotypes and norms which sanction the differential treatment of others – women, members of other ethnic groups, persons with disabilities and persons of different sexual orientation. These cultural attitudes – and the patterns of discrimination which flow from them – prevail in the context of a weak response by the state, which has failed to challenge stereotypes and stigma, to enact legislation to prohibit discrimination, or to ensure equal enjoyment of economic, social and cultural rights without discrimination.

3. THE LEGAL AND POLICY FRAMEWORK RELATED TO EQUALITY

This part of the report describes and analyses the legal and policy framework governing discrimination and equality issues in Solomon Islands, in order to assess its adequacy to address the patterns of discrimination identified in the preceding part. It covers both the international legal obligations of the state, and the domestic legal and policy framework which protect the rights to equality and freedom from discrimination. In respect of domestic law, it predominantly examines the 1978 Constitution of Solomon Islands, the main source of anti-discrimination protection in the country. Notably, Solomon Islands is currently in the process of reforming its constitution. This part also considers the constitutional reform process, including by examining the draft constitutions that have been published by the Constitutional Reform Unit, the body set up and tasked with drafting a new constitution. This part goes on to explore limited domestic laws and draft laws which have some equality and anti-discrimination relevance before referring to government policies which may have an impact on equality. Finally, this part examines the implementation and enforcement mechanisms of the law, both through the courts and through specialised institutions.

In order to assess the full picture of the legal framework as it relates to equality in Solomon Islands, this part should be read together with the previous part which examined laws that discriminate, or which are open to discriminatory interpretation.

Throughout this part, Solomon Islands legal and policy framework is analysed in relation to the extent to which it complies with international law and best practice on equality. Whilst focusing on the laws, policies and mechanisms of enforcement, it also references comments by equality and human rights lawyers in Solomon Islands on their practical efficacy and the extent to which they are used.

3.1 International Law

This section provides an overview of Solomon Islands international obligations in relation to the rights to equality and non-discrimination. Solomon Islands has ratified four key UN human rights treaties and has thereby expressly agreed to protect, respect and fulfil the rights contained in these

instruments and to be bound by the legal obligations contained therein. In addition, Solomon Islands is bound by customary international law which provides some important protection in respect of the right to non-discrimination on certain grounds.

3.1.1 Major United Nations Treaties Relevant to Equality

Solomon Islands has a mixed record of participation in international human rights and other legal instruments. It has committed itself to four of the nine core United Nations human rights treaties, namely the International Covenant on Economic, Social and Cultural Rights (ICESCR); the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD); the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) (as well as the Optional Protocol to CEDAW); and the Convention on the Rights of the Child (CRC). Solomon Islands has signed, but not ratified, the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights; the First and Second Optional Protocols to the Convention on the Rights of the Child; the Convention on the Rights of Persons with Disabilities and the Optional Protocol to the Convention on the Rights of Persons with Disabilities.

Calls have been made for Solomon Islands to join the remaining international human rights instruments. At Solomon Islands' Universal Periodic Review by the Human Rights Council in May 2011, several recommendations highlighted the need to join the remaining international human rights instruments, all of which were accepted by Solomon Islands.⁴⁹⁹ Despite this commitment, Solomon Islands has not since ratified or signed any further core treaties.

499 Solomon Islands Country Statement, *Solomon Islands Response to HRC-UPRWG 115 Recommendations*, 21st September 2011, p. 3, available at: http://www.uprinfo.org/sites/default/files/document/solomon_islands/session_11_may_2011/solomonislandplenarystatement2011.pdf.

Instruments Relevant to Equality	Signed	Ratified / Acceded / Succeeded
International Covenant on Civil and Political Rights (1966)	No	No
Optional Protocol I to the International Covenant on Civil and Political Rights (1966)	No	No
International Covenant on Economic, Social and Cultural Rights (1966)	n/a	Succeeded
Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (2008)	24 October 2009	17 March 1982
International Convention on the Elimination of All Forms of Racial Discrimination (1965)	n/a	No
Declaration under Article 14 of the International Convention on the Elimination of All Forms of Racial Discrimination (allowing individual complaints)	No	Succeeded
Convention on the Elimination of All Forms of Discrimination against Women (1979)	n/a	17 March 1982
Optional Protocol to the Convention on the Elimination of all forms of Discrimination against Women (1999)	n/a	No
Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984)	No	Acceded
Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (2002)	No	6 May 2002
Convention on the Rights of the Child (1989)	n/a	Acceded
Optional Protocol I to the Convention on the Rights of the Child (2000) – involvement of children in armed conflict	24 September 2009	6 May 2002
Optional Protocol II to the Convention on the Rights of the Child (2000) – sale of children, child prostitution and child pornography	24 September 2009	No
Optional Protocol III to the Convention on the Rights of the Child (2011) – communicative procedure	No	No
International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990)	No	Acceded
Convention on the Rights of Persons with Disabilities (2006)	23 September 2008	10 April 1995
Optional Protocol to the Convention on the Rights of Persons with Disabilities (2006)	24 September 2009	No
International Convention for the Protection of All Persons from Enforced Disappearances (2006)	No	No

Further, the extent to which Solomon Islands' ratification of ICESCR, ICERD, CEDAW and CRC has resulted in a full acceptance and co-operation with the obligations and relevant treaty body regimes has been patchy.

3.1.1.1 International Covenant on Economic, Social and Cultural Rights

Solomon Islands succeeded to the ICESCR in 1982, four years after its independence from the United Kingdom. Upon succession, the government declared that Solomon Islands maintained the reservations entered by the United Kingdom on its own ratification in 1976 “save in so far as the same could not apply to Solomon Islands”.⁵⁰⁰ As a result, Solomon Islands has reserved or maintained rights to postpone a number of the ICESCR obligations with significant implications on the right to equality.

Notably, Solomon Islands reserves the right to postpone the application of the Article 7(a)(i) requirement to ensure fair wages and equal remuneration for work of equal value without distinction, “in so far as it concerns the provision of equal pay to men and women for equal work in the private sector”.⁵⁰¹ This reservation is directly contrary to the principle of equality, which demands equal pay to men and women for equal work. In addition to the ICESCR, the principle of equal pay for work of equal value is enshrined in several international instruments, including the CEDAW⁵⁰² and the Equal Remuneration Convention (No. 100) of the International Labour Organization (ILO) both of which have been ratified without reservation by Solomon Islands and so constitute binding obligations on the state.

Solomon Islands has also reserved the right to postpone the obligations to ensure the widest possible protection and assistance be accorded to the family and that marriage be entered into with the free consent of the intending spouses in respect to “a small number of customary marriages”.⁵⁰³ This reservation seriously limits the rights and freedoms of women. Customary marriages in Solomon Islands are based on inter-familial and inter-clan loyalties and obligations and usually envisage the payment of a bride price

500 See endnote no. 14 to the list of participants to the International Covenant on Economic, Social and Cultural Rights, available at: https://treaties.un.org/pages/viewdetails.aspx?chapter=4&lang=en&mtmsg_no=iv-3&src=treaty#14.

501 United Kingdom of Great Britain and Northern Ireland, Declarations and Reservations to the ICESCR, available at: https://treaties.un.org/pages/viewdetails.aspx?chapter=4&lang=en&mt-dsg_no=iv-3&src=treaty#EndDec.

502 Convention on the Elimination of All Forms of Discrimination against Women, Article 11.

503 See above, note 501.

and the exchange of food and gifts during a traditional ceremony.⁵⁰⁴ In this context, women are not always free to decide whether, when and whom to marry. There is also evidence that the bride price significantly shapes the relationship of the couple by subjecting women to their husband's authority and making them more likely to experience domestic violence.⁵⁰⁵ The bride price may affect customary decisions in custody disputes when the marriage ends. Thus, if the bride price has been paid, in case of divorce or death of the spouse, the father or his family will be entitled to custody of the couple's children, whilst if it has not been paid the mother or her family will have the right to take care of them.⁵⁰⁶ Allowing young girls to be married after the age of puberty, customary law also favours early marriages and it is not uncommon for a girl to be married at the age of 11–12.⁵⁰⁷ As a result of the realities of customary marriage in Solomon Islands, the reservation creates serious concerns from the perspective of equality and non-discrimination.

In addition, Solomon Islands' declaration in relation to the obligation to require compulsory primary education is problematic from an equality perspective.⁵⁰⁸ Ensuring equality of opportunity and participation of all people regardless of their socio-economic and other characteristics necessitates some important basic socio-economic provisions. Compulsory primary education is one of these.⁵⁰⁹

Under Articles 16 and 17 ICESCR Solomon Islands must comply with a reporting procedure which enables the extent to which the state is observing

504 Care, J.C. and Brown, K., "Marit Long Kastom: Marriage in the Solomon Islands", *Int J Law Policy Family* 18 (1), 2004, pp. 52–75, available at: <http://lawfam.oxfordjournals.org/content/18/1/52.short>.

505 Secretariat of the Pacific Community for Ministry of Women, Youth & Children's Affairs, *Solomon Islands Family Health and Safety Study: A study on violence against women and children*, 2009, pp. 149–151, available at: <http://countryoffice.unfpa.org/pacific/drive/SolomonIslands-FamilyHealthandSafetyStudy.pdf>.

506 *Ibid.*

507 Jalal, I., *Harmful Practices against Women in Pacific Islands Countries: Customary and Conventional Laws*, EGM/GPLHP/2009/EP.15, 2009, available at: http://www.un.org/womenwatch/daw/egm/vaw_legislation_2009/Expert%20Paper%20EGMGPLHP%20Imrana%20Jalal_.pdf.

508 The declaration relates to Article 13(2)(a) and Article 14 of the ICESCR.

509 For further discussion of access to education in Solomon Islands see Parts 2.1–2.4 and, in particular, Part 2.6, above.

the rights contained within the ICESCR to be assessed. Solomon Islands submitted its initial report in 2001 and was examined by the Committee on Economic, Social and Cultural Rights (CESCR) for the first time in 2002. However, despite the Committee's request for the second periodic report to be submitted by 30 June 2005, no further report has been submitted.

3.1.1.2 International Convention on the Elimination of All Forms of Racial Discrimination

Solomon Islands succeeded to the ICERD in 1982, four years after its independence from the United Kingdom. However, it has not submitted any of the reports it is required to submit in accordance with the reporting procedure contained in Article 9 ICERD since its initial report in 1983, resulting in criticism from the Committee on the Elimination of Racial Discrimination (CERD) when it examined Solomon Islands in 2002.⁵¹⁰

3.1.1.3 Convention on the Elimination of All Forms of Discrimination against Women

In 2002, *Solomon Islands* acceded to the CEDAW and the first Optional Protocol to the CEDAW which recognises the competence of the Committee on the Elimination of Discrimination against Women (the CEDAW Committee) to consider complaints from individuals. It made no reservations or declarations. However, Solomon Islands has failed to comply with its reporting obligations under Article 18 CEDAW. It submitted its combined initial to third periodic report to the Committee in 2013.⁵¹¹ On 14 November 2014, the Committee, in its concluding observations on the combined reports, welcomed the “constructive dialogue” it had had with Solomon Islands but expressed its regret that the combined reports were only submitted in 2013 despite the state acceding to the Convention in 2002.⁵¹²

510 United Nations Committee on the Elimination of Racial Discrimination, *Concluding Observations: Solomon Islands*, CERD/C/60/CO/12, 21 May 2002, Para 2.

511 United Nations Committee on the Elimination of Discrimination against Women, *Consideration of reports submitted by States parties under article 18 of the Convention, Initial to third periodic reports of States parties; Solomon Islands*, UN Doc. CEDAW/C/SLB/1-3, 30 January 2013.

512 United Nations Committee on the Elimination of Discrimination against Women, *Concluding observations on the combined initial, second and third periodic reports of Solomon Islands*, UN Doc. CEDAW/C/SLB/CO/1-3, 14 November 2014, Para 2.

The reservation made under ICESCR regarding “a small number of customary marriages” taken together with the continued practices of customary marriage amount to a violation of Solomon Islands’ binding obligation to “take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations” under Article 16 of the CEDAW. Specifically, arrangement of marriages by the families significantly restricts the possibility for women to decide if, whom and when they will marry, contravening, *inter alia*, Article 16(1)(a) and (b) of the CEDAW; the limitations of women’s rights in marriage compromise their equal status and accord to the husband the status of head of household, violating, *inter alia*, Article 16(1)(c) of the CEDAW; and the possibility that, through the practice of bride price, women are subjected to the authority and decisions of their husbands, also in relation to issues of health and fertility affects, their access to education, information, and employment, has a significant impact on their physical and mental well-being, and would be a violation of Article 16(1)(e) of the CEDAW. In addition, the consideration on whether a bride price has been paid for the marriage in order to make a custody decision impinge upon the prioritisation of the “best interest of the child” and violate Article 16(1)(d) and (f) of the CEDAW. Finally, child marriage is in violation of Article 16(2) of the CEDAW which requires a minimum age for marriage.

Solomon Islands has retained a reservation regarding its right to interpret the CEDAW Article 6 right of everyone to work as “not precluding the imposition of restrictions, based on place of birth or residence qualifications, on the taking of employment in any particular region or territory for the purpose of safeguarding the employment opportunities of workers in that region or territory,”⁵¹³ demands attention from an equality perspective. The principle of non-discrimination in employment is enshrined in several international instruments, including the International Covenant on Civil and Political Rights (ICCPR), the ICESCR and the ICERD. Discrimination on the grounds of national origin, place of birth and place of residence is explicitly prohibited by the ICESCR (Article 2(2) as interpreted by the CESCR), the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (Article 7) and the ILO Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (Article 1(1)). The principle of equality and non-discrimination cannot be derogated in international human rights law

513 See above, note 501.

as doing so would undermine the realisation of any of the international treaties' rights. Only when the justification for differential treatment is "reasonable and objective", the aim of such differentiation is "promoting the general welfare in a democratic society" and the measures taken are proportionate to the aim sought, some form of differentiation is considered admissible.⁵¹⁴ The right to equality also requires that positive action is taken to overcome past disadvantage.⁵¹⁵ Positive measures applied to any groups in order to increase their representation at work or in any other sphere, or accelerate the achievement of equality, should be temporary and last only for the time necessary to reach the aim sought.⁵¹⁶

Whether or not measures which favour people in the employment sphere on grounds of their place of birth or residence can be justified from an equality perspective depends in large part upon the context in which the measures are introduced. As pointed out in the introduction, Solomon Islands is characterised by deep ethnic and cultural divisions. Solomon Islanders identify strongly with others on the basis of *wantok* – groups defined on the basis of shared linguistic and cultural heritage, and place of origin – and on the basis of the island from which they originate.⁵¹⁷ Ethnic resentment over jobs and land rights was also the key causal factor to the 1998–2003 conflict between Guadalcanal people and Malaitian immigrants in Guadalcanal.⁵¹⁸ Against this backdrop, the government may be pursuing a legitimate aim in keeping this reservation. However, it would be necessary to ensure that any measures taken to promote access to employment for certain groups must be benefitting disadvantaged groups, must be temporary,⁵¹⁹ as well as proportional. It is difficult to see how a measure which completely bans people from other regions from applying for a particular job can be justified when, for example, a more proportionate approach, even if there is a legitimate

514 United Nations Committee on Economic, Social and Cultural Rights, *General comment No. 20: Non-discrimination in economic, social and cultural rights (art. 2, para. 2, of the International Covenant on Economic, Social and Cultural Rights)*, 2 July 2009, UN Doc E/C.12/GC/20, Para. 13.

515 Equal Rights Trust, *Declaration of Principles on Equality*, London, 2008, Principle 3, p. 5.

516 See above, note 514, Para. 39.

517 See Introduction, Country Context (section 1.3).

518 See Introduction, History, Government and Politics (section 1.4).

519 United Nations Committee on the Elimination of Discrimination against Women, *General Recommendation No. 25: Article 4, Paragraph 1 of the Convention on the Elimination of All Forms of Discrimination against Women (Temporary Special Measures)*, 2004, Para 14.

aim being pursued, would be to allow applications from all but prefer those from local residents.

3.1.1.4 Convention on the Rights of the Child

Solomon Islands acceded to the Convention on the Rights of the Child (CRC) in 1995. It submitted its initial report to the Committee on the Rights of the Child (the CRC Committee) in 2002 in accordance with Article 44 CRC.⁵²⁰ However, despite the CRC Committee's request for the second and third periodic report to be combined and submitted by 9 May 2007, no further reports have been submitted by the state.

As noted above in the discussion of the CEDAW, the reservation on ICESCR regarding a "small number of customary marriages" is arguably a violation of duties under the CEDAW: the practice of paying a bride price in marriage has an impact on custody decisions, impinging upon the prioritisation of the "best interest of the child", in violation of Article 16(1)(d) and (f) CEDAW. It also arguably violates Article 18 of the CRC. The practice of child marriage itself violates Articles 12(1) and 19(1) of the CRC, which enshrine respectively the right of the child to express their views freely and the right to protection from all forms of abuse.

3.1.2 Other Treaties Related to Equality

Solomon Islands ratified Convention No. 100 of the International Labour Organisation (ILO) on Equal Remuneration in 2012, and ILO Convention No. 111 (Discrimination (Employment and Occupation) Convention) in 2012. It has not, however, ratified ILO Convention No. 169 on Indigenous and Tribal Peoples. Solomon Islands succeeded to the 1960 UNESCO Convention against Discrimination in Education in 1982. It acceded to the 1951 UN Convention relating to the Status of Refugees in 1995, but has not ratified the 1954 UN Convention relating to the Status of Stateless Persons.

⁵²⁰ United Nations Committee on the Rights of the Child, *Consideration of reports submitted by States parties under Article 44 of the Convention, Initial reports of States parties: Solomon Islands*, UN Doc CRC/C/51/Add.6, 12 July 2002.

Instruments Relevant to Equality	Signed	Ratified / Acceded / Succeeded
Convention Relating to the Status of Refugees (1951)	n/a	Acceded 28 February 1995
Convention Relating to the Status of Stateless Persons (1954)	No	No
Convention on the Reduction of Statelessness (1961)	No	No
Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery (1956)	n/a	Succeeded 3 September 1981
UN Convention against Transnational Organised Crime (2000)	No	No
Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (2000)	No	No
Rome Statute on the International Criminal Court (2002)	3 Dec 1998	No
UNESCO Convention Against Discrimination in Education (1960)	n/a	Succeeded 19 March 1982
Forced Labour Convention (1930) (ILO Convention No. 29)	n/a	Ratified 6 August 1985
Equal Remuneration Convention (1951) (ILO Convention No. 100)	n/a	Ratified 13 April 2012
Discrimination (Employment and Occupation) Convention (1958) (ILO Convention No. 111)	n/a	Ratified 13 April 2012
Worst Forms of Child Labour Convention (1999) (ILO Convention No. 182)	n/a	Ratified 13 April 2012
Indigenous and Tribal Peoples Convention (1989) (ILO Convention No. 169)	No	No

3.1.3 Treaties Not Ratified by Solomon Islands

While the abovementioned treaties relevant to equality which have not been ratified by Solomon Islands do not bind the state they, together with comments of their respective treaty bodies, do have an important interpretative function when determining the obligations of Solomon Islands. They should be used to elucidate: i) Solomon Islands' obligations under the treaties to which it is a party, to the extent that the treaties to which it is not a party can explain concepts which are also found in those treaties to which

it is a party; ii) the content of the right to equality and non-discrimination for persons covered by ICESCR, CERD, CEDAW and CRC who are vulnerable to multiple discrimination on grounds which include those protected by other treaties; and iii) Solomon Islands' obligations under customary international law.

3.1.4 Customary International Law

Under international law, binding legal obligations on states derive from customary international law as well as from treaty law. Customary international law is deduced over time from the practice and behaviour of states.⁵²¹ Customary international laws are particularly significant when they reach a level – known as peremptory norms⁵²² – at which they are binding on all states and cannot be derogated from. It is largely accepted that the prohibition of racial discrimination is a peremptory norm of international customary law.⁵²³ In addition, it can be said that the prohibition of discrimination on other grounds, such as gender and religion, may now be part of customary international law, although not yet reaching the status of a peremptory norm.⁵²⁴ Some argue, and it has been stated by the Inter-American Court of Human Rights, that the broader principle of non-discrimination

521 Shaw, M., *International Law*, Fifth edition, Cambridge University Press, 2003, p. 69.

522 *Prosecutor v Anto Furundzija* (Judgement) ICTY- IT-95-17/1-T (10 December 1998), Para 153; Parker, K. and Neylon, L.B., “Jus Cogens: Compelling the Law of Human Rights”, *Hastings International and Comparative Law Review*, Vol. 12, 1988–1989, p. 417. See also Vienna Convention on the Law of Treaties, Article 53.

523 De Schutter, O., *International Human Rights Law: Cases, Materials, Commentary*, Cambridge University Press, 2010, pp. 64–68 and the materials referred to therein; Pellett, A., “Comments in Response to Christine Chinkin and in Defense of *Jus Cogens* as the Best Bastion against the Excesses of Fragmentation”, *Finnish Yearbook of International Law*, Vol. 17, 2006, p. 85; cf Shaw, M., *International Law*, Sixth edition, Cambridge University Press, 2008, p. 287, who refers to it as part of customary international law, with no reference to it being a peremptory norm; Tanaka, J. (in dissent) *South-West Africa Cases (Ethiopia v South Africa; Liberia v South Africa)* [1966] ICJ Rep (International Court of Justice), pp. 293, 299–300.

524 *Ibid.*, Shaw, p. 287; *Ibid.*, Pellett, p. 85; Cassel, D., “Equal Labour Rights for Undocumented Migrant Workers”, in Bayefsky, A. (ed), *Human Rights and Refugees, Internally Displaced Persons and Migrant Workers: Essays in Memory of Joan Fitzpatrick and Arthur Helton*, Martius Nijhoff Publishers, 2006, pp. 511–512.

is a peremptory norm of customary international law⁵²⁵ but this is subject to debate.⁵²⁶ Accordingly, it is clear that, as a matter of customary international law, Solomon Islands cannot derogate from the obligation to protect, respect and fulfil the right to be free from racial discrimination; is obliged to protect, respect and fulfil the right to be free from gender and religious discrimination; and it is arguably obliged to protect, respect and fulfil the right to be free from discrimination on other grounds.

3.1.5 Status of International Obligations in National Law

Solomon Islands is a dualist state, its 1978 Constitution making no provision for the automatic incorporation of international law into domestic law. In order for international treaties to become part of domestic law, they must therefore be enacted in legislation.

Of course, states remain obliged to comply with their international legal obligations, regardless of their domestic laws. It is not a defence to a breach of Solomon Islands' international obligations to argue that it was complying with its own national law.⁵²⁷ Further, international human rights law requires the passing of national legislation to provide protection from violations of human rights, including the rights to equality and non-discrimination.⁵²⁸ Part 2 of this report has identified that national law falls short in relation to enacting important international equality and non-discrimination protections.

525 Inter-American Court of Human Rights, *Advisory Opinion OC-18/03 - Juridical Condition and Rights of Undocumented Migrants*, Inter-Am. Ct. H.R. (Ser. A) No. 18 (2003), 17 September 2003, p. 23. See also, by way of example, Martin, F.F. et al, *International Human Rights and Humanitarian Law: Cases, Treaties and Analysis*, Cambridge University Press, 2006, pp. 34–35.

526 Bianchi, A. "Human Rights and the Magic of *Jus Cogens*", *The European Journal of International Law*, Vol. 19, 2008, p. 506; See Cassel, above note 524, pp. 511–512; and see Pellett above, note 523, p. 85.

527 Vienna Convention on the Law of Treaties, Article 27. This rule is also accepted to be customary international law: see Shaw, above note 523, pp. 124–126.

528 See, for example, Inter-American Court of Human Rights, *Velásquez Rodríguez Case*, Judgment of July 29, 1988, Series C, No. 4, Paras 166-177; African Commission on Human and Peoples' Rights, *The Social and Economic Rights Action Center and the Center for Economic and Social Rights v. Nigeria*, Comm. No. 155/96 (2001) A.H.R.L.R. 60 (ACHPR 2001), Para 46; European Court of Human Rights, *A. v The United Kingdom*, Application No. 25599/94, 23 September 1998, Paras 22-24; United Nations Human Rights Committee, *General Comment No. 31: The Nature of the General Legal Obligation Imposed on States Parties to the Covenant*, UN Doc, CCPR/C/21/Rev.1/Add. 13, Para 7.

Where national law falls short in this way, the approach of courts in countries where English common law was adopted to the application of international law has largely been the same. In the event of ambiguity in domestic law, courts have favoured the interpretation that complies with international treaty obligations. However, where there is no ambiguity, precedence is given to domestic law.⁵²⁹ Solomon Islands' courts largely take this approach.

There appears to be only one case in Solomon Islands which considers the principles of interpretation with regard to Solomon Islands' international human rights law obligations. In *Kelly v Regina*,⁵³⁰ the Court of Appeal, the supreme court of Solomon Islands, considered the application of the CRC in an appeal from a conviction and sentence to life imprisonment of a 14 year old convicted of murder. The Court stated that international treaties and conventions relating to the treatment of children "may provide interpretative assistance in applying local law".⁵³¹ However, the Court, as the High Court had done in the case before it,⁵³² significantly limited the extent to which it considered itself bound to apply them. It stated that, unless there is ambiguity, such treaties and conventions "cannot control or displace the positive provisions of Solomon Islands law under which the prosecution was instituted and the trial of the appellant took place".⁵³³ It noted that the CRC had not been incorporated into domestic law by parliamentary ratification and that "[a]t most, therefore, it serves as a guide to the procedure to be followed in case of this kind [sic]".⁵³⁴ Further, it made no reference to customary international law.

In the case, the Court dealt with the issues of the prosecution of the appellant and the sentence of life imprisonment separately. In respect to prosecution, the Court stated relevant national law, the Penal Code, did not contain any ambiguity on this point "that would permit recourse to international law in order to interpret it or alter it even if it laid down a different norm

529 See Shaw, above note 523, pp. 128–147; 151–154.

530 *Kelly v Regina* [2006] SBCA 21, CA-CRAC 019 of 2006 (25 October 2006).

531 *Ibid.*

532 *K v Regina* [2005] SBHC 150; HCSI-CRC 368 of 2005 (16 September 2005).

533 *Ibid.*

534 *Ibid.*

altogether”.⁵³⁵ With respect to the issue of sentencing, the Court appeared to allow the appeal on the basis that the sentencing court had failed to apply a national law, section 13 of the Juvenile Offenders Act 1972, which displaced the requirement of a mandatory life sentence under section 200 of the Penal Code and gave the court discretion to sentence a person under 18 years of age to a sentence of detention.⁵³⁶ However, the Court went on to say that, to the extent that there was any ambiguity, this was resolved by section 5(g) of the Constitution and “if need be, also by international treaties and conventions on the subject”.⁵³⁷ Earlier in its judgment the Court had noted that Article 37(a) of the CRC prohibited life imprisonment without the possibility of release for those under 18 and that the International Guidelines for the Administration of Juvenile Justice (the “Beijing Rules”), which did not constitute terms of binding treaty, laid down “desiderata” relevant to sentencing but that the latter appeared to have been complied with in any event. While these comments of the Court do indicate some recognition, albeit *obiter*, of the importance of national law complying with international norms, the Court did little more than pay them lip service. It did not give full consideration to the various provisions of the CRC that set out protections for prosecution of those under the age of 18, instead preferring the “safeguards” in its own domestic laws.

The case was remitted to the High Court for a new sentencing hearing. In its sentencing judgment the High Court demonstrated a greater willingness to consider the provisions of the CRC, noting that, in reaching its decision, it had in mind:

*[T]he guidelines set out in the Convention on the Rights of the Child regarding how young persons ought to be treated. That the best interests of the child should be the central concern in any sentencing process and that care and rehabilitation should be the main focus of any order of the courts on conviction.*⁵³⁸ (Footnotes removed.)

535 *Ibid.*

536 *Ibid.*

537 *Ibid.*

538 *Regina v K* [2006] SBHC 53; HCSI-CRC 419 of 2005 (6 December 2006).

Nonetheless, no further explanation of the meaning of the CRC requirements was provided. This suggests that Solomon Island courts will not step in to rectify gaps in national law and guidance on important matters of human rights.

In 2012, the High Court demonstrated a greater willingness to rely in part on international human rights law in reaching a decision although it provided no comments on the principles of the interpretation of international obligations by national courts. In *Regina v Gua*,⁵³⁹ a case with important gender equality implications, the High Court considered whether, as a matter of law, a man could be found guilty of raping his wife.⁵⁴⁰ In finding that the common law rule that he could not was no longer applicable, the Court relied in part on the CEDAW. The Court held that:

*[I]n this modern time, marriage is now regarded as a partnership of equals and this principle of equality has been reflected, not only in international conventions to which Solomon Islands is a party, but also in the entrenched provisions of the Constitution.*⁵⁴¹

Article 15 and 16 of CEDAW were then referenced among the reasons for it reaching its decision, although the decision was brief and so the extent to which the Court was influenced by the CEDAW is unclear.

It is noteworthy that the current constitutional reform process looks likely to result in a constitution which retains the dualist system. Each of the 2004, 2009, 2011 and 2013 Draft Constitutions includes an identically worded provision, which would provide that the law of Solomon Islands would include “customary international law, international conventions, treaties and agreements applicable to Solomon Islands so far as they are incorporated into domestic law after this constitution has come into effect”, thereby expressly

539 *Regina v Gua* [2012] SBHC 118; HCSI-CRC 195 of 2011 (8 October 2012).

540 For a more detailed discussion of the case, particularly with respect to its implications for equality and non-discrimination, see subsection 3.2.5 below.

541 See above, note 539, Para. 51.

retaining the dualist system.⁵⁴² The 2014 Draft requires courts to consider international law when interpreting its Bill of Rights.⁵⁴³

3.2 National Law

There is a dearth of national law dealing with matters of equality and non-discrimination. Aside from the provisions of the 1978 Constitution of Solomon Islands, there is not even partial protection from discrimination in the law. What follows is predominantly an analysis of the constitutional protections provided, together with a consideration of those which may become available through the reform process as this looks likely to remain the most significant legal protection on offer for some time. There is no sign of any move towards comprehensive equality legislation and even attempts to provide single-ground protection in national law have been hampered by slow processes and disagreements.

3.2.1 The 1978 Constitution

The 1978 Constitution of Solomon Islands is currently the principal instrument governing the protection of human rights in national law. It is the supreme law of Solomon Islands and other laws which are inconsistent with it shall be void.⁵⁴⁴ As a result, this section considers its provisions in some detail. However, it is important to note that, since 2004, there has been ongoing consultation on constitutional reform and this is predicted to be nearing its conclusion. As such, it is currently unclear how long the 1978 Constitution will remain in force.⁵⁴⁵

542 2004 Draft Constitution of Solomon Islands, section 9(1)(f); 2009 Draft Constitution of Solomon Islands, section 9(1)(h); 2011 Draft Constitution of Solomon Islands, section 12(1)(h); and 2013 Draft Constitution of Solomon Islands, section 15(1)(i). For a further discussion of the constitutional reform process in so far as it relates to equality and non-discrimination, see subsection 3.2.2 below.

543 Draft Constitution of Solomon Islands 2014, section 48. Please note that a reference to the 2014 Draft in this report is a reference to the Bill of Rights section of the Draft Constitution published by the Constitutional Reform Unit: Office of the Prime Minister and Cabinet Joint Constitutional Congress and Eminent Persons Advisory Council on 6 May 2014. The full 2014 Draft is only available in full in hard copy form at the offices of the Constitutional Reform Unit. The full draft has not been analysed in this report.

544 Constitution of Solomon Islands, 1978, section 2.

545 For a detailed discussion of the constitutional reform process in so far as it relates to equality and non-discrimination see subsection 3.2.2 below.

The non-binding preambular pledges to the Constitution indicate a recognition of the importance of equality and its centrality to the Constitution. The upholding of the principle of equality is identified as a key purpose of the Constitution in one of the five pledges:

(b) we shall uphold the principles of equality, social justice and the equitable distribution of incomes.

The pledges also identify the need to “enhance human dignity”, “build communal solidarity” and “cherish and promote the different cultural traditions within Solomon Islands”.⁵⁴⁶ Accordingly, at the outset a commitment to equality, diversity and cohesion is indicated. However, when reviewing the substance of the 1978 Constitution itself it becomes clear that there are large gaps in the protections it provides.

The *Fundamental Rights of the Individual*, the most significant provisions of the 1978 Constitution for the purpose of upholding equality and non-discrimination, are contained within Chapter II. According to section 3, “every person in Solomon Islands” is entitled to fundamental rights. This creates a territorial limitation on the scope of the state’s human rights obligations which does not accord with international human rights law. Article 2(1) of the International Covenant on Civil and Political Rights (ICCPR), the key international instrument protecting rights of the sort included within the 1978 Constitution, requires that a state respect and ensure the rights of all individuals within its territory and subject to its jurisdiction. The Human Rights Committee has elaborated that this means a state must respect and ensure the ICCPR rights “to anyone within the power or effective control of that [state], even if not situated within the territory of the [state]”.⁵⁴⁷ Principle 10 of the Declaration of Principles on Equality also requires that states “respect, protect, promote and fulfil” the right to equality of all of those within their territory and subject to their jurisdiction. The 1978 Constitution falls short in this respect.

Section 3 goes on to state that an individual is entitled to the fundamental rights accorded by the 1978 Constitution “whatever his race, place of origin, political opinions, colour, creed or sex”. Accordingly, it acknowledges to a limited extent

⁵⁴⁶ See above, note 544, Pledges (c) and (d).

⁵⁴⁷ See United Nations Human Rights Committee, above note 528, Para 10.

that the rights contained in the 1978 Constitution, which include a range of civil and political rights from the right to life to the right to privacy, are to be enjoyed without discrimination on the mentioned grounds. This protection is limited as compared to the protection which Solomon Islands is required to afford under its international human rights obligations due to the cumulative effect of two key factors. First, the list of grounds identified in section 3 is closed and significantly shorter than those found in the key international human rights treaties. For example, Article 2(2) of CESC states that the rights enunciated in ICESCR must be exercised “without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status”. Secondly, international human rights law provides protection for a more extensive list of rights than those protected under Chapter II of the 1978 Constitution. As a result, the right to non-discrimination explicitly applies to the enjoyment of a wider range of rights in international human rights law than are in fact protected by the 1978 Constitution.

There is no right to equality in the 1978 Constitution. However, section 15 of the Constitution provides a right – albeit limited – to non-discrimination. In the absence of specific anti-discrimination legislation and non-discrimination provisions in other legislation, it is the principal legal protection from discrimination in the country.

Section 15 prohibits discrimination in three areas: (i) legislation, (ii) the acts of public officials and authorities; and (iii) the provision of certain services. It reads:

- (1) Subject to the provisions of subsections (5), (6) and (9) of this section, no law shall make any provision that is discriminatory either of itself or in its effect.*
- (2) Subject to the provisions of subsections (7), (8) and (9) of this section, no person shall be treated in a discriminatory manner by any person acting by virtue of any written law or performance of the function of any public office or any public authority.*
- (3) Subject to the provision of subsection (9) of this section, no person shall be treated in a discriminatory*

manner in respect of access to shops, hotels, lodging-houses, public restaurants, eating-houses or places of public entertainment or in respect of access to places of public resort maintained wholly or partly out of public funds or dedicated to the use of the general public.

- (4) *In this section, the expression “discriminatory” means affording different treatment to different persons attributable wholly or mainly to their respective descriptions by race, place of origin, political opinions, colour, creed or sex whereby persons of one such description are subjected to disabilities or restrictions to which persons of another such description are not made subject or are accorded privileges or advantages which are not accorded to persons of another such description.*
- (5) *Subsection (1) of this section shall not apply to any law so far as that law makes provision –*
- (a) for the imposition of taxation or the appropriation of revenue by the Government or the government of Honiara city, or any provincial government, or the Honiara city council or any provincial assembly for local purposes;*
 - (b) with respect to persons who are not citizens of Solomon Islands;*
 - (c) for the application, in the case of persons of any such description as is mentioned in the preceding subsection (or of persons connected with such persons), of the law with respect to adoption, marriage, divorce, burial, devolution of property on death or other like matters that is the personal law applicable to persons of that description;*
 - (d) for the application of customary law;*
 - (e) with respect to land, the tenure of land, the resumption and acquisition of land and other like purposes;*

- (f) for the advancement of the more disadvantaged members of the community; or*
 - (g) where persons of any such description as is mentioned in the preceding subsection may be subjected to any disability or restriction or may be accorded any privilege or advantage which, having regard to its nature and to special circumstances pertaining to those persons or to persons of any other such description, is reasonably justifiable in a democratic society.*
- (6) Nothing contained in any law shall be held to be inconsistent with or in contravention of subsection (1) of this section to the extent that it makes provision with respect to standards or qualifications (not being standards or qualification specifically relating to race, place of origin, political opinions, colour, creed or sex) to be required of any person who is appointed to any office in the public service, any office in a disciplined force, any office in the service of the government of Honiara city or any provincial government or any office in a body corporate established directly by any law for public purposes, or who wishes to engage in any trade or business.*
- (7) Subsection (2) of this section shall not apply to anything which is expressly or by necessary implication authorised to be done by any such provision of law as is referred to in subsection (5) or (6) of this section.*
- (8) Subsection (2) of this section shall not affect any discretion relating to the institution, conduct or discontinuance of civil or criminal proceedings in any court that is vested in any person by or under this Constitution or any other law.*
- (9) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that*

the law in question makes provision whereby persons of any such description as is mentioned in subsection (4) of this section may be subjected to any restriction on the rights and freedoms guaranteed by section 9, 11, 12, 13 and 14 of this Constitution, being such a restriction as is authorised by section 9(2), 11(6), 12(2), 13(2) or 14(3), as the case may be.

This section is highly problematic. It contains a confused mixture of discrimination principles, limitations to their scope and exceptions to their application. Section 15's three prohibitions are contained in sub-sections (1) to (3). These sub-sections are to be interpreted in part by reference to section 15(4) which defines the meaning of "discriminatory" for the purpose of section 15.

The section 15(4) definition of "discriminatory" as "meaning affording different treatment to different persons", accords most closely with the definition of direct discrimination under international law.⁵⁴⁸ It does not, in itself, encompass other important forms of prohibited conduct, namely indirect discrimination and harassment. The formulation of the definition differs from the formulation of direct discrimination under international law in ways which may be significant. First, while international law generally considers direct discrimination to involve "less favourable treatment" or the suffering of a "detriment", section 15(4) refers to the subjection to "disabilities or restrictions" or the exclusion from "privileges or advantages". One could argue that the two forms of wording should be interpreted in the same way. However, the extent to which the difference in wording may result in a difference in application has yet to be tested in the courts. Secondly, section 15(4) requires that "persons of another such description" are not made subject to disabilities or restrictions or accorded the privileges or advantages in question. Although there is no case law on this point either, this could well be interpreted as requiring that there be a comparator in order for discrimination to be found. There is an increasing recognition that, as a matter of best practice, a comparator need not be actual and may be hypo-

⁵⁴⁸ For a detailed description of direct discrimination, please see section 1.2 of this report.

thetical.⁵⁴⁹ Again, there is no case law on whether this is the approach that would be taken in Solomon Islands in interpreting section 15(4).

A key limitation of the definition of “discriminatory” in section 15(4) is that the list of grounds upon which discrimination is prohibited is limited to six: race, place of origin, political opinion, colour, creed and sex. As such, it excludes a number of grounds upon which discrimination is prohibited under the international treaties to which Solomon Islands is party such as ethnic origin, descent, pregnancy, maternity, civil, family or carer status, language, birth, national or social origin, nationality, economic status, sexual orientation, gender identity, age, disability and health status.⁵⁵⁰ It should be noted that the grounds of “ethnic origin” and “descent” are often read into the generalising notion of “race”, but again, absent judicial interpretation, one can’t be sure that this would be the case in Solomon Islands. The closed list of grounds read together with the definition of “discriminatory” also does not appear to cover discrimination on multiple, intersecting grounds, as is required by international law and best practice.⁵⁵¹

Section 15(1) prohibits provisions of law which are “discriminatory” either of themselves or in effect. As a result it meets, in part, Solomon Islands’ obli-

549 See, for example, the European Union Equality Directives definitions of direct and indirect discrimination which allow for hypothetical comparators: Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, Articles 2(2)(a) and (b); Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation, Articles 2(2)(a) and (b); Council Directive 2004/113/EC of 13 December 2004 implementing the principle of equal treatment between men and women in the access to and supply of goods and services, Articles 2(a) and (b); and Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast), Article 2(1)(a) and (b).

550 “Ethnic origin” (ethnicity) and “descent” are protected grounds under Article 1(1) of the ICERD; Article 11 of the CEDAW requires states parties to take steps to protect women from discrimination on grounds of “pregnancy and maternity”. “Marital status” is a protected ground under Articles 1 and 11 of the CEDAW and the CESCR has stated that “marital and family status”, “nationality”, “economic status”, “sexual orientation”, “gender identity”, “age”, “disability” and “health status” are protected grounds falling within “other status” in Article 2(2) of the ICESCR. (See above, note 514, Paras. 31, 30, 35, 32, 29, 28 and 33); “Language”, “birth”, “national origin” and “social origin” are protected grounds under Article 2(2) of the ICESCR.

551 See above, note 514, Para. 17; See above, note 515, Principle 12, p. 10.

gation to ensure that legislation does not discriminate.⁵⁵² However, the gaps and exceptions contained in the remainder of section 15 substantially reduce its impact and, as a result, section 15 falls far short of what is required under Solomon Islands' international obligations. In addition, case law has further limited the scope of its application.⁵⁵³

The definition of what constitutes discriminatory legislation itself is problematic. Section 15(1) refers to legislation which is "discriminatory either of itself or in its effect". Accordingly, read alone, section 15(1) prohibits legislation which discriminates either directly or indirectly. However, when taken together with section 15(4), the wording becomes less clear as to whether legislation discriminating indirectly is indeed prohibited. In the 2001 decision of the High Court in *Folotalu v Attorney-General*,⁵⁵⁴ which is the only case in which a court has provided interpretation of section 15(1), the court applied the section as if it only covers direct discrimination.⁵⁵⁵ Under international human rights law, the obligation of states is to ensure that legislation does not discriminate either directly or indirectly.⁵⁵⁶ Further, in *Tanavalu v Tanavalu*, the High Court stated that section 15(1) "refers to a law to be made in the future", suggesting that the section will not apply in relation to laws already made – a major restriction on the scope of section 15(1).⁵⁵⁷

Section 15(5) contains a list of exceptions to the prohibition set out in section 15(1). The first exception, in section 15(5)(a), is legislation for the imposition of taxes or the appropriation of revenue by national or local government. No international human rights instrument to which Solomon Islands is party

552 See, for example, the Convention on the Elimination of All Forms of Discrimination against Women, Article 2(f); the International Convention on the Elimination of All Forms of Racial Discrimination, Article 2(1)(c); and the United Nations Committee on Economic, Social and Cultural Rights, above note 514, Para 10.

553 See section 3.4.2 below.

554 Civil Case (Constitutional) No. 234 of 2001 [2001] SBHC 149; HC-CC 234 of 2001 (19 October 2001).

555 *Ibid.*, p. 16.

556 See, for example, Committee on the Elimination of Discrimination against Women, above note 519, Para 7; *L.R. et al v Slovakia*, Communication No.31/2003, UN Doc. CERD/C/66/D/31/2003, 2005, Para 10.4; and Committee on Economic, Social and Cultural Rights, above note 514, Para 10.

557 *Tanavalu v Tanavalu* [1998] SBHC 4; HC-CC 185 of 1995 (12 January 1998), p.10. For a further discussion of the case see section 3.4.2 below.

contains an exception to the right to non-discrimination for taxation or tax legislation. On the contrary, at least one UN treaty body – the CEDAW Committee – has criticised systems of taxation which have the effect of limiting women’s full participation in all areas of life.⁵⁵⁸

The second exception, in section 15(5)(b), is for legislation which makes provision with respect to persons who are not citizens of Solomon Islands. In general, international human rights law requires equal treatment between citizens and non-citizens. Different treatment between citizens and non-citizens is generally only permissible in respect of certain rights (such as certain political rights related to elections, freedom of movement and certain economic rights) and not others.⁵⁵⁹ In addition, any exceptions to this principle may be made only if they are to serve a legitimate objective and are proportionate to the achievement of that objective.⁵⁶⁰

For example, whilst Article 2(2) of ICESCR provides that:

[D]eveloping countries, with due regard to human rights and their national economy, may determine to what extent they would guarantee the economic rights recognized in the present Covenant to non-nationals.

The CESCR has interpreted this provision narrowly, stating that:

The ground of nationality should not bar access to Covenant rights, e.g. all children within a State, including those with an undocumented status, have a right to receive education and access to adequate food and affordable health care. The Covenant rights apply to everyone including non-nationals, such as refugees, asylum-seekers, stateless per-

558 United Nations Committee on the Elimination of Discrimination against Women, *Concluding Observations: Switzerland*, UN Doc. CEDAW/C/CHE/CO/3, 7 August 2009, Paras 37 and 38.

559 Economic and Social Council, Commission on Human Rights, Sub-Commission on the Promotion and Protection of Human Rights, Prevention of Discrimination: *The rights of non-citizens: Final report of the Special Rapporteur, Mr. David Weissbrodt, submitted in accordance with Sub-Commission decision 2000/103, Commission resolution 2000/104 and Economic and Social Council decision 2000/283*, UN Doc. E/CN.4/Sub.2/2003/23, 26 May 2003, Paras 18 and 19.

560 *Ibid.*, Para 1.

*sons, migrant workers and victims of international trafficking, regardless of legal status and documentation.*⁵⁶¹

Similarly, whilst ICERD contains an exception for differences between citizens and non-citizens through Article 1(2), the CERD has, too, interpreted this restriction narrowly:

2. *Article 1, paragraph 2, must be construed so as to avoid undermining the basic prohibition of discrimination; hence, it should not be interpreted to detract in any way from the rights and freedoms recognized and enunciated in particular in the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights;*
3. *Article 5 of the Convention incorporates the obligation of States parties to prohibit and eliminate racial discrimination in the enjoyment of civil, political, economic, social and cultural rights. Although some of these rights, such as the right to participate in elections, to vote and to stand for election, may be confined to citizens, human rights are, in principle, to be enjoyed by all persons. States parties are under an obligation to guarantee equality between citizens and non-citizens in the enjoyment of these rights to the extent recognized under international law;*
4. *Under the Convention, differential treatment based on citizenship or immigration status will constitute discrimination if the criteria for such differentiation, judged in the light of the objectives and purposes of the Convention, are not applied pursuant to a legitimate aim, and are not proportional to the achievement of this aim. Differentiation within the scope of article 1, paragraph 4, of the Conven-*

561 See above, note 514, Para 30.

*tion relating to special measures is not considered discriminatory...*⁵⁶²

The right to non-discrimination under CEDAW applies to all women and the CEDAW Committee has also made clear that CEDAW's prohibition on discrimination includes discrimination between citizens and non-citizens, even in times of conflict or during a state of emergency.⁵⁶³ Summing up provisions in a number of instruments, Principle 9 of the Declaration of Principles on Equality states that "the right to equality is to be freely exercised by all persons present in or subject to the jurisdiction of a State".⁵⁶⁴ Thus, the exception in section 15(5)(b) relating to discrimination against non-citizens is in clear violation of Solomon Islands' international obligations. It is of particular concern given the existence of legislation identified in Part 2 of this report, permitting discrimination against non-citizens in relation to a number of freedoms including in relation to land and the ability to hold or to acquire perpetual title to land under the Land and Titles Act.⁵⁶⁵

The third exception, in section 15(5)(c) concerns laws relating to adoption, marriage, divorce, burial, devolution of property on death or similar matters. This provision thus excludes a large and important area of law from the application of the prohibition on discrimination, thereby permitting discriminatory laws which are likely to have a significant impact on women in particular. The CEDAW Committee has raised concerns in a number of countries where such legislation exists to the disadvantage of women and criticised exceptions to the right to non-discrimination for personal laws.⁵⁶⁶ International best practice clearly requires that protection from discrimination be accorded in "all areas of activity regulated by law".⁵⁶⁷

562 United Nations Committee on the Elimination of Racial Discrimination, *General Recommendation No. 30: Discrimination against Non-citizens*, UN Doc. CERD/C/64/Misc.11/rev.3, 2004.

563 United Nations Committee on the Elimination of Discrimination against Women, *General Recommendation No. 30 on women in conflict prevention, conflict and post-conflict situations*, UN Doc. CEDAW/C/GC/30, 18 October 2013, Para 2.

564 See above, note 515, Principle 9, pp. 8-9.

565 See section 2.7 of this report.

566 United Nations Committee on the Elimination of Discrimination against Women, *Concluding Observations: Zambia*, UN Doc. CEDAW/C/ZMB/CO/5-6, 27 July 2011, Paras 13-14 and 41.

567 See above, note 515, Principle 10, p. 8.

The fourth exception, in section 15(5)(d), means that customary law can still discriminate. There is no such exception to the right to non-discrimination under international law, which requires that all law, customary or otherwise, comply with the right to non-discrimination.⁵⁶⁸ The CEDAW Committee, in particular, has raised concerns in countries where there is an exception to the right to non-discrimination for customary law, noting that it often has a significant impact upon women.⁵⁶⁹ The research outlined in this report identifies some serious discrimination occurring in Solomon Islands in the name of “customary law”.⁵⁷⁰

The fifth exception, in section 15(5)(e), means that laws relating to land, the resumption and acquisition of land and other like purposes can discriminate, which is another exception not recognised in international law. As noted above, the Land and Titles Act discriminates against those who are not Solomon Islanders by preventing them from holding or acquiring perpetual title to land. “Solomon Islanders” is defined in the Act in a manner even more restrictive than simply being a national of Solomon Islands: a person must be both born in Solomon Islands and have two grand-parents who were members of a group, tribe or line indigenous to Solomon Islands.⁵⁷¹ As a result this exception leaves the 1978 Constitution and the courts applying it unequipped to address a serious issue of discrimination in the country.

The sixth and seventh exceptions – contained within sections 15(5)(f) and (g) – exclude preferential treatment and restrictions for “the more disadvantaged members of the community” under certain circumstances. Under section 15(5)(f), laws which make provision “for the advancement of the more disadvantaged members of the community” are excepted from the right to non-discrimination. This provision thus permits positive action (also referred to in international instruments as “special measures”). Whilst such a provision is welcome, the consideration of positive action as an exception to

568 See, for example, the determination of the CEDAW Committee that civil law, common law and religious or customary laws and practices can all constitute discrimination in contravention of CEDAW: Committee on the Elimination of Discrimination against Women, *General Recommendation No. 29: Article 16 of the Convention on the Elimination of All Forms of Discrimination against Women (Economic consequences of marriage, family relations and their dissolution)*, UN Doc. CEDAW/C/GC/29, 26 February 2013, Para 2.

569 *Ibid.*, Para 41.

570 See section 2.1 of this report for a discussion on discrimination and inequality under customary law.

571 Land and Titles Act, section 2 (Cap 133).

the right to non-discrimination rather than an essential element of the right to equality represents a major weakness, particularly since section 15(5)(f) is permissive rather than compelling such measures to be taken.

The Declaration of Principles on Equality considers positive action to be a “necessary element within the right to equality”.⁵⁷² This approach reflects the current best practice approach on positive action. The CESCR has stated, for example, that:

*In order to eliminate substantive discrimination, States parties may be, and in some cases are, under an obligation to adopt special measures to attenuate or suppress conditions that perpetuate discrimination.*⁵⁷³

In respect of equality between men and women, CEDAW provides at Article 4 that:

Adoption by States Parties of temporary special measures aimed at accelerating de facto equality between men and women shall not be considered discrimination as defined in the present Convention, but shall in no way entail as a consequence the maintenance of unequal or separate standards; these measures shall be discontinued when the objectives of equality of opportunity and treatment have been achieved.

The CEDAW Committee has, however, made clear that:

*[T]he application of temporary special measures in accordance with the Convention is one of the means to realize de facto or substantive equality for women, rather than an exception to the norms of non-discrimination and equality.*⁵⁷⁴

The seventh exception, section 15(5)(g), relates to laws which make provision:

572 See above, note 515, Principle 3, p. 5.

573 See above, note 514, Para 9.

574 See above, note 519, Para 14.

[W]here persons of any such description as is mentioned in the preceding subsection [the more disadvantaged members of the community] may be subjected to any disability or restriction or may be accorded any privilege or advantage which, having regard to its nature and to special circumstances pertaining to those persons or to persons of any other such description, is reasonably justifiable in a democratic society.

To the extent that laws provide “privileges or advantages”, it is not clear how such laws would differ from those that make provision “for the advancement” which are excepted under section 15(5)(f). To that extent, again, it is problematic that such laws are considered an exception to the right to non-discrimination rather than an essential means of ensuring *de facto* equality.

It is particularly difficult to envisage how laws which make provisions subjecting “the more disadvantaged members of the community” to a disability or restriction could ever be “reasonably justifiable in a democratic society” since such legislation would result in further disadvantage. Whilst it is difficult to envisage this provision ever having any effect in practice, it is nevertheless problematic that it remains within section 15 given that it indicates that such legislation could, in theory, exist and that it could be justified to subject disadvantaged individuals to further disadvantage.

The final exception contained within section 15 which applies only to the section 15(1) prohibition is section 15(6). Section 15(6) provides an exception for laws which make provision with respect of standards or qualifications to be required of certain persons (such as officials in the public service) provided that such standards or qualifications do not specifically relate to any of the six protected characteristics listed in section 15(4) (race, place of origin, political opinions, colour, creed or sex). The purpose of the exception is not at all clear. The apparent effect is to allow legislative provisions which set standards or qualifications required of certain categories of persons and which indirectly (but not directly) discriminate against individuals on one of the six protected characteristics. There are only a small number of legislative provisions which theoretically could fall within this exception such as minimum height requirements for police officers (which would indirectly discriminate on grounds of sex) or English-language requirements for persons in public

office (which would indirectly discriminate on grounds of race and place of origin). International human rights law might permit such limitations if they were necessary in a democratic society and proportionate to a legitimate aim, however the exception in section 15(6) is a blanket one, and thus is broader than that which international human rights law would permit.

The second prohibition of discrimination under section 15 is contained in section 15(2) which prohibits discriminatory treatment “by any person acting by virtue of any written law or performance of the function of any public office or any public authority”. When taken together with section 15(4), this section only covers direct discrimination and thus falls short of Solomon Islands’ international obligations. Further, international human rights law requires the prohibition of discriminatory treatment not only by persons acting in pursuance of legislation or their public functions, but by persons in both the public and private sector in all areas of activity regulated by law.⁵⁷⁵ This would include, for example, the provision of housing in the private sector, the provision of goods and services and employment by private companies. In addition, reference only to “written law” is problematic, as it excludes from the section’s protection acts taken by virtue of a range of laws which may discriminate. This is evidenced by the High Court in *Tanavalu v Tanavalu*,⁵⁷⁶ which, in considering the meaning of section 15(2), stated:

[C]ustomary law is not “written law”. The Constitution does not define the expression, written law, the expression is defined in the Interpretation and General Provisions Act as, “an Act, any subsidiary legislation or an imperial enactment”. That excludes customary law. So a person acting “by virtue of” customary law may treat another in discriminatory manner if that is in accordance with the applicable rule of customary law.

575 See above, note 515, Principle 9, p. 8; the Committee on the Elimination of Discrimination against Women, for example, has referred to the rights to equality and non-discrimination as applying “in all fields of women’s lives throughout their lifespan, as enshrined in the Convention” (emphasis added) (Committee on the Elimination of Discrimination against Women, *General Recommendation No. 28: on the core obligations of States parties under Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women*, UN Doc. CEDAW/C/GC/28, 16 December 2010, Para. 31.

576 See above, note 557.

Section 15 contains two limitations specific to section 15(2) alone. First, section 15(7) concerns action taken (explicitly or by implication) under laws excluded from the operation of the prohibition of discrimination under sections 15(5) and 15(6). This is clearly problematic in that if such a provision of law unjustifiably discriminates in contravention of international human rights law, actions sanctioned by such laws will similarly constitute unjustifiable discrimination and cannot be justified simply because they were taken in accordance with legislation.

Second, section 15(8) concerns “any discretion relating to the institution, conduct or discontinuance of civil or criminal proceedings in any court that is vested in any person by or under this Constitution or any other law”. Allowing the discriminatory exercise of discretion by any person in court proceedings, including judges, is unacceptable in that it would permit the prosecution services and courts to commence or discontinue civil or criminal proceedings for entirely irrelevant reasons such as the individual in question’s sex or race.

The final prohibition of discrimination is contained in section 15(3) which prohibits “discriminatory treatment” in respect to “access” to a list of services and public places: shops, hotels, lodging-houses, public restaurants, eating-houses or places of public entertainment or in respect of access to places of public resort maintained wholly or partly out of public funds or dedicated to the use of the general public. This falls significantly short of international best practice on equality and non-discrimination which requires discrimination to be prohibited in treatment by a much broader range of private actors including employers (in respect, for example, to recruitment, working conditions, and pay), educational institutions, as well as providers of all goods and services, including housing.⁵⁷⁷ Further, by using the term “access”, the provision is limited in simply accessing those services rather than their use or enjoyment. For example, a person who is allowed into a restaurant or hotel but is treated discriminatorily whilst using the services may be restricted from making use of section 15(3).

Given the application of section 15(4) to the definition of the prohibition of discrimination, section 15(3) only covers direct discrimination in these areas,

⁵⁷⁷ See, for example, Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, Article 3(1). See also the ICESCR which requires states parties to prohibit discrimination (Article 2(2)) in the enjoyment of just and favourable conditions of work (Article 7) and in education (Article 13).

whereas international best practice requires that all forms of discrimination, including indirect discrimination and harassment, also be prohibited.⁵⁷⁸

Finally, section 15 contains a limitation on the scope of all three of the prohibitions of discrimination within the section. Section 15(9) provides an exception for legislation which restricts the rights and freedoms of a person with a protected characteristic to the extent that that legislation amounts to a restriction to the rights guaranteed by sections 9 (privacy of home and other property), 10 (secure protection of law), 11 (freedom of conscience), 12 (freedom of expression), 13 (freedom of assembly and association) or 14 (freedom of movement), and that restriction is authorised under the Constitution by sections 9(2), 11(6), 12(2), 13(2) or 14(3), as the case may be.

This complicated provision creates a wide-ranging exception which is clearly contrary to international human rights law. It carves out swathes of legislation from the applicability of constitutional rights. As a result, legislation which discriminates in the exercise of conscience, expression and movement, for example, may be constitutional. This is of particular concern given the broad scope of some of the exceptions which it encompasses. Notably, section 14(3) enables the state to restrict the movement of “any class of persons” where “reasonably required”.⁵⁷⁹ Section 15(9) is a flagrant breach of international human rights law. As the Human Rights Committee, for example, has stated in the context of the rights to freedom of opinion and expression as protected under Article 19 of the ICCPR:

*Laws restricting the rights enumerated in article 19 (...) must (...) themselves be compatible with the provisions, aims and objectives of the Covenant. Laws must not violate the non-discrimination provisions of the Covenant.*⁵⁸⁰

Other limitations on the scope and effect of section 15 are contained elsewhere in the Constitution. Notably, its application during periods of public emergency is significantly limited, in contravention of international human rights norms.

578 See above, note 515, Principle 9, p. 8.

579 See above, note 544, section 14(3)(b).

580 United Nations Human Rights Committee, *General Comment No. 34: Article 19: Freedom of opinions and expression*, UN Doc. CCPR/C/GC/34, 12 September 2011, Para 26.

Section 16 provides that when Solomon Islands is “at war” or when the Governor-General declares a state of emergency (which he or she may do “at any time by proclamation”), the applicability of a number of the fundamental rights provisions in the Constitution will change. Section 16(7) states:

Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of section (...) 15 of this Constitution to the extent that the law in question makes in relation to any period of public emergency provision, or authorities the doing during any such period of any thing, that is reasonably justifiable in circumstances of any situation arising or existing during the period for the purpose of dealing with that situation.

This provision makes a very broad range of discriminatory actions “reasonably justifiable”. In any case, at the least, Solomon Islands remains bound by its obligation not to discriminate in the enjoyment of economic, social and cultural rights under the ICESCR. As the Covenant does not contain a derogation provision, it must be concluded that Covenant rights remain applicable in times of emergency, at the very least in respect of their core requirements, including that of non-discrimination.⁵⁸¹ Further, it is clear that under international human rights law, derogations from civil and political rights during times of emergency must not discriminate on grounds of “race, colour, sex, language, religion or social origin”.⁵⁸² As a matter of international best practice, no derogation from the right to equality, or its subsumed right to non-

581 A strong case is made for the fact that state obligations under the ICESCR are non-derogable in Saul, B., Kinley, D., and Mowbray, J., (eds) *The International Covenant on Economic Social and Cultural Rights: Commentary, Cases and Materials*, Oxford University Press, 2014, pp. 258–262. Among other things, they refer to the fact that, at a minimum, the CESCR has stated that the minimum core of the rights contained within the Covenant, which includes the right to their enjoyment without discrimination, is non-derogable: see the United Nations Committee on Economic, Social and Cultural Rights, *General Comment No 15: The Right to Water*, UN Doc E/C.12/2002/11, Paras 37 and 40. For other useful discussion see Müller, A., “Limitations to and Derogations from Economic, Social and Cultural Rights”, *Human Rights Law Review*, 9(4), 2009, pp. 557–601.

582 International Covenant on Civil and Political Rights, Article 4(1). For a further discussion of the meaning of Article 4(1), see Equal Rights Trust, *In Search of Confluence: Equality and Non-Discrimination in Sudan*, 2014, pp. 166–167.

discrimination, is permitted. Principle 27 of the Declaration of Principles on Equality, states:

*No derogation from the right to equality shall be permitted. Any reservation to a treaty or other international instrument, which would derogate from the right to equality, shall be null and void.*⁵⁸³

While Solomon Islands' public emergency clause relates to national provisions, the same principle should be said to apply and so the inclusion of section 15 within the scope of the public emergency provisions violates Solomon Islands' international obligations as well as best practice.

More positively, from a non-discrimination perspective, although there are significant restrictions on the rights of members of "disciplined forces" (including navy, military, police and prisons service amongst others) as relates to the law or authority of the relevant force, section 15 still applies, maintaining the protection from discrimination contained within it, for those types of personnel.⁵⁸⁴

Chapter II of the 1978 Constitution also contains a number of rights which, although not directly relating to equality and non-discrimination, have an important role in ensuring that particular groups can participate in civil and political life of Solomon Islands. For example, section 11 protects freedom of conscience which includes freedom of religion or belief. However, it is noteworthy that the majority of the rights contained within Chapter II have, like section 15, a large number of exceptions built in, which severely limits their scope and, in some cases, raises particular concerns from an equality and non-discrimination perspective.⁵⁸⁵

3.2.2 Constitutional Reform Process

Calls for reform of the 1978 Constitution gained momentum during "the Tensions" and a commitment to constitutional reform was included in the Towns-

583 See above, note 515, Principle 27, p. 14.

584 See above, note 544, section 19(3). For the full definitions of "disciplinary law" and "disciplined force", see section 19(1).

585 See above, note 544, section 14(3)(b) and (c).

ville Peace Agreement.⁵⁸⁶ While the reforms are predominantly aimed at replacing the unitary system of government inherited from the United Kingdom with a federal system, they have also resulted in a review of the constitutional rights guaranteed in Solomon Islands.⁵⁸⁷ The first draft constitution was completed in 2004 and there have been several subsequent drafts, the most recent of which is the Second Draft Constitution of Solomon Islands 2014, which was published on 6 May 2014 and on which a public consultation began in May 2015 and is scheduled to end in April 2016. The online publication of the 2014 Draft has not been sanctioned and the Draft is only available to the public in hard copy form at the offices of the Constitutional Reform Unit.⁵⁸⁸ The Equal Rights Trust has obtained the revised Bill of Rights chapter. Any references to the 2014 Draft herein are references to that extract.

This section briefly explores the key equality and non-discrimination provisions of the published drafts. It identifies the way in which the approach to these rights has evolved throughout the consultation. Through this process, it becomes clear that the provisions relating to matters of equality and non-discrimination were changed in each subsequent draft until the most recent 2014 Draft. Despite marking a progress compared to the previous drafts, the 2014 Draft retains a number of provisions that are of concern from an equality and non-discrimination perspective. Further, the limited availability of the 2014 Draft highlights a key concern with the reform process. In our discussions with key stakeholders since early 2015, concerns have been raised that the constitutional reform process has lacked transparency. And whilst the Draft is currently undergoing a series of public awareness consultations, key stakeholders have not been included.

The 2004 Draft Constitution

The 2004 Draft Constitution, which was the first draft in this process, made some improvements on the 1978 Constitution from an equality and non-dis-

586 Townsville Peace Agreement, 15 October 2000, part 4(1).

587 The Preamble of the 2013 Draft Federal Constitution of Solomon Islands, refers to the “incompatibility of the unitary system of government for political independence with our heterogeneous character”.

588 The Equal Rights Trust has obtained the revised Bill of Rights chapter. Any references to the 2014 Draft herein are references to that extract.

crimination perspective. It retained a section on rights and freedoms, moving this from its location in chapter 2 of the current Constitution to chapter 4. Significantly, chapter 4 of the 2004 Draft Constitution contained 38 sections compared to the 17 found in the 1978 Constitution, contained a newly worded right to non-discrimination and, crucially, inserted a right to equality.

Unlike the 1978 Constitution, the 2004 Draft provided in section 21(1)(a) that the rights and freedoms contained within bind:

- (i) all branches and levels of government; and*
- (ii) all persons performing the functions of any public authority or government office; and*
- (iii) all other persons and bodies if, and to the extent that it is applicable taking into account the nature of the right and the nature of the duty imposed by the right;*

The extent to which private persons could be bound under (iii) was not expanded on and therefore introduced an additional source of uncertainty. However, it is certainly arguable that the subsection meant the scope of the rights was wider than under the 1978 Constitution.

However, section 21 also included some potentially wide reaching limitations on the rights contained within chapter 4. While these were arguably not as extensive as the overall limitation to the rights in the 1978 Constitution, they did constitute significant limitations on the rights to equality and non-discrimination contained in the Draft.

Section 21(1)(b) provides that the rights and freedoms affirmed and protected therein include:

[T]he rights of clans and tribal village communities to maintain and develop laws or customary practices whereby they –

- (i) determine the responsibilities of individuals within their communities;*
- (ii) promote, develop and maintain their institutional structures and their distinctive customs, traditions, procedures and practices;*

(iii) determine the methods customarily practised by clan or tribal communities for dealing with offences or breaches of custom.

The relationship between these rights and the rights contained in the rest of the Chapter, including the rights to equality and non-discrimination, is not further explained. Similarly, section 21(2) provided that:

The Rights and Freedoms in this Constitution shall be subject only to such reasonable limitations found in law or custom as may be demonstrably justifiable in a free and democratic society, taking account of the objectives of this Constitution, the cultures in Solomon Islands society and the state of development of the country.

Further, section 21(4) provided:

Any law and any action taken pursuant to a law may interpret the application of a Right and Freedom having regard to the collective right and responsibilities of an individual in his or her traditional community.

Again, it is not clear what the limits of these sections would be and how they would be interpreted in practice. To leave this ambiguity to the judiciary to resolve may result in an outcome which wouldn't favour equality and non-discrimination over discriminatory custom or practices which were seen to be in the interests of the community.

The newly proposed right to equality is contained in section 23 which provided that “[e]very person is equal before the law and has the right to equal protection of law”. The inclusion of this right to equality was an important and promising development in the Draft and represented a significant improvement from the 1978 Constitution which has no such provision. The wording provided partial coverage of the right to equality as understood in international best practice which requires that all persons have the right to equal protection and benefit of the law.⁵⁸⁹ Section 23 contains no limitations

589 See above, note 515, Principle 1, p. 5.

beyond those set out in section 21, as outlined above. As a result, there would be scope for individuals to claim their right to equality before the law regardless of their particular background or status.

The right to non-discrimination appears in section 27(1) and provided:

Every person has the right not to be unfairly discriminated against whether directly or indirectly on the grounds of actual or supposed characteristics or circumstances, including race, religion, clan or tribal origins, ethnic origin, colour, place of origin, island or region, sex, gender, pregnancy, birth, language, economic status, age, disability or illness, opinions and beliefs.

This proposed section is a marked improvement on the 1978 Constitution in a number of ways: it is much clearer; its scope is not explicitly limited to certain laws or areas of life; it expressly prohibits indirect discrimination. This extension in scope is particularly important given that a far wider range of rights were proposed to be protected under the 2004 Draft which included a wide range of economic, social and cultural rights not contained in the 1978 Constitution.⁵⁹⁰ In addition, section 27 made clear that discrimination on the basis of a supposed (perceived) characteristic is prohibited, in accordance with best practice.⁵⁹¹ The Draft incorporated a presumption in section 27(2) that:

Discrimination on one or more of the grounds in subsection (1) is unfair unless it is established to be fair.

The Draft did not include any indication of what “fair” discrimination may be. Section 27(3)(c) provided that:

A law, or any administrative action taken under a law is not inconsistent with these rights on the ground that it (...) makes provision of some interests over others in government or organs of government in order to address inequalities or to preserve public order and to facilitate peace.

590 2004 Draft Constitution of Solomon Islands, Part III, Chapter 4.

591 See above, note 515, Principle 5, p. 6.

However, the relationship between these two provisions is not clear. International human rights law requires any exceptions to have a legitimate aim and a proportionate relationship between the means used to carry out that aim and the discriminatory effect.⁵⁹² The requirement of fairness in section 27(2) is not sufficiently clear to ensure that exceptions to discrimination will be limited according to international human rights standards.

The Draft significantly expanded on the number of grounds upon which discrimination is explicitly prohibited from six to 17,⁵⁹³ and, critically, introduced an open-ended list of characteristics, which is in accordance with international human rights law. Several important grounds of discrimination are still not expressly prohibited in the 2004 Draft Constitution, including sexual orientation, maternity, gender identity and family or carer status.

Several problematic exceptions to the prohibition of non-discrimination contained in the 1978 Constitution did not appear in the 2004 Draft Constitution, including the exceptions for laws relating to adoption, marriage, divorce, burial, devolution of property on death or other like matters and laws relating to land, the resumption and acquisition of land and other like purposes. Further, the allowance for discriminatory conduct in court proceedings had been removed. However, section 27(3)(b) of the 2004 Draft Constitution retained an exception on the prohibition of discrimination against non-citizens, although using a different formulation:

A law, or any administrative action taken under a law is not inconsistent with these rights on the ground that it (...) imposes on persons who are not citizens a disability or restriction, or confers on them a privilege or advantage not imposed or conferred on citizens.

As noted above, such an exception is contrary to international law and best practice.⁵⁹⁴

592 See above, note 514, Para 13; see also United Nations Human Rights Committee, *General Comment No. 18: Non-discrimination*, UN Doc. HRI/GEN/1/Rev.1 at 26, 1989, Para 13. See above, note 515, Principle 5, p. 8.

593 See above, note 590, sections 21–58.

594 See subsection 3.2.1 above.

The exception relating to discrimination arising from customary law contained in section 15(5)(d) of the 1978 Constitution did not appear in the 2004 Draft Constitution. However, the new section 21(1)(b), set out above, resulted in ambiguity as to the relationship between customary law and the right to non-discrimination.

The Draft also made specific provisions for children, women, the elderly and persons with disabilities. Whilst none of these sections fully replicated international human rights law and best practice protections, their inclusion marked an important move towards recognising the specific protection needs of some particular groups. Section 54(2) reads: “The Republic affirms its commitment to the Convention on the Elimination of All Forms of Discrimination Against Women” which could arguably have amounted to incorporating the text of the Convention into the Draft.

Section 58 stated:

Social justice and affirmative action – Special measures taken to relieve inequality shall not of themselves constitute unlawful discrimination provided such measures are for a lawful purpose and are reasonable and proportional temporary measures to relieve an established inequality.

Accordingly, the Draft permits affirmative action, an important step towards substantive equality. It did not go as far as international best practice however, as it did not require positive action to be taken in certain instances.⁵⁹⁵

Also of note is the positive move away from gender discriminatory nationality law with gender neutral citizenship provisions, and important improvement on the 1978 Constitution.

Less positively, while the limitations on the rights to equality and non-discrimination are limited, the Draft failed to ensure that the rights were not breached during states of emergency (section 60(2)).

595 See above, note 515, Principle 3, p. 5.

The 2009 Draft Constitution

The provisions of the 2009 Draft Constitution that relate to equality and non-discrimination are similar to those found in the 2004 Draft Constitution. As such, we focus here only on the amendments to the earlier Draft in so far as they impact on the protection of equality and non-discrimination. A new provision in the 2009 Draft requires the fundamental rights, freedoms and other rights in the constitution to be affirmed in all State Constitutions.⁵⁹⁶ This includes the right to equality, which was retained without change in the Draft. It also includes the right to non-discrimination in section 27, which was also retained with only one small change, the welcome addition of sexual orientation, marital status and employment status to the explicitly listed protected characteristics.

On the other hand, further limitations were introduced. These included the extension of section 21(1)(b) to:

*(b) include the rights of clans and tribal village communities to maintain and develop laws or customary practices whereby they (i) determine the **behaviour, conduct** and responsibilities of individuals within their communities. (Emphasis added.)*

This change would arguably have extended the reach of customary law, potentially further limiting the application of the rights to non-discrimination and equality. Notably, the rights of children contained in section 52 were also extended to include “firm discipline”, and children were given the following set of rights and obligations:

- (a) respect parents, elders and others.*
- (b) participation in family chores.*
- (c) participation in community activities.*
- (d) participation in the observation of cultural and religious activities.*
- (e) reasonable chastisement by parents or guardians.*

⁵⁹⁶ 2009 Draft Constitution of Solomon Islands, section 21(4). The previous section 21(4) in the 2004 Draft Constitution becomes section 21(3).

The lack of definition around discipline and chastisement was extremely worrying as was the inclusion of obligations for children but not for adults. The inclusion of these obligations in any law would constitute age discrimination and it is difficult to envisage how this could be justified without further elaboration.

The rights of the elderly differ slightly between the 2004 and 2009 drafts. In 2009, rights to participation in the affairs of society and to “perusal of personal development” were qualified by the phrase “where appropriate”.⁵⁹⁷ However, the right for “elderly” persons to die in dignity was included and their right to non-discrimination was reiterated.⁵⁹⁸

The 2011 Draft Constitution

The 2011 Draft Constitution represented a radical departure from the 2004 and 2009 versions in terms of its protection of the rights to equality and non-discrimination. The Draft reverted to provisions similar to those in the 1978 Constitution, removing the right to equality and reinstating the wording of the protection from discrimination provision in section 15 of the 1978 Constitution, in the Draft’s section 37.

The Preamble to the 2011 Draft Constitution commits Solomon Islands “[t]o govern through democracy, accountability, equality and social justice”, reflecting the pledge to uphold equality in the Preamble to the 1978 Constitution. Section 13(k) of the 2011 Draft introduces a new commitment to some aspects of equality for the government, stating that the government:

[S]hould create the conditions conducive for unity, peace, security, order and good governance and in particular shall (...) (e) promote equal participation of both men and women in public affairs, with particular emphasis on the involvement of women, youth and disabled persons in the life of the Republic.

Further, section 225 imposes a number of “essential qualifications” for registration of political parties, one of which is that “by its constitution or rules the

597 2009 Draft Constitution of Solomon Islands, section 55(a) and (b).

598 *Ibid.*, section 55.

political party has a federal or state character, which seeks to (...) (d) promote and respect Rights and Freedoms and gender equality”. Section 229 provides the “guiding principles in public administration of the Republic”, one of which is “equal and adequate opportunities for training and advancement of men and women equally”. Nonetheless, the addition of these few general statements and ideals did not compensate for the loss of the improved, albeit imperfect, equality and non-discrimination provisions that existed in the previous two drafts.

The 2013 Draft Constitutions

The right to non-discrimination in the 2013 Draft Constitution differs little from that of the 2011 Draft Constitution. Section 40 of the 2013 version replicates section 37 of the 2011 version with the addition of one further exception: new section 40(5)(e) which exempts from the prohibition of discrimination laws “for the prohibition of cohabitation of same sex partners and same sex marriages”. The effect of this would be to prevent same-sex couples from arguing before a court that the right to non-discrimination in section 40 prohibits the limitation of marriage or of other forms of relationship recognition to same-sex couples.

Whilst international human rights law does not explicitly provide for a right for same-sex couples to marry or to have their relationship recognised by the state, the right to non-discrimination is not entirely toothless when it comes to same-sex relationships. Article 10(1) ICESCR states that:

The widest possible protection and assistance should be accorded to the family, which is the natural and fundamental group unit of society, particularly for its establishment and while it is responsible for the care and education of dependent children.

Section 40 potentially violates Article 10(1) of the Covenant both alone and in combination with Article 2(2). Whilst the CESCR has not yet provided a definition of “the family” in Article 10(1), the term should not be considered to exclude same-sex couples living together in a manner equivalent to spouses or cohabiting different-sex couples, particularly given that some same-sex couples may be raising children. An inclusive interpretation would be consist-

ent with the recognition by the CESCRC that Article 2(2) prohibits discrimination on the basis of sexual orientation which, by its logical inference, should cover same-sex couples. To protect only single LGBT people in the enjoyment of their economic, social and cultural rights and not same-sex couples – personal relationships being the natural expression of one’s sexual orientation – would be to deny that same-sex couples, with or without children, can constitute a family, and this would be contrary to the growing international consensus that such families are as valid as “traditional” families.

The 2014 Draft Constitution

As noted above, our analysis of the 2014 Draft is limited to the Bill of Rights within that Draft (sections 15 to 49). The Bill of Rights within the 2014 Draft is a substantial departure from that which is contained in its two most recent predecessors, reintroducing a right to equality and expanding its non-discrimination provision significantly from earlier drafts. However, similar to all the previous Drafts and the 1978 Constitution currently in force, the rights contained within the Bill of Rights are expressly limited by custom. Section 16(2) provides that:

The rights and freedoms in this Chapter are subject to any necessary limitation or qualification to accommodate a custom or customary practice that is –

- (a) traditionally observed and currently practiced in a particular locality of the Republic;*
- (b) is not harsh, or repugnant to general humanity; and*
- (c) is reasonably justifiable in a democratic society.*

This is a potentially significant limitation and it is unclear how the determination of which customs are “harsh” or “repugnant” will be made. Section 16(3) further subjects the rights to limits that are set out in any law and:

- (a) are reasonably necessary to protect or promote:*
 - (...)*
 - (ii) customary traditions and ownership of land, resources or property*
 - (...) and*

- (b) are justifiable, considering both customary traditions and the principles of an open and democratic society based on human dignity, equality and freedom, taking into account all relevant factors, including –*
- (i) the nature of the right or freedom;*
 - (ii) the importance of the purpose of the limitation;*
 - (iii) the nature and extent of the limitation; and*
 - (iv) the relation between the limitation and its purpose and whether there are less restrictive means to achieve the purpose.*

Although section 16(3) incorporates a requirement of proportionality, it is again unclear how the balance would be struck in practice. Section 48 provides guidance to courts and similar bodies on interpreting Chapter 3.⁵⁹⁹ However, it too creates uncertainty as it requires courts to “protect the customs and customary practices referred to in section 16(2)” and also to “promote the values that underlie an open and democratic society based on human dignity, equality and freedom” and “consider international law relevant to the protection of the rights and freedoms in this Chapter”. As noted above, international law requires that all law, customary or otherwise, complies with the right to non-discrimination.⁶⁰⁰ It is therefore difficult to see how courts will be able to reconcile discriminatory customs and international law, such as those identified in this report, with international law.

Further limitations on equal rights to ownership of land and inheritance in accordance with customary law are contained in section 43, discussed below. In addition to the limitations relating to custom and customary law, section 46 of the 2014 Draft allows for laws relating to a state of emergency to derogate from the rights contained in Chapter 3. Such limitations must be strictly required, “consistent with the Republic’s obligations under international law applicable to a state of emergency” and only take effect once published. As noted above, as a party to the ICESCR, Solomon Islands cannot derogate from its obligation of non-discrimination in the enjoyment of economic, social and cultural rights in times of emergency.

⁵⁹⁹ This section expressly notes that it is in addition to compliance with section 245, a section which had not been seen by the Equal Rights Trust at the time of writing.

⁶⁰⁰ See above, note 568.

The substance of the rights in the 2014 Draft gives reason for optimism that there may have been a reversal in approach since the 2013 Draft. Crucially, as in the 2004 and 2009 Drafts, the 2014 Draft includes a right to equality in section 19(1). This provides that “[e]veryone is equal before the law and has the right to equal protection and benefit of the law”. The inclusion of the words “and benefit of the law” is additional to the 2004 and 2009 Drafts and brings the section into line with international best practice. Section 19(2) provides that “[e]quality includes the full and equal enjoyment of all rights and freedoms recognised in this Chapter or elsewhere in the law”. The wording of this section means that the relationship between it and section 19(1) is not completely clear. However, it appears that section 19(2) provides that the scope of the right to equality provided in section 19(1) includes all laws in Solomon Islands.

Section 19 also contains a prohibition on direct or indirect discrimination on a range of non-exhaustive grounds listed in sub-section 3. The use of a non-exhaustive list of grounds is a positive development, in line with international best practice.⁶⁰¹ However, the list explicitly excludes sexual orientation from these grounds. This exclusion is completely contrary to international human rights law, which has long recognised sexual orientation as a protected characteristic.⁶⁰² Further, the prohibition does not cover discrimination on the grounds of perceived characteristics (unlike the 2004 and 2009 Drafts) or discrimination by association. The draft extends to discrimination on one or more grounds, thus recognising multiple discrimination.

Section 19(4) provides that no person may discriminate against another on the grounds contemplated in Section 19(3). The scope of the prohibition is therefore extensive, applying to private persons in all settings, which would apparently encompass their private life. This scope is beyond that required

601 See above, note 514, Para 27.

602 See, for example, ICCPR *Young v Australia*, (Communication No. 941/2000), UN Doc. CCPR/C/78/D/941/2000, 2003; see the CESCR, above note 514, Para 32; ECtHR: *Salgueiro da Silva Mouta v Portugal* (Application No. 33290/96), 21 December 1999; *Smith and Grady v the United Kingdom* (Application Nos. 33985/96 and 33986/96), 27 September 1999; *Karner v Austria* (Application No. 40016/98), 24 July 2003; *Buczkowski and Others v Poland* (Application No. 1543/06), 3 May 2007; and *E.B. v France* (Application No. 43546/02), 22 January 2008; and EU Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation.

by international best practice⁶⁰³ and raises some concerns with respect to the individual right to a private life. As a result, it seems likely to be unenforceable in practice.

An exception to the prohibition on discrimination is provided in section 19(5), which allows for differential treatment that is “reasonable in the circumstances”. This leaves scope for a potentially wide range of circumstances to be considered as reasonable and for subjectivist bias. As noted above, any exceptions allowing for differential treatment must have a legitimate aim and there must be a proportionate relationship between the means used to carry out that aim and the discriminatory effect.⁶⁰⁴

Significantly, positive action is permitted under section 19(6). However, international best practice goes further to require positive action to be taken in certain instances.⁶⁰⁵ The recognition of the rights of particular groups is also welcome. The rights of children are recognised in section 20, without any of the “obligations” that were cause for serious concern in the 2009 Draft. Sections 42 to 45 elaborate on the rights of particular groups and section 41 provides express clarity that these additional sections should in no way be seen to limit or qualify the rights of these groups. Section 42 provides additional rights for persons with disabilities, including the right to reasonable accommodation. The inclusion of reasonable accommodation is a positive step; however, it is unclear whom the duty to provide reasonable accommodation falls on. Sections 44 and 45 provide additional rights to elderly persons and cultural, religious and linguistic communities respectively.

Section 43 is headed “Men, women and families” and provides for equal treatment between women and men, together with the rights to paternity and maternity leave. Although equal rights for men and women to land ownership and inheritance are provided for, these are “[s]ubject to customary ownership, and to customary laws relating to land ownership and land usage”. This provision leaves a degree of uncertainty as to how rights to land ownership and inheritance will be decided in practice. This uncertainty is further compounded by section 43(8) which provides that “[w]omen and men have the

603 See above, note 515, Principle 10, p. 9.

604 See above, note 514, Para 13; See also United Nations Human Rights Committee, above note 592.

605 See above, note 515, Principle 3, p. 5.

right to be free from any law, culture, custom or tradition that undermines their dignity, health, welfare, interest or status". The section also expressly provides that marriage is a relationship between a man and a woman, thereby excluding same sex marriages. While international human rights law does not recognise a right to marry for same-sex couples, international consensus among the community of equality experts increasingly considers that discriminating between same-sex and different-sex couples with respect to the ways in which they may recognise their relationship in law, is contrary to the right to equality.

Despite the limitations which remain in the Bill of Rights of the 2014 Draft, it is a welcome improvement both on earlier drafts and on the 1978 Constitution. Accordingly, it should be seen as an important starting point to be finessed through further consultation.

Summary

The constitutional reform process has not reached its completion. The significant regression in terms of the protection of equality and non-discrimination following the 2004 Draft is worrying. However, the Bill of Rights of the 2014 Draft improves significantly on the current Constitution and the previous drafts in relation to the rights to equality and non-discrimination. This is a promising development. Nonetheless, there are problematic provisions in the 2014 Draft such that the rights to equality and non-discrimination as understood in international law and best practice would still not be fully guaranteed.

3.2.3 Specific Equality and Anti-Discrimination Legislation

Solomon Islands legal protection of equality and non-discrimination is very poor. There is no specific equality or anti-discrimination legislation in the country and very few pieces of legislation which touch on equality issues. While there has been greater development of legislation over recent years and a number of pieces of legislation which would prohibit discrimination on grounds of disability and HIV status are in the process of being drafted, the landscape of legal protections is still woefully inadequate. In fact, there is only one draft bill with a sufficient equality and non-discrimination focus to belong in this section and it is currently unclear whether or not it will ever be enacted.

Persons with Disability (Equal Opportunities, Protection of Rights and Full Participation) Bill 2006

A Bill protecting persons with disabilities from discrimination has been in place for many years. This section of the report provides an overview of the provisions proposed in the most recent draft of the Bill, Draft No. 5.

Part II of the Bill establishes two complementary mechanisms to ensure the protection of persons with disabilities: a Director and a National Coordinating Council for Disability (the Council). The Director is responsible for the overall administration of the legislation. The Director has a variety of tasks including conducting research, raising public awareness, reporting annually to the Council and advising the Council on any development at international or regional levels regarding the recognition, protection or rehabilitation of persons with disabilities. The Council is tasked with formulating policies for the employment, education, transportation, infrastructure, health rehabilitation and welfare of persons with disabilities; evaluating and co-ordinating the execution of its policy at national and provincial levels; overall responsibility for the achievement of the objectives of the legislation; providing advice to the Minister on matters of policy relating to the recognition, protection and rehabilitation of persons with disabilities; and providing advice to the Director regarding any preparation, adoption, implementation and review of development plans as necessary.

Part III of the Bill provides that persons with disabilities “enjoy, on an equal basis with other persons, rights in political, educational, economic, spiritual, cultural and social fields, in family life and all other aspects of life” but does not specify precisely what those rights are, nor how they are to be enforced. It makes it an offence to “discriminate against, insult or harass a person with disabilities on the basis of their disabilities”. In addition, it requires persons with disabilities, their family members and carers to be advised of their human rights and any rights under the scope of the legislation.

Part IV of the Bill seeks to ensure that children with disabilities are able to access education on an equal basis with other children through a number of actions: free or reduced cost of education, better integration of children with disabilities in schools, the establishment of specialist schools and

classes, free or a reduced cost of assistive devices, teacher training, and the production of a comprehensive education scheme by the Minister for Education incorporating provisions enhancing equal access to education.

Part V of the Bill prohibits discrimination on grounds of disability in employment, specifically in any application procedures; the hiring, promotion or discharge of employees; remuneration; job training; and other terms, conditions and privileges of employment. Employers are required to provide reasonable accommodation for employees with disabilities, and the Director can conduct inspections of places of employment.

Part VI of the Bill requires the government to take “necessary measures to provide persons with disabilities with accessible medical assistance needed to restore or provide vital functions”. It also entitles persons with disabilities to receive medical help according to their immediate needs; and requires reasonable funds for accessing medical or rehabilitation services; and equipment and training for rehabilitation.

Part VII of the Bill requires the Director to make provision for counselling services to: parents and family members of people with disabilities; persons with disabilities and their families; and requires the Director to encourage persons with disabilities to seek medical care and/or rehabilitation and counselling services, and encourage persons with disabilities and their families to aim “for a life that is inclusive”.

Part VIII of the Bill provides for various enforcement provisions. Clause 22 provides that persons may lodge a complaint, or have a complaint lodged on their behalf, with the Director. The Director must then investigate whether a violation has occurred or not. If she/he determines that such a violation has occurred, she/he must write a warning letter to the person against whom the complaint was lodged and file a petition with the court if the violation continues. Clause 24 provides that a court may grant “any equitable relief that it considers to be appropriate” including granting temporary or permanent relief to the complainant; providing an auxiliary aid or service, modification of policy, practice or procedure, or alternative method; making facilities readily accessible to and usable by person with disabilities; or such other orders as the court shall consider appropriate under the circumstances.

Clause 23 creates an offence of fraudulently receiving, or attempting to receive “any material, financial or other benefit meant for persons with disabilities”, punishable by a fine of up to 3000 SBD (US\$370) or imprisonment for up to 12 months. Clause 25 creates a penalty for persons who violate any provision of the legislation of up to 2000 SBD (US\$247) for the first violation and of at least 2000 SBD for any subsequent violation.

Clause 26 provides for the creation of Regulations on a number of issues: the construction and design of public buildings to ensure that such buildings are accessible to persons with disabilities; safety requirements in workplaces for persons with disabilities; counselling services; safety and accessibility to public transport, roads, public utilities and recreational areas; and access to and participation in social, sporting and cultural activities.

With the Bill containing such important and detailed protections for people with disabilities, it is dispiriting that it is taking so long for the legislative process to run its course. It is noteworthy that, while Solomon Islands has signed but not ratified the Convention on the Rights of People with Disabilities (CRPD), some of the Bill’s clauses would provide important rights for persons with disabilities that are required under the CRPD. There is some room for improvement but overall the priority should be ensuring that the Bill or an improved version of it is passed as soon as possible.

3.2.4 Non-discrimination Provisions in Other Fields

There are no non-discrimination provisions in any other pieces of legislation in Solomon Islands. There is, however, a single provision containing a positive action measure, namely section 48(1) of the Political Parties Integrity Act 2014 which requires political parties to ensure that at least 10% of all candidates it selects and endorses for an election are women. In addition, political parties who see their female candidate elected will receive a “temporary special measures grant” of 10,000 SBD (US\$1,227) each year for each woman elected.⁶⁰⁶ It is evident that there is severe underrepresentation of women in government in Solomon Islands and so the Act’s attempt to address this is welcome. It remains to be seen whether these positive action measures will begin to redress the balance.

⁶⁰⁶ Political Parties Integrity Act, Section 58(1)(a).

Further, the passing of the Family Protection Act 2014 (FPA), while not including any reference to non-discrimination, is an important development from an equality perspective. The Act aims to prohibit all forms of domestic violence. This legislation is particularly welcome, given the widespread nature of violence against women in Solomon Islands, including in the domestic sphere.⁶⁰⁷ It also represents an important step towards Solomon Islands complying with a number of its obligations under the CEDAW. Domestic violence, which disproportionately affects women, is recognised as a form of sex (gender) discrimination under international law and the state is obliged to take adequate measures to protect people, and particularly women, from this violence.⁶⁰⁸ The FPA 2014 defines domestic violence, in Part 1, section 4, as actual or threatened conduct constituting physical, sexual, psychological or economic abuse, committed through a single act, or a series of more minor actions. The FPA defines potentially affected persons as those in a domestic relationship (as per sections 5 and 6) and offers protection to them and to their family members, including parents and children. Accordingly, it provides protection to men as well as women. The FPA defines any commission of domestic violence as an “offence” which, under the meaning of the FPA, is punishable by a jail term of three years, a fine of 30,000 “penalty units”, or both. As well as penalising domestic violence with criminal sanctions, the FPA makes provision for certain forms of protection for those affected, including temporary Police Safety Notices, and court-issued Protection Orders.

Protection Orders are governed by Part 3 FPA, and may be issued by courts as interim or final orders. The former are to be issued by a court or authorised justice, satisfied that an immediate order is necessary to prevent the commission of domestic violence on an affected person, protect another vulnerable person from exposure to such violence, or to avoid the affected person being prevented from pursuing an application for a final protection order. The latter may be made following an interim order, or independent of it, if the court is satisfied on the balance of probabilities that the respondent has committed or is likely to commit domestic violence against the affected person, and that the making of an order is necessary to protect the affected person from domes-

607 See above, note 512, Para 24.

608 See for example, United Nations Committee on Ending all forms of Discrimination Against Women, *General Comment No. 19: Violence Against Women*, UN Doc. A/47/38, 1992, Paras. 4–7; *Opuz v Turkey*, Application No. 33401/02, 9 June 2009 and CEDAW Committee, *Gegidze v Georgia*, Communication No. 24/2011, 26 July 2013.

tic violence. The need for protection, the effect of the relevant behaviour, the opinion and the well-being of the affected person must always be considered by the court before making an order. The application for a protection order may be made by the affected person, or on behalf of the affected person. If the affected person is a vulnerable person, those able to apply on behalf of that person are more limited. The conditions of a protection order are to an extent standardised, at section 35, but may be tailored to specify certain criteria, as per section 36 FPA.

The affected person in an application for a final protection order is permitted to seek mediation with the respondent which the court must facilitate. However, the CEDAW Committee has actively discouraged the use of mediation in domestic violence cases.⁶⁰⁹ The FPA, in Part 5, establishes a Family Protection Advisory Council composed of representatives from different areas of government, as well as from civil society and the police force. Part 5 also allows the registration of domestic violence counsellors, and requires the establishment and support of public awareness programmes aimed at preventing domestic violence.

Despite its declaration in the introductory text that it aims to draw upon and implement principles underlying the CEDAW and the CRC, the FPA itself contains no specific reference to any of the articles listed therein and does not address domestic violence as a form of discrimination. This is a significant gap as, in order to be fully protective, it is arguable that measures taken to address domestic violence are based on the key recognition that sex discrimination is central to the issue. Whilst the FPA is a very positive step towards tackling an invidious form of discrimination, in order to be effective, it must be coupled with a strategy which raises public awareness, offers a widespread programme of counselling, is inclusive of NGOs and addresses the issue that many victims of domestic violence will be extremely reluctant to report it. Cases must therefore be more actively investigated, rather than acknowledged only when they are brought to the attention of the relevant authorities.

3.3 National Policies Impacting on Discrimination and Inequality

In contrast to the notable absence of national legislation on equality and non-discrimination, there has been a recent proliferation of national policies which

⁶⁰⁹ See above, note 512, Para. 25(c).

may potentially have some impact on the protection from discrimination or advancement towards equality of certain groups. These are outlined in this section. However, these policies cannot fill the huge protection gap left by the dearth of equality legislation in Solomon Islands. The policies are not legally binding, there is limited awareness of their existence and no clear evidence that they have had any impact on the position of the groups they purport to assist. Indeed, the regular reporting that is to be expected from a government detailing the extent to which measures promised in a policy have been taken does not exist. Accordingly, the policies are currently of limited use in determining the position of equality and non-discrimination rights in Solomon Islands. We include them herein as they provide some limited exposition of the issues that have been discussed and considered as relevant by the national government. They may help to indicate the potential shape of future legislation.

3.3.1 National Policy on Gender Equality and Women's Development 2010–2015

The National Policy on Gender Equality and Women's Development was produced by the Ministry of Women, Youth & Children Affairs and endorsed by the Cabinet in 2009. It has as its central goal "to advance gender equality and enhance women's development ensuring the active contribution and meaningful participation of both Solomon Islands women and men in all spheres, and at all levels, of development and decision making".⁶¹⁰ It is a detailed policy with overall laudable aims and proposed measures. However, as with other policies, there is little evidence of the extent to which measures have been taken to implement its aims.

The policy details five priority outcomes to be achieved by 2015, as well as a sixth outcome in relation to monitoring:

(i) Improved and equitable health and education for women, men, girls and boys

This includes seeking to reduce the maternal mortality ratio from 184 out of every 100,000 live births, the infant mortality rate from 34 out of every 1,000

⁶¹⁰ Ministry of Women, Youth and Children Affairs, *Solomon Islands National Policy on Gender Equality and Women's Development*, 2010–2013, p. 1, available at: http://www.pso.gov.sb/index.php/resources/doc_download/190-sig-final-evaw-policy.

live births, and the prevalence of sexually transmitted infections. Further, it includes seeking to address the gender gap in access to education. The measures it envisages taking are broad and relate mostly to improving systems and access.

(ii) Improved economic status of women

The policy notes that improving the economic status of women through their access to, and share of, productive resources such as land, income, financial services, training opportunities, enterprise development services and technology contributes significantly to poverty reduction. It also notes that decisions over customary land management in Solomon Islands are invariably made by men, and that women's employment in the non-agricultural sector is restricted largely to low-paid, low status jobs in the tertiary and services sector with average earnings half that of men's. It identifies a range of measures to address the situation including developing policies and programs that involve women and men in natural resource development and management, improve women's access to, and ownership of, resources and land, developing opportunities for women in the fishery, agriculture, forestry and mineral sectors and a range of other opportunities for economic empowerment.

(iii) Equal participation of women and men in decision-making and leadership

The policy notes the underrepresentation of women in decision-making and leadership from the parliamentary to the local community level. It states that measures will be taken to increase participation of women including through training opportunities in leadership, cultural change at levels of decision-making and providing gender awareness and training for provincial and national decision makers.

(iv) Elimination of violence against women

The policy notes the level of violence against women is extremely high, in fact the third highest in the world. In addition to calling for a specific policy on eliminating violence against women which would strengthen legislative protection and law enforcement; treatment and rehabilitation programs for perpetrators; preventative approaches and provision of support services, the policy suggests a number of measures to be taken. These include: developing

national commitments to eliminate violence against women; strengthening legal frameworks, law enforcement and improving justice systems; conducting public awareness and advocacy; strengthening and improving protective and support services; rehabilitating and treating perpetrators; and working with men to end violence against women. In relation to this aim, the enactment of the FPA 2014 (discussed above) is a positive development. However, the extent of the government's engagement with the other promised measures is less evident.

(v) Increased capacity for gender mainstreaming

The policy recognises the importance of capacity building among partners and stakeholders and across government and calls for a strengthened and highly skilled national women's machinery to coordinate policy implementation and reporting. The policy also states the aim of embedding articles from the CEDAW in legislative and regulatory provisions. The failure to do this adequately in the FPA 2014 is not a positive beginning in achieving this aim, especially considering one of the stated measures is to embed CEDAW articles into legislative and statutory reforms and policy initiatives across governments. Other stated measures include: assessing capacities and strengthening the National Women's Machinery in policy advocacy, gender awareness, gender training and gender analysis; establishing and managing a Gender Management Information System in MYWCA (Ministry of Women, Youth and Children Affairs); establishing gender desks as a priority in the Ministry of Finance (gender budgeting and national statistics), Ministry of Planning (Gender Planner), and the Prime Minister's Office (Gender Policy Analyst); supporting women's development, gender awareness, leadership development and livelihood programmes at the provincial, community and village levels; and conducting a public sector-wide stock-take of capacities for gender mainstreaming.

(vi) Effective monitoring and evaluation of policy outcomes

The policy states that monitoring and evaluation are critical to achieving gender equality results and for gathering evidence that the action strategies stated above are indeed closing the gender gaps and improving women's development to advance the status of women. The policy therefore contains an additional outcome to integrate this monitoring and evaluation focus. The

stated measures to be taken to achieve this outcome include establishing a National Steering Committee on Gender Equality and Women's Development to meet quarterly and ensuring there are a number of different reporting mechanisms to monitor policy outcomes.

3.3.2 National Policy on Eliminating Violence against Women

The National Policy on Eliminating Violence against Women was produced by the Ministry of Women, Youth and Children Affairs and includes a three year National Action Plan lasting from January 2010 to January 2013. The policy was guided by four principles and values:

- i. zero tolerance of violence;
- ii. recognition of women's rights;
- iii. shared responsibility for eliminating violence against women; and
- iv. achieving gender equality.

The policy seeks to eliminate violence against women through seven strategic areas.

Developing National Commitments to Eliminate Violence against Women

The first strategic area involves the establishment of "a mechanism for high-level collaboration and co-operation between governments, donors and CSOs with regard to service delivery to women victimised by violence";⁶¹¹ reforming national legislation to incorporate national, regional and international commitments on violence against women; a nation-wide advocacy campaign to secure national support and commitment; developing appropriate mechanisms for effectively implementing, monitoring, evaluating and reviewing relevant policy mechanisms; advising government's ministries; and capacity-building of implementing mechanisms.

Strengthening the Legal Framework and the Law Enforcement and Justice System

The second strategic area involves reforming criminal law, protective law and family law; providing information and education about the law reform; pro-

611 *Ibid.*, p. 16.

viding training and education for relevant stakeholders in the criminal justice system (such as police, prosecutors, magistrates and judges) about the law reform; and enforcement of laws prohibiting violence against women.

Eliminating and Preventing Violence against Women through Public Awareness and Advocacy

The third strategic area involves supporting social marketing research and data collection to improve the effectiveness of advocacy and awareness activities; and preparing and disseminating information on eliminating violence against women in all provinces and Honiara. The latter will include programmes in school, parenting programmes, and broadcast and print media programmes.

Improving Protective, Social and Support Services

The fourth strategic area involves strengthening a number of existing protective, social and support services, including the Ministry of Health and Medical Services, the Royal Solomon Islands Police Force, the Social Welfare Department, the Family Support Centre and the Christian Care Centre; increasing the number and quality of existing services for women who have suffered violence; and supporting community-based initiatives to help victims of violence.

Treating Perpetrators

The fifth strategic area primarily involves developing effective behaviour change and rehabilitation programmes for perpetrators and offenders.

Working with Men to End Violence against Women

The sixth strategic area involves establishing and supporting partnerships between men's and women's groups that engage men as vital contributors to collective action to change perceptions, attitudes, and behaviours of men and as champions in ending violence against women; targeting training for men on gender equality, masculinity, the role of men in society and men's responsibility to eliminate violence against women through acting as role models for other men in the treatment of women; and supporting men to continue to

take initiative in community and civic education activities such as The White Ribbon Campaign.

Coordinating the Policy with Related Policies and Coordinating Violence against Women Elimination Services with Each Other and with the Policy

The seventh strategic area primarily involves the establishment of an Eliminating Violence against Women National Task Force (NTF) to coordinate the implementation of the policy, and oversee and monitor the implementation of the National Action Plan.

3.3.3 National Policy on Disability 2005–2010

Solomon Islands National Policy on Disability 2005–2010 was published by the Ministry of Health and Medical Services in 2004. While a more recent policy has been finalised, as of May 2015, it had not been placed before Cabinet for approval.⁶¹² The 2005–2010 policy comprised 11 objectives with the ultimate goal of:

*A society that will accept and embrace the equal rights of all people with disability, assist and involve them physically, socially, spiritually and culturally and ensure the achievement of their goals and visions.*⁶¹³

The eleven objectives were:

- i. To establish a National Coordinating Council for Disability (NCCD) with representation from policy makers from key government ministries, NGOs, churches, the private sector and with equal representation from women and men with disability;
- ii. To strengthen and provide technical, financial and appropriate resources to support groups and networks for parents, families, teachers and the wider community at the local, provincial and national level;

612 People with Disabilities Solomon Islands, *Submission to the Universal Periodic Review for Solomon Islands*, May 2015, available at: <http://uprdoc.ohchr.org/uprweb/downloadfile.aspx?file-name=2288&file=EnglishTranslation>.

613 Solomon Islands, *National Policy on Disability, 2005–2010*, p. 6.

- iii. The promotion of equal participation of women with disabilities and mainstreaming their issues on a national, regional and international level;
- iv. For the NCCD, in collaboration with all stakeholders, to raise national awareness concerning disability issues;
- v. For the Ministry of Education and Human Resources Development in consultation with people with disabilities, to review education and training policies to ensure that they give opportunity to boys and girls with disabilities, improve their access and their equal right to education, and provide compulsory special education modules in all teacher training courses;
- vi. For the Community Based Rehabilitation Programme of the Ministry of Health and Medical Services, in collaboration with relevant stakeholders, to develop and strengthen support services (e.g. physical training, sign language, interpreters, trainer aids) to enable persons with disabilities to fully participate in all sectors of training and include people with disabilities in the planning and provision of training;
- vii. To develop early intervention measures for children from 0 to 4 years old, particularly including compulsory vision and hearing tests for all children between the ages of 0–4 years;
- viii. To create more opportunities for income generation, employment and promotion based on equal rights and empowerment of all persons regardless of disability or gender;
- ix. To distribute and acquire assistive equipment and improve accessibility of transport services, structures and buildings (e.g. hospitals, hotels, churches, banks, schools, roads, sports facilities, bridges, etc.);
- x. To improve communication links between national and provincial government offices and dissemination of information through media (e.g. radio, pamphlets, newspapers, etc.) to people with disabilities;
- xi. To review the legal system to ensure that it is inclusive of people with disabilities.

3.4 Enforcement and Implementation

The extent to which Solomon Islands limited legal protections can be said to be effective, at least within their limited scope, depends on their enforcement and implementation at the executive and judicial levels. Unfortunately, as this section identifies, there are significant enforcement and implementation gaps in both areas.

3.4.1 Enforcement

States do not meet their obligation to protect people from discrimination by simply prohibiting discrimination in the law. They must also ensure that the rights to equality and non-discrimination are effectively enforced in practice. This means that, in addition to improving legal protection from discrimination, Solomon Islands must also put in place mechanisms which guarantee victims of discrimination effective access to justice and appropriate remedies.

According to Principle 18 of the Declaration of Principles on Equality:

Persons who have been subjected to discrimination have a right to seek legal redress and an effective remedy. They must have effective access to judicial and/or administrative procedures, and appropriate legal aid for this purpose. States must not create or permit undue obstacles, including financial obstacles or restrictions on the representation of victims, to the effective enforcement of the right to equality.⁶¹⁴

Access to Justice

Access to justice will only be effective where victims of discrimination are able to seek redress unhindered by undue procedural burdens or costs. Remedies must be “affordable, accessible and timely” and “legal aid and assistance” must be provided where necessary.⁶¹⁵ Rules on standing which allow organisations to act on behalf, or in support, of victims of discrimination are particularly important in overcoming the disadvantages faced by individuals in the justice system. It is also important to allow groups of victims who have experienced similar discriminatory treatment to bring claims on behalf of a group, if the systemic nature of discrimination is to be effectively addressed.

614 See above, note 515, Principle 18, p. 12.

615 See United Nations Committee on the Elimination of Discrimination against Women, above note 575, Para. 34.

Section 18 of the 1978 Constitution sets out the process by which individuals are able to bring claims alleging a violation of the right to non-discrimination as provided for by section 15 (or, indeed, for violations of any of the rights and freedoms in Chapter II of the 1978 Constitution). While it provides some recourse to the courts, section 18 does not provide sufficient access to justice for victims of discrimination.

Where a person believes that a violation of section 15 has been, is being or is likely to be committed in relation to him, then he may apply to the High Court for redress under section 18(1). Where the person is in detention, another person may bring a claim on behalf of that person alleging a contravention. The limitation on persons not in detention to bringing a claim only where the alleged contravention is “in relation to him” limits standing to bring a claim more narrowly than international best practice requires. Principle 20 of the Declaration of Principles on Equality, for example, states that:

*States should ensure that associations, organisations or other legal entities, which have a legitimate interest in the realisation of the right to equality, may engage, either on behalf or in support of the persons seeking redress, with their approval, or on their own behalf, in any judicial and/or administrative procedure provided for the enforcement of the right to equality.*⁶¹⁶

Section 18(2) gives the High Court original jurisdiction (a) to hear and determine any applications made under section 18(1) and (b) to determine any question arising in the case referred to it in pursuance of section 18(3). Section 18(3) provides that if in proceedings in a lower court a question arises as to the contravention of section 15 (or any other section in Chapter II), the judge may (and shall, if any party to the proceedings so requests) refer the question to the High Court. The High Court can, however, reject the reference if it believes that the raising of the question is “merely frivolous or vexatious”. This is not uncommon. Further, section 18(2) provides that the High Court can reject a claim if it deems that adequate means of redress were available under another law. The High Court has declined to

616 See above, note 515, Principle 20, pp. 12–13.

hear claims in relation to other sections of the Constitution where it considers that alternative redress is available.⁶¹⁷

Under section 18(4), a person aggrieved by any determination of the High Court under section 18 may appeal the decision to the Court of Appeal. A person may not, however, appeal a determination of the High Court that the original application was “frivolous or vexatious”. This is problematic. Where the High Court has wrongly made this determination, the applicant is left with no further recourse to the courts to adjudicate their discrimination complaint.

Section 18(5) gives the Parliament the power to confer additional powers to the High Court for the purpose of enabling that court more effectively to exercise the jurisdiction conferred upon it by section 18. However, from the information available publicly and through discussions with lawyers in Solomon Islands, we have seen no evidence that this power has been exercised.

Section 18(6) allows for rules of court making provision with respect to the practise and procedure of the High Court in relation to the jurisdiction conferred on it by or under this section to be made (including rules with respect to the time within which any application or reference shall or may be made or brought). Such rules were made in 1982: the Constitutional Provisions Rules 1982 which amended the High Court (Civil Procedure) Rules 1964 which states that “no application for redress made under Section 18(1) of the Constitution (...) shall be made unless leave has been granted under this rule”.⁶¹⁸

Concerns over access to justice for victims of discrimination in Solomon Islands have been raised by, *inter alia*, the CEDAW Committee which, in 2014, noted:

Structural barriers to women’s access to the formal justice system, in particular the lack of human and financial resources allocated to the judiciary at the provincial level and of legal practitioners who provide legal aid to

617 For example, in *Solomons Mutual Insurance Ltd v Controller of Insurance* [2003] SBHC 115; HC-CC 114 of 1999 (31 July 2003), Palmer J declined to exercise his power to grant redress under the Constitution in relation to the validity of search and seizure warrants because adequate redress was otherwise available to the applicant.

618 Rule 1(1) of Order 61A of the High Court (Civil Procedure) Rules 1964.

*women, as well as the high costs for seeking redress in the High Court.*⁶¹⁹

Legal Aid System

Section 92 of the 1978 Constitution establishes the office of the Public Solicitor whose functions are set out in section 92(4) as: (a) to provide legal aid, advice and assistance to any person in need who has been charged with a criminal offence and (b) to provide legal aid, advice and assistance to any person when directed to do so by the High Court.

The Public Solicitor's office was not established, however, until the Public Solicitor Act in 1987.⁶²⁰ Prior to this, the only legal aid services in Solomon Islands were provided by the Social Welfare Solicitors from an office in the Honiara City Council in the late 1970s.⁶²¹ The first lawyers were volunteers from Voluntary Service Overseas who worked for Social Welfare Solicitors. Following the passage of the Public Solicitor Act, Voluntary Service Overseas lawyers started to work at the Public Solicitor's office and were later joined by Solomon Islands law graduates.⁶²² There are three Public Solicitor's offices in the country now: in Honiara, Gizo and Auki, but only the Honiara Public Solicitor's Office has a Family Protection Unit.

The Public Solicitor Act governs the provision of legal aid in Solomon Islands. Under section 3, legal aid (a) consists of representation of persons in proceedings, including all such assistance as is usually given in the steps preliminary or incidental to the proceedings or in arriving at, or giving effect to, a compromise to avoid or bring an end to the proceedings; and (b) includes the providing of legal advice and assistance to persons in need of such advice and assistance.

Legal aid is strictly limited under section 4 only to (a) persons who qualify for it in the terms set out in section 92(4) of the Constitution; and (b) to oth-

619 See above, note 512, Para 12.

620 Public Solicitor Act (Cap 30).

621 Public Solicitor's Office, *History of the PSO*, available at: <http://www.pso.gov.sb/index.php/about-us>.

622 *Ibid.*

er persons whose income does not exceed the amount set out in secondary legislation. The secondary legislation is the Legal Aid (Income Limit) Order which sets out a maximum income of 12,000 SBD (US\$1,482.00) for a person to be eligible for legal aid. While this provision is restrictive, the Public Solicitor’s Office is in the process of establishing a “Means and Merits Test”, which includes cases of domestic violence and child protection as priority areas when allocating legal aid.⁶²³ The guidelines also make clear that matters of criminal justice, domestic violence and child protection are not subjected to the means test when considering whether they are eligible for legal aid.

Nonetheless, the poor provision of legal aid has been criticised by the CEDAW Committee which urged Solomon Islands in 2014 to “ensure the provision of free legal aid to women without sufficient means to claim their rights”.⁶²⁴

Evidence and Proof

International law recognises that it can be difficult for a person to prove that discrimination has occurred, and thus requires that legal rules on evidence and proof are adapted to ensure that victims can obtain redress. Principle 21 of the Declaration of Principles on Equality states that:

*Legal rules related to evidence and proof must be adapted to ensure that victims of discrimination are not unduly inhibited in obtaining redress. In particular, the rules on proof in civil proceedings should be adapted to ensure that when persons who allege that they have been subjected to discrimination establish, before a court or other competent authority, facts from which it may be presumed that there has been discrimination (prima facie case), it shall be for the respondent to prove that there has been no breach of the right to equality.*⁶²⁵

623 The “Means and Merits” Guidance sets out the priority areas as: (i) criminal cases (including extradition matters and appeals); (ii) matters relating to domestic violence and child protection; (iii) matters directed by the High Court pursuant to section 92(4) of the Constitution; and (iv) family matters.

624 See above, note 512, Para 13.

625 See above, note 515, Principle 21, p. 13.

As this principle indicates, the “burden of proof” in cases of discrimination should be transferred to the defendant, once a *prima facie* case that discrimination has occurred has been made. The CESCR has stated in its General Comment No. 20 that:

*Where the facts and events at issue lie wholly, or in part, within the exclusive knowledge of the authorities or other respondent, the burden of proof should be regarded as resting on the authorities, or the other respondent, respectively.*⁶²⁶

As noted above, however, Solomon Islands has no anti-discrimination legislation, and there are no provisions in the Constitution relating to the burden of proof.

Remedies and Sanctions

It is essential that remedies are designed so as not only to address the needs of the individual bringing a claim, but to address structural causes of the discrimination experienced by the individual in the case, which are likely to affect others. In this respect, the CEDAW Committee has said:

*This obligation requires that States parties provide reparation to women whose rights under the Convention have been violated. Without reparation the obligation to provide an appropriate remedy is not discharged. Such remedies should include different forms of reparation, such as monetary compensation, restitution, rehabilitation and reinstatement; measures of satisfaction, such as public apologies, public memorials and guarantees of non-repetition; changes in relevant laws and practices; and bringing to justice the perpetrators of violations of human rights of women.*⁶²⁷

626 See above, note 514, Para 40.

627 See United Nations Committee on the Elimination of All Forms of Discrimination against Women, above note 575, Para 32.

The CESCR has also said that “effective” remedies include compensation, reparation, restitution, rehabilitation, guarantees of non-repetition and public apologies.⁶²⁸ Sanctions imposed on discriminators must be effective, proportionate and dissuasive.⁶²⁹

Section 18 of the 1978 Constitution provides that the High Court:

[M]ay make such orders, issue such writs and give such directions, including the payment of compensation, as it may consider appropriate for the purpose of enforcing or securing the enforcement of any of the provisions of sections 3 to 16 (inclusive) of this Constitution.

Whilst this remedy-making power appears to be fairly broad, in 2014, the CE-DAW Committee criticised Solomon Islands for “the lack of effective remedies and redress available to women in both the traditional justice and the formal justice system”.⁶³⁰ The Committee recommended that Solomon Islands:

*[E]stablish specific remedies to provide redress for women in both the formal and the traditional justice systems, and sensitize the public on the importance of addressing violations of women’s rights through judicial remedies.*⁶³¹

Administrative Mechanisms

In addition to judicial remedies, states are required to establish effective administrative mechanisms such as a national human rights institution or an independent equality body. The CESCR has stated that:

National legislation, strategies, policies and plans should provide for mechanisms and institutions that effectively address the individual and structural nature of the harm

628 See above, note 514, Para 40.

629 See above, note 515, Principle 22, p. 13.

630 See above, note 512, Para 12.

631 *Ibid.*, Para 13.

*caused by discrimination in the field of economic, social and cultural rights. Institutions dealing with allegations of discrimination customarily include courts and tribunals, administrative authorities, national human rights institutions and/or ombudspersons, which should be accessible to everyone without discrimination.*⁶³²

Such mechanisms should also promote respect for the enjoyment of human rights without any discrimination, review government policy, monitor legislative compliance, and educate the public.⁶³³

Whilst the 1978 Constitution of Solomon Islands establishes the office of an Ombudsman, this role is limited to:

- (a) Making enquiries into the conduct of any person to whom section 97(3) of the 1978 Constitution applies in the exercise of his office or authority, or abuse thereof (section 97(3) lists such persons as members of the public service, the Police Force, the Prisons Service, the government of Honiara city, provincial governments, and other offices, commissions, corporate bodies or public agencies);
- (b) Assisting in the improvement of the practices and procedures of public bodies; and
- (c) Ensuring the elimination of arbitrary and unfair decisions.

Whilst such functions could, in theory, include investigations into discrimination carried out by the persons listed in section 97(3), it is unclear whether, in practice, the Ombudsman does carry out such investigations. Indeed, in 2014, the CEDAW Committee criticised Solomon Islands for “the lack of information about the mandate of the Solomon Islands Ombudsman to receive and deal with complaints about violations of women’s human rights” in its state party

632 See above, note 514, Para 40.

633 United Nations Committee on the Elimination of Racial Discrimination, *General Recommendation No. 17 on the establishment of national institutions to facilitate the implementation of the Convention*, UN Doc. A/48/18, 1993, Para 1; Committee on Economic, Social and Cultural Rights, *General Comment No. 10: The role of national human rights institutions in the protection of economic, social and cultural rights*, UN Doc. E/C.12/1998/2510, 1998, Para. 3. See also *Principles relating to the Status of National Institutions (the Paris Principles)*, adopted by General Assembly Resolution 48/134 of 20 December 1993.

report.⁶³⁴ The Committee recommended that the government “take measures to ensure that the Ombudsman Office or another entity has a mandate to receive and address complaints by women about discrimination”.⁶³⁵

In addition, during the 2011 Universal Periodic Review, the government of Solomon Islands accepted recommendations that Solomon Islands take steps towards the establishment of a national human rights institution for the promotion and protection of human rights.⁶³⁶ The government stated that the establishment of the body was dependant on the draft Federal Constitution being passed, although it also showed some openness in considering the issue independently from the Constitution.⁶³⁷

3.4.2 Jurisprudence on Equality and Non-discrimination

The judiciary plays an important role in shaping the law of Solomon Islands through the existence of precedent. Unfortunately, in part because there is no specific national law on equality and non-discrimination and human rights protections are a recent development in Solomon Islands, the judiciary has yet to develop jurisprudence on the rights to equality and non-discrimination. The development of jurisprudence is further hampered by a lack of information and resources. In addition, there are few lawyers with sufficient human rights experience to bring cases where rights have been violated or to make detailed submissions on violations of rights.

The cases set out below evidence the limited extent of the discussion of equality and non-discrimination by the judiciary, representing a big gap in the protection of these rights in Solomon Islands, especially given the problematic protection under the 1978 Constitution and the lack of other anti-discrimination law at the national level. What follows is an expansion of the detail in relation to cases already identified as having an impact on the international

634 See above, note 512, Para 12.

635 *Ibid.*, Para 13.

636 United Nations Human Rights Council, Universal Periodic Review, *Report of the Working Group on the Universal Periodic Review: Solomon Islands*, UN Doc. A/HRC/18/8, 11 July 2011, Paras 79.1 (Canada), 79.2 (Ireland), 79.3 (Argentina), 79.4 (Spain), 79.5 (United Kingdom), 79.6 (Morocco) and 79.7 (Indonesia).

637 *Ibid.*, Para 25.

and national obligations outlined above coupled with an exploration of a limited number of cases in other areas which show a poor appreciation on the part of the judiciary of Solomon Islands' of the obligation to protect equality and freedom from discrimination.

Despite the issue of discrimination being central in several cases, including *Regina v Gaa*,⁶³⁸ there does not appear to be any judicial discussion of the rights to equality and non-discrimination as set out in international law. The cases which follow in the below section are all concerned with discrimination, yet none makes any reference to international standards or obligations. Instead, each case is decided through interpretation of the provisions of the Constitution and of domestic law.

There are few cases in which the courts discuss and apply section 15 of the 1978 Constitution, although lawyers are increasingly presenting arguments relating to discrimination and violations of section 15.

A decision of the High Court of Solomon Islands in 2001, discussed in brief under 3.2 above, appears to interpret section 15(1) as only applying to cases of direct discrimination, a significant limitation on the ordinary meaning of the section. In *Folotalu v Attorney-General*,⁶³⁹ the applicant, Walter Folotalu, challenged the constitutionality of section 2 of the National Parliament Electoral Provisions (Amendment) Act 2001 which increased the non-refundable deposit from 2,000 SBD (US\$247) to 5,000 SBD (US\$618) to be paid by intending candidates contesting in the upcoming general elections. One of the arguments of the claimant was that it was discriminatory against him on grounds of place of residence as a non-wage earner living in the rural areas. As the provision applied to all persons equally, it could not be said to be directly discriminatory but there were arguments that could be made in relation to indirect discrimination. The Court paid scant attention to the section 15(1) arguments. And the language of the Court in determining whether the provision could be considered discriminatory provides a clear indication that it was only considering direct discrimination and did not consider the possibility that legislation could discriminate indirectly.

638 See discussion in subsection 3.1.5 of this report.

639 See above, note 554. See also brief discussion of the case at 3.2 above.

The Court referred to a decision of the High Court of Fiji in a similar case in which that court had stated:

*In this latter regard learned Counsel for the applicant argued that a nomination fee of \$1,000 unlawfully discriminated against the poor as opposed to the rich. I cannot agree. The requirement of a \$1,000 refundable deposit on nomination is a general requirement which applies to all persons who are nominated for election to parliament. It applies to both rich and poor alike and although it may cast an unequal burden on the latter that does not in my view render the requirement discriminatory...*⁶⁴⁰

Whilst the specific arguments of the applicant are not detailed within the judgment, it would appear that he argued that the legislation discriminated against him indirectly:

I take note though of the point which the Applicant seeks to establish, that the increase makes it more difficult and in some instances, well in his case, impossible, to pay the deposit and thereby disqualifying him from running for office in the coming elections.

However, the Court went on to say:

I think the more accurate word to use in his case is that he is being penalized (disadvantaged) by this increase, but not discriminated (treated unfairly) against.

The Court thus concluded that the applicant had not been discriminated against. By considering discrimination as not possible where legislation applied to all persons equally, the Court took a narrow view of “discriminatory” which includes only direct and not indirect discrimination.

In addition, as also discussed in brief at 3.2 above, one of the areas in which the prohibition of discrimination contained in section 15 has been considered

640 *Sakeasi Butadroka v Attorney-General & Electoral Commission* (1992), Fiji High Court, unreported.

is in its relationship to customary law. Section 15(5)(d) of the 1978 Constitution provides an exception to the right to non-discrimination in application of customary law. In *Tanavalu v Tanavalu*,⁶⁴¹ the High Court confirmed that the 1978 Constitution permitted the use of customary law even if it discriminated against women.

The case concerned customary inheritance for the purpose of the National Provident Fund Act. The Act provided that where a member of the Fund dies without nominating a beneficiary for their accumulated funds, distribution is to be in accordance with the custom of the member, “to the children, spouse and other persons” entitled in custom.⁶⁴² The Act did not say how this custom was to be established. The plaintiff in the case was a widow whose husband had nominated his brother and nephew as beneficiaries when he joined the fund. Section 32 of the Act provided that the nomination became void when he married the plaintiff the following year. When he died, his father applied for, and was paid, the amount held in the fund on the basis of local custom. Of the 11,079 SBD (US\$1,368) paid to him, the father deposited 4000 SBD (US\$494) in an interest-bearing deposit account in the name of the deceased’s son. He used 3000 SBD (US\$370) to meet funeral expenses and paid 2000 SBD (US\$247) each to the deceased’s brother and nephew. Seventy-nine SBD (US\$10) was used for his own purposes. The plaintiff challenged this distribution, seeking a declaration in the High Court that she and her infant child were entitled to a third share of the money each. The evidence in the case showed that inheritance in the deceased’s tribe was patrilineal and that the deceased’s father was entitled to distribute the estate to relatives. According to customary law the deceased’s father had the discretion to pay some amount of the inheritance to the widow, but in some circumstances, for example, as where she had left the father’s house, he was entitled to leave her out of the distribution altogether.

The plaintiff argued that the customary law as found was discriminatory and hence unconstitutional. Section 15(1) provides that “[s]ubject to the provisions of subsections (5), (6) and (9) of this section, no law shall make any pro-

641 See above, note 557.

642 Brown, K. and Corrin Care, J., “More on Democratic Fundamentals in Solomon Islands: *Minister for Provincial Government v Guadalcanal Provincial Assembly*”, 32, *Victoria University of Wellington Law Review*, 2001, p. 653.

vision that is discriminatory either of itself or in its effect". The Court found that the word "law" in section 15(1), did not include customary law:

Does the word law therein include customary law? I do not think so, because the section refers to a law to be made in the future and customary law is not made; it evolves or was already pertaining at the time of the adoption of the Constitution.

The Court went on to say that discriminatory customary law would not be outlawed by sub-section (1) in any event because section 15(5)(d) (and section 15(5)(c)) excused discriminatory law in a case such as this. Section 15(2) was also considered. It provides that:

Subject to the provisions of subsections (7), (8) and (9) of this section, no person shall be treated in a discriminatory manner by any person acting by virtue of any written law or performance of the function of any public office or any public authority.

The Court considered that it was clear that "written law" in section 15(2) did not extend to customary law:

[C]ustomary law is not "written law". The Constitution does not define the expression, written law, the expression is defined in the Interpretation and General Provisions Act as, "an Act, any subsidiary legislation or an imperial enactment." That excludes customary law. So a person acting "by virtue of" customary law may treat another in discriminatory manner if that is in accordance with the applicable rule of customary law.

The allegations of discrimination were not pursued before the Court of Appeal. Nor were the arguments expressed above on the meaning of section 15 put forward. The Court of Appeal upheld the first instance decision and limited its consideration of the conflict between customary law and protection from discrimination to the following words:

The Constitution (s 15(5) and cl 3 of Schedule 3) recognises the importance of customary law to citizens of the Solomon Islands. The former provision recognises that the application of customary law may have certain discriminatory consequences. The learned trial judge was correct in holding that the Act was not unconstitutional because section 36(c) discriminated against the widow.

The case of *The Premier of Guadalcanal v The Attorney General*⁶⁴³ revolved around the Provincial Government Act 1996 which replaced the existing system of provincial government with a new regime. The Act provided for ten Area Assemblies. Each Assembly would be made up of 50% elected members and 50% appointed chiefs and elders. The Act was challenged by the Guadalcanal Provincial Assembly as unconstitutional. Although the challenge was primarily based on arguments that the Act was contrary to constitutional principles of representative and responsible government, arguments were also made that the Act contravened the right to non-discrimination in section 15 of the 1978 Constitution.

In customary societies, “patriarchal values are, at least formally, overriding and ubiquitous”.⁶⁴⁴ This was acknowledged by Williams JA in his judgment:

Firstly the traditional position is that only a male can be a “traditional chief”. That means that one-half of the members of the Area Assembly must be males and that, it might be said, effectively denies females equal opportunity with males. There is certainly force in this argument, but the answer in essence is that the Constitution recognises that the “traditional chiefs” should play a role in government at the provincial level. The Constitution itself therefore recognises this imbalance or discrimination and it will remain until the role of “traditional chiefs” under the Constitution is re-evaluated. Initially the role of women in government will be limited to standing for election to Area Assemblies, and un-

643 Unreported, Court of Appeal, Solomon Islands, [1997] SBCA 1, CA-CAC 3 of 1997, 11 July 1997.

644 See above, note 642, p. 662.

*doubtedly when that has become more readily accepted, consideration will be given to the discriminatory effect of appointing chiefs and elders pursuant to sections 30 and 31 of the 1996 Act.*⁶⁴⁵

A similar conclusion was reached by Goldsbrough JA:

*Parliament has made provision for provincial government. It was required to do so. It has considered, as required, the role of traditional chiefs. Indeed it has decided to enhance their role, as compared to the repealed legislation. In this regards it is clear that women at present may be disadvantaged, given that traditional chiefs are male. This I conclude cannot be said to offend against the constitution as it is required consideration by that same constitution.*⁶⁴⁶

Neither of these judges, nor the third judge, Kapi P, referred to section 15 of the Constitution, nor analysed the discriminatory effect of the Act on the right to non-discrimination contained therein. The judgments have been criticised by Brown and Corrin Care for contending that:

*Parliament was charged by the Constitution to provide for the position of traditional chiefs and that if it devised a formula for doing so that was discriminatory then that discrimination was sanctioned by the Constitution itself.*⁶⁴⁷

This reasoning has been criticised as “circuitous and faulty”.⁶⁴⁸ It certainly results in a significant restriction on non-discrimination in respect of the ability to stand for elections and represent one’s community at the provincial level. The fact that the Court has made a judgment with such significant implications on equality without even referring to section 15 of the 1978 Constitution, is deeply disquieting.

645 *Ibid.*, p. 664.

646 *Ibid.*, p. 665.

647 *Ibid.*

648 *Ibid.*

Unlike in the above cases, in the case of *Director of Public Prosecutions v Bowie*,⁶⁴⁹ a violation of the prohibition of non-discrimination contained in section 15 of the 1978 Constitution was found. However, its conclusion as to the remedy following the finding is seriously regressive. The case concerned section 155 of the Penal Code, which created an offence of gross indecency between males and which, when first enacted, read:

Any male person who, whether in public or private, commits any act of gross indecency with another male person, or procures another male person to commit any act of gross indecency with him, or attempts to procure the commission of any such act by any male person with himself or with another male person, whether in public or private shall be guilty of a felony, and shall be liable to imprisonment for five years.

In 1988, a prosecution was instigated against Noel Bowie. At the close of the prosecution case, his lawyer submitted to the court that section 155 was inconsistent with section 15 of the Constitution on the basis that it was discriminatory against men. The submission was upheld and the defendant acquitted.

The Director of Public Prosecutions appealed the acquittal and the matter reached the High Court. The Court noted that section 155 was limited to men and that there was no similar or corresponding offence relating to women. As such, the Court considered it “hard to imagine a clearer case” of a violation of section 15. An argument had been made by the appellant that, even if section 155 was discriminatory under section 15(1), it was saved by section 15(9). It was argued that as section 15(9) provides an exception for legislation which restricts the rights and freedoms of a group of people sharing a protected characteristic and which is guaranteed by sections 9 (privacy of home and other property) and 13 (freedom of assembly and association) where such a restriction would be authorised by sections 9(2) or 13(2) as the case may be. The appellant argued that section 155 restricted the rights to privacy and to freedom of association but that such a restriction was justified on grounds of public morality and public health, both of which were legitimate justifications under sections

649 Criminal Appeal Case No. 32 of 1988 [1988] SBHC 1; [1988-1989] SILR 113 (13 October 1988).

9(2) and 13(2). The Court, however, rejected this argument stating that for it to succeed it would be necessary to interpret section 15 too widely with the result that any justified restriction of sections 9 and 13 would mean it could never violate section 15. Instead, section 15(9) could only be interpreted to save section 155 in relation to privacy and freedom of association and not generally.

Whilst the Court's conclusions thus far were welcome, the means by which the inconsistency was remedied led to a deeply unjust result. Section 2 of the Constitution provides that "if any law is inconsistent with this Constitution, that other law shall, to the extent of the inconsistency, be void". The court was faced with two options: either holding that the law was void in its entirety or only to the extent that it was inconsistent with section 15. In deciding which option to choose, the Court asked itself whether the inconsistent part of the section was so inextricably bound up with the remainder that the loss of the part would destroy the whole. The Court held that it was only the use of the word "male" that led to the inconsistency and that simple removal of that word – in effect, making the offence gender-neutral – would not "prevent the remainder having a clear and complete meaning and, therefore, being able independently to survive".⁶⁵⁰ The perverse result was that the scope of the offence was therefore extended to cover all persons, rather than simply men, extending beyond the original intentions of the legislature when drafting the provision:

*One cannot escape the irony that, by invoking the protective provisions of the Constitution in the aid of part of the community, the population as a whole is now subject to a criminal offence that had not affected it hitherto but, ironical though it is, I feel that is the correct result.*⁶⁵¹

The Court justified this result on the basis that the legislature had probably not even considered the idea of acts of gross indecency between females but that, had it been so considered, the legislature would have widened the offence to include such acts rather than not prohibit any attempts to make

⁶⁵⁰ *Ibid.*

⁶⁵¹ *Ibid.*

such conduct criminal. The appeal was therefore allowed and the defendant tried *de novo*.⁶⁵²

Perhaps the only positive result which has been reached before the courts in relation to non-discrimination was the case of *Regina v Gua*,⁶⁵³ which was noted in 3.1.5 above due to the court's reliance on the international obligations contained in the CEDAW. Until 2012, the principle of the common law of England that a man may not be found guilty of raping his wife had been adopted in Solomon Islands, despite the principle's abolition in English law in 1991 by a decision of the House of Lords.⁶⁵⁴ In *Regina v Gua*, the High Court of Solomon Islands ruled that the principle no longer formed part of the law of Solomon Islands. After summarising the history of the principle and its abolition in English law, Justice Apaniai analysed the law of Solomon Islands in order to determine whether it remained a principle of Solomon Islands law.

The appellant had argued that, despite the decision of the House of Lords, the law of Solomon Islands remained unchanged by virtue of section 2(1) of Schedule 3 to the Constitution of Solomon Islands which provides that:

Subject to this paragraph, the principles and rules of the common law and equity shall have effect as part of the law of Solomon Islands, save in so far as:

652 Shortly after the decision, the National Parliament adopted the Penal Code (Amendment) Act 1989 (Act No. 5 of 1989), which amended section 155 by making it gender neutral. The new section 155 provided: "Any person who, whether in public or private, commits any act of gross indecency with another person, or procures another person to commit any act of gross indecency with him or her, or attempts to procure the commission of any such act by any person with himself or herself or with another person, whether in public or private shall be guilty of a felony, and shall be liable to imprisonment for five years." The offence could therefore be committed by both men and women and involve acts between persons of the same or the opposite sex. Perhaps realising that the drafting of this new offence meant that it included acts between opposite-sex couples, a year later, the National Parliament adopted the Penal Code (Amendment) Act 1990 (Act No. 9 of 1990) which repealed section 155 and replaced it with an entirely new section which applied only to acts between persons of the same sex: "Any person who, whether in public or private - (a) commits any act of gross indecency with another of the same sex; (b) procures another of the same sex to commit any act of gross indecency; or (c) attempts to procure the commission of any act of gross indecency by persons of the same sex, shall be guilty of a felony and be liable to imprisonment for five years."

653 See above, note 539.

654 *R v R* (House of Lords) [1991] UKHL 12, [1992] 1 AC 599, [1991] 3 WLR 767, [1991] 4 All ER 481, (1991).

- (a) they are inconsistent with this Constitution or any Act of Parliament;
- (b) they are inapplicable to or inappropriate in the circumstances of Solomon Islands from time to time; or
- (c) in their application to any particular matter, they are inconsistent with customary law applying in respect of that matter.

Justice Apaniai rejected this argument on the basis that the principles and rules of the common law had changed as a result of the decision of the House of Lords. He also held that, even if this were not the case, the principle that a man could not be found guilty of raping his wife had “run its course” and was no longer “applicable nor appropriate in the circumstances of the Solomon Islands”, adding that “[t]he proposition should now be confined to its grave”.⁶⁵⁵

Of particular importance from the perspective of the right to equality, Justice Apaniai also commented on the evolution of the understanding of equality between men and women in Solomon Islands and Solomon Islands’ obligations under international human rights law:

- (50) *The time when women are considered as sex objects or as subservient chattel of the husband in Solomon Islands has gone.*
- (51) *In this modern time, marriage is now regarded as a partnership of equals and this principle of equality has been reflected, not only in international conventions to which Solomon Islands is a party, but also in the entrenched provisions of the Constitution.*
- (52) *One of the international conventions to which Solomon Islands is a party is the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW) which, in article 15, calls on all state parties to accord women equality with men before the law and, in article 16, calls for the same personal rights between husband and wife.*
- (53) *As for the Constitution, sections 3 and 15 of the Constitution guarantees women equal rights and freedoms as men and affords them protection against*

655 See above, note 539, Para 49.

all forms of discrimination, including discrimination on the ground of sex.

- (54) *Furthermore, judicial decisions regarding rape and similar offences against women have also reflected the judicial approach to offences affecting women.*
- (55) *The courts have stated time and again that rape is an offence which is often committed out of a selfish desire to gratify a man's own sexual desires, appetite and fantasies in disregard for the rights, dignity and feelings of the victim.*
- (56) *A husband raping his own wife does so for no other reason than to satisfy his own selfish desires at the expense of the wife's dignity and feelings. Such behaviour must come to an end.*
- (57) *All these instances show the changing attitude in Solomon Islands towards the status of women and the recognition that women are equal partners with men in nearly all things, including marriage.*
- (58) *In my view the time has come for this court to take a hard look at this old marital exemption rule and see whether its terms accord with what is now regarded generally in these modern times as acceptable behaviour. (Footnotes removed.)*

Thus, whilst not strictly overturning the law on the basis of its discriminatory nature or of international human rights law, the judge nevertheless appears to take into account the relevant international human rights law, including the right to equality between men and women, in his analysis of the common law's development on this issue. This analysis was again limited in its exploration of the nature of the obligations set out in the relevant treaty. However, in the context of an otherwise woeful consideration of equality and non-discrimination by the judiciary of Solomon Islands, the judgment is to be strongly welcomed as one of the few positive results for the enforcement of the rights to equality and non-discrimination in Solomon Islands.

3.5 Conclusion

This report finds that Solomon Islands' legal and policy framework is manifestly inadequate to address the patterns of discrimination and inequality prevalent in the country. Not only does Solomon Islands have a poor record of participation in international instruments, having acceded to only four key UN human rights treaties, but its national legislation and jurisprudence indicate scant regard for the human rights that Solomon Islands has agreed to uphold.

The 1978 Constitution provides no constitutional right to equality and its very limited non-discrimination provision, as is the case with many of the limited number of fundamental rights it contains, is rendered incredibly narrow by numerous limitations and exceptions. In the context of the constitutional reform process, from 2004 to 2013 the constitutional drafts showed a decrease in the protection proposed to be provided in respect of the rights to equality and non-discrimination, which is indeed a worrying trend. It is reassuring however that the Bill of Rights from the 2014 Draft constitution reversed the trend and that the latest Draft would mark a significant improvement on the 1978 Constitution with respect to equality and non-discrimination protection. However, there is further work to be done before the 2014 Draft is in line with international law and best practice. Disappointingly, there is currently no sign that the reform process will be opened up wider to ensure that, amongst others, expert voices from the human rights community will have sufficient traction in the process.

Beyond the thin protection contained within the 1978 Constitution, Solomon Islands legislation provides almost no protection from discrimination. Not only does the state lack comprehensive equality legislation, but it also lacks specific anti-discrimination laws. While the Persons with Disability (Equal Opportunities, Protection of Rights and Full Participation) Bill 2006 contains important provisions to advance the equality of persons with disabilities, its progress through the legislative process has been slow and it remains to be passed. The Family Protection Act 2014 provides important and much needed law relating to domestic violence, which is endemic in Solomon Islands, with women the usual victims. While the Act fails to mention the relevance of discrimination to such violence, it is nevertheless to be strongly welcomed. Aside from this, there is little to celebrate within the legal framework.

The absence of effective constitutional and legislative protections of the rights to equality and non-discrimination are exacerbated by a weak and ineffective system of implementation and enforcement. The judiciary has demonstrated an evident lack of capacity with respect to arguments relating to international human rights law and also the constitutional right to non-discrimination, with comments contained in the High Court judgment in *Regina v Gaa* a notable exception. The dearth of jurisprudence itself also signifies that not enough discrimination cases are coming before the courts. This is in part because of the ongoing lack of public awareness in respect of the constitutional right to non-discrimination.

4. CONCLUSIONS AND RECOMMENDATIONS

4.1 Conclusions

The overarching conclusion of this report is that discrimination on the basis of a wide range of characteristics in Solomon Islands is prevalent and that it persists in the absence of an effective legal and policy framework to eliminate discrimination and advance equality. At the most basic level, the state is failing to meet its obligations arising under international human rights instruments to which it is party to respect, protect and fulfil the rights to equality and non-discrimination.

The report finds evidence of discrimination on the basis of gender, ethnicity, disability, sexual orientation, health status, economic status and citizenship. It finds that **women** are effectively second-class citizens, with both cultural traditions and laws reinforcing gender stereotypes. Rates of gender-based violence are high, and the acceptance of such violence as justified by a majority of both men and women is alarming. Significant inequalities between men and women persist in areas such as education, employment and public life. **Ethnicity** is a complex issue in a country where people are more likely to identify as members of a *wantok* group or as people from a particular island than as citizens of Solomon Islands itself. This report finds evidence of discrimination rooted in the *wantok* system, leading to nepotism in many areas of life. However, despite a history of tension and violence between people from different islands, the report does not identify a clear pattern of disadvantage or underdevelopment for particular islands.

Persons with disabilities are perceived as either “cursed” or in need of charity and are denied equality of participation in education, employment, healthcare and other services, as a result of both direct discrimination and failure to accommodate their needs. **Lesbian, gay and bisexual persons** are also subject to severe social stigma, with the result that there are very few openly gay, lesbian or bisexual persons in the country. Testimony from gays and lesbians collected for this report provides evidence of harassment, violence and discrimination on the basis of sexual orientation. The small population of **persons living with HIV** in Solomon Islands is at risk of direct discrimination in access to services, including health services, as a result of fear fuelled by prejudice and ignorance of the disease. The report

also finds worrying evidence of discrimination on the basis of **economic status** and **citizenship status**.

Solomon Islands is not party to the International Covenant on Civil and Political Rights, which gives rise to an obligation to prohibit discrimination on a wide-ranging list of grounds in all areas of life regulated by law. Nevertheless, it has binding obligations to eliminate many forms of discrimination on each of these grounds, arising under other instruments to which it is party. This report concludes that the country is failing to meet its obligations to eliminate discrimination and advance equality on each of the seven grounds examined.

One major factor which limits Solomon Islands' potential to address these and other patterns of discrimination and disadvantage is the **paucity of the legal and policy framework**. Solomon Islands has a **poor record of participation in international human rights instruments**. Nevertheless, as a party to the International Covenant on Economic, Social and Cultural Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, and the Convention on the Elimination of All Forms of Discrimination against Women, Solomon Islands has obligations to enact and implement laws prohibiting discrimination and providing for positive action to advance equality for disadvantaged groups. Yet this report concludes that Solomon Islands has not met this obligation.

The **Constitution of Solomon Islands** provides only a limited protection from discrimination, and no right to equality. The constitutional right to non-discrimination is subject to an array of limitations and exceptions which limit its scope and effectiveness. Yet this narrow and limited right constitutes almost the only legal guarantee against discrimination in the country. The state has neither **comprehensive anti-discrimination legislation** nor any **laws prohibiting discrimination on specific grounds**. Moreover, laws governing conduct in other areas of life – such as education, employment or access to goods and services – provide no protection from discrimination. Enjoyment of the rights to equality and non-discrimination is further undermined by the **lack of effective implementation and enforcement**, either through government policy or institutions, or through the courts.

Yet all is not lost. Ongoing attempts to adopt a new Constitution present an opportunity. If Solomon Islands is to meet its obligations to ensure enjoyment of the rights to equality and non-discrimination – and thereby address

some of the serious patterns of human rights abuse affecting its population – it must ensure that this process is open, consultative and reflective of the country context, and in compliance with international human rights law.

4.2 Recommendations

In light of the foregoing conclusions, the Equal Rights Trust offers to the government of Solomon Islands a set of recommendations, whose purpose is:

1. To strengthen the protection from discrimination through improving the legal and policy framework in respect to equality; and
2. To enable Solomon Islands to meet its obligations under international law to respect, protect and fulfil the rights to non-discrimination and equality.

All recommendations are based on international law related to equality, and on the Declaration of Principles on Equality, a document of international best practice which consolidates the most essential elements of international law related to equality.

The recommendations are presented below:

Recommendation 1: Implementation of the Recommendations of the Truth and Reconciliation Commission

- 1(a) The Truth and Reconciliation Commission concluded that “the country’s differences” had become “a source of division [and] conflict” and a “means of discrimination [and] perpetuating and promoting group domination [and] privilege”.⁶⁵⁶ In order to ensure that the country’s future is free from conflict, discrimination and group domination and privilege, Solomon Islands is urged to implement, in full, all recommendations of the Truth and Reconciliation Commission that have not yet been implemented, particularly those that relate to groups exposed to discrimination and disadvantage, and to constitutional and legislative reform.

⁶⁵⁶ Solomon Islands Truth and Reconciliation Commission, *Confronting the Truth for a better Solomon Islands: Final Report, Volume III*, 2012, p. 780, available at: <http://pacificpolicy.org/files/2013/04/Solomon-Islands-TRC-Final-Report-Vol-3.pdf>.

- 1(b) Solomon Islands should integrate the principles of equality and non-discrimination in all future peace-building and development policies and ensure non-discrimination in investment, budgeting, provision of goods and services, and equitable distribution of resources across the country.

**Recommendation 2:
Strengthening of International Commitments Related to Equality**

- 2(a) Solomon Islands is urged to ratify the following international human rights instruments which are relevant to the rights to equality and non-discrimination:

- I. The International Covenant on Civil and Political Rights (1966);
- II. the First Optional Protocol to the International Covenant on Civil and Political Rights (1966);
- III. the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (2008);
- IV. the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984);
- V. the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (2002);
- VI. the First Optional Protocol to the Convention on the Rights of the Child (involvement of children in armed conflict) (2000);
- VII. the Second Optional Protocol to the Convention on the Rights of the Child (sale of children, child prostitution and child pornography) (2000);
- VIII. the Third Optional Protocol to the Convention on the Rights of the Child (communicative procedure) (2011);
- IX. the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990);
- X. the Convention on the Rights of Persons with Disabilities (2006);
- XI. the Optional Protocol to the Convention on the Rights of Persons with Disabilities (2006);
- XII. the International Convention for the Protection of All Persons from Enforced Disappearances (2006);
- XIII. the International Labour Organization Convention No. 169 on Indigenous and Tribal Peoples;
- XIV. the UN Convention relating to the Status of Refugees (1951); and
- XV. the UN Convention relating to the Status of Stateless Persons (1954).

2(b) Solomon Islands is urged to make a declaration under Article 14 of the International Convention on the Elimination of All Forms of Racial Discrimination allowing individual complaints.

Recommendation 3: Constitutional Reform

(3)(a) The Equal Rights Trust notes and echoes the recommendation of the Truth and Reconciliation Commission that:

[T]he new constitution must ensure that the country's differences do not again become a source of division or conflict or the means of discrimination or perpetuating and promoting group domination or privilege.⁶⁵⁷

On that basis, Solomon Islands is urged to ensure that the new constitution adopted following the constitutional reform process protects the rights to equality and non-discrimination in accordance with international human rights law and best practice. In particular, Solomon Islands is urged to ensure that the new constitution does not replicate the limited protection against discrimination found in section 15 of the 1978 constitution but instead contains provisions which:

- I. Provide for a strong right to equality encompassing (i) the right to recognition of the equal worth and equal dignity of each human being; (ii) the right to equality before the law; (iii) the right to equal protection and benefit of the law; (iv) the right to be treated with the same respect and consideration as all others; and (iv) the right to participate on an equal basis with others in any area of economic, social, political, cultural or civil life;
- II. Provide, in addition to the right to a broad right to equality, for a distinct right to non-discrimination applying to all areas of life regulated by law;
- III. Prohibit discrimination on all grounds enumerated in Principle 5 of the Declaration of Principles on Equality, namely race, colour, ethnicity, descent, sex, pregnancy, maternity, civil, family or carer status, language, religion or belief, political or other opinion, birth, national or social origin, nationality, economic status, association with a national minority, sexual orientation, gender identity, age, disability, health status, genetic or other

⁶⁵⁷ *Ibid.*

predisposition toward illness or a combination of any of these grounds, or on the basis of characteristics associated with any of these grounds; and contain criteria for the inclusion of additional grounds, so that such grounds could be incorporated as necessary over time without requiring constitutional amendment; and

- IV. Provide definitions of the conducts which are prohibited as violating the right to equality.

Recommendation 4: Repeal or Amendment of National Legislation

Solomon Islands is urged to undertake a review of all legislation and policy in order to (i) assess compatibility with the rights to equality and non-discrimination, as defined under the international instruments to which it is party; and (ii) amend, and, where necessary, abolish existing laws, regulations and policies that conflict with these rights. This process should include review of:

Constitutional Provisions:

- I. Section 5 of the Constitution, which permits the deprivation of liberty of a person “who is, or is reasonably suspected to be, of unsound mind (...) for the purpose of his care or treatment or the protection of the community”.
- II. Section 8 of the Constitution, which excludes from the protection of personal property any law which provides for the “taking of possession or acquisition of (...) property of (...) a person of unsound mind”.
- III. Section 14(3)(c) of the Constitution permitting restrictions in the Constitution and other pieces of legislation to the right to freedom of movement of non-citizens.
- IV. Section 15(5)(b) of the Constitution permitting restrictions in the Constitution and other pieces of legislation to the right to non-discrimination of non-citizens.

Legislative Provisions:

Criminal Law

- I. Section 136 of the Penal Code providing an excessively narrow definition of rape, particularly by overlooking certain forms of sexual violence against women and marital rape.

- II. Section 158 of the Penal Code making it an offence, punishable by life imprisonment, for anyone who intentionally “procure[s] the miscarriage of a woman”, including the woman herself.
- III. Section 160 of the Penal Code criminalising “unnatural offences” (buggery) with up to fourteen years imprisonment.
- IV. Section 161 of the Penal Code criminalising attempts to commit “unnatural offences” as well as indecent assaults against a man with up to seven years imprisonment.
- V. Section 162 of the Penal Code (Amendment) Act 1990 criminalising “gross indecency” between two persons of the same sex with up to five years imprisonment.
- VI. Section 58 of the Evidence Act which does not completely prohibit the use of the past sexual history of a complainant to challenge her truthfulness before the court.

Family Law

- I. Section 10(3) of the Islanders Marriage Act providing that the minimum legal age for marriage is 15 years.
- II. Section 18(1) of the Islanders Divorce Act holding that a husband who has filed a petition for divorce or separation may claim damages from any person found to have committed adultery with the wife of the petitioner.
- III. Section 17 of the Affiliation Separation and Maintenance Act allowing a court to discharge the order to pay maintenance payments to the wife for the benefit of children committed to her custody if the wife commits “an act of adultery”.

Employment Law

- I. Section 2 of the Labour Act excluding certain categories of workers, such as domestic workers, from the rights to claim maternity leave.
- II. Section 36(1) of the Labour Act allowing for the employment of “infirm or disabled persons” at less than the minimum wage with the Commissioner of Labour’s permission.
- III. Section 39 of the Labour Act prohibiting the employment of women at night.
- IV. Section 40 of the Labour Act prohibiting the employment of women in mines.

Citizenship Law

- I. Section 6 of the Citizenship Act not allowing women to transmit their nationality to jointly adopted children.
- II. Section 7(3) of the Citizenship Act excluding women from the possibility to apply on behalf of their children for acquisition of nationality through naturalisation.
- III. Section 7(4)(b)(v) of the Citizenship Act stating that women can apply for nationality after two years of marriage only with the consent of the husband.
- IV. Section 11(1) of the Citizenship Act depriving women of the right to citizenship if, after they have obtained it through marriage with a citizen of Solomon Islands, they divorce and subsequently remarry a non-citizen.

Land Law

Section 2 of the Land and Titles Act restricting the right to hold or to acquire perpetual title to land only to Solomon Islanders that were born in Solomon Islands and have two grand-parents who were members of a group, tribe or line indigenous to Solomon Islands.

Recommendation 5: Substantive Law Protecting the Rights to Equality and Non-Discrimination

5(a) Solomon Islands should adopt appropriate legislative measures for the implementation of the right to equality. Such measures should ensure comprehensive protection across all grounds of discrimination and in all areas of activity regulated by law.

(5)(b) The enactment of comprehensive equality legislation should give effect to the principles of equality under international law and ensure constitutional protection against discrimination and the promotion of the right to equality. Equality legislation should aim at eliminating direct and indirect discrimination and harassment in all areas of life regulated by law; cover all prohibited grounds listed in Principle 5 of the Declaration of Principles on Equality; and attribute obligations to public and private actors, including in relation to the promotion of substantive equality and the collection of data relevant to equality.

- (5)(c) Comprehensive equality legislation could either take the form of:
- I. A single Equality Act, which offers consistent protection against discrimination across all grounds of discrimination and in all areas of life regulated by law; or
 - II. A coherent system of Acts and provisions in other legislation which together address all grounds of discrimination in all areas of life regulated by law.
- (5)(d) Members of groups who may be distinguished by one or more of the prohibited grounds should be given the opportunity to participate in the decision-making processes which lead to the adoption of such legislative measures.
- (5)(e) It is recommended that the Persons with Disability (Equal Opportunities, Protection of Rights and Full Participation) Bill be enacted as soon as possible.
- (5)(f) In order to ensure that the right to equality is effective in Solomon Islands, the government should review its current positive action measures and consider taking further positive action, which includes a range of legislative, administrative and policy measures, in order to overcome past disadvantage and to accelerate progress towards equality of particular groups, including under-represented ethnic groups, women and persons with disabilities.

Recommendation 6: Enforcement

- (6)(a) Solomon Islands is urged to review its procedural law to ensure that persons who have been subjected to discrimination have a right to seek legal redress and obtain an effective remedy. They must have effective access to judicial and administrative procedures, and appropriate legal aid for this purpose.
- (6)(b) Solomon Islands should introduce legislation or other measures to protect individuals from victimisation, defined as any adverse treatment or consequence as a reaction to a complaint or to proceedings aimed at enforcing compliance with equality provisions.

- (6)(c) In amending its procedural law related to equality, Solomon Islands should ensure that associations, organisations or other legal entities, which have a legitimate interest in the realisation of the right to equality, may engage, either on behalf or in support of the persons seeking redress, with their approval, or on their own behalf, in any judicial and/or administrative procedure provided for the enforcement of the right to equality.
- (6)(d) In amending its procedural law related to equality, Solomon Islands should adapt legal rules related to evidence and proof in order to ensure that victims of discrimination are not unduly inhibited from obtaining redress. In particular, rules on evidence and proof in civil proceedings should be adapted to ensure that when persons who allege that they have been subjected to discrimination establish, before a court or other competent authority, facts from which it may be presumed that there has been discrimination, it shall be for the respondent to prove that there has been no breach of the right of equality.
- (6)(e) Solomon Islands must ensure that sanctions for breach of the right to equality are effective, proportionate and dissuasive. Appropriate remedies should include reparations for material and non-material damages. Sanctions should also include the elimination of discriminatory practices and the implementation of structural, institutional, organisational or policy changes that are necessary for the realisation of the right to equality.
- (6)(f) Solomon Islands is urged to establish and maintain a body or a system of coordinated bodies for the protection and promotion of the right to equality. Equality bodies must comply with the UN Paris Principles, including in terms of their independent status and competences, as well as adequate funding and transparent procedures for the appointment and removal of their members.
- (6)(g) It is recommended that Solomon Islands establish a focal point within government to coordinate policy and action relating to the right to equality.

**Recommendation 7:
Duty to Gather and Disseminate Information**

- (7)(a) During the research for this report, it has been established that there is a significant lack of information, including statistics, in relation to key indicators of equality in Solomon Islands. Solomon Islands should collect and publicise information, including relevant statistical data, in order to identify inequalities, discriminatory practices and patterns of disadvantage, and to analyse the effectiveness of measures to promote equality. Wherever statistics are collected in relation to key indicators of equality, they should be disaggregated in order to demonstrate the different experiences of disadvantaged groups within Solomon Islands society. Hate crime statistics must be collected and publicised, including statistics on gender-based violence. Solomon Islands should further ensure that such information is not used in a manner that violates human rights.
- (7)(b) Laws and policies adopted to give effect to the right to equality must be accessible to all persons. Solomon Islands must take steps to ensure that all such laws and policies are brought to the attention of all persons who may be concerned by all appropriate means.
- (7)(c) Solomon Islands should adopt a freedom of information law which would create a legal right for individuals and organisations to obtain information held by the government, and regulate the process for requesting and releasing such information.

**Recommendation 8:
Policies to Respect and Promote the Rights to
Equality and Non-Discrimination**

Solomon Islands should take appropriate measures and adopt policies to ensure that all public authorities and institutions, as well as private sector bodies, respect the rights to equality and non-discrimination. Such measures could include, for example:

- I. Reviewing existing guidelines, policies and practices to ensure that they do not contravene the rights to equality and non-discrimination;

- II. Developing guidelines for public bodies to ensure respect for the rights to equality and non-discrimination;
- III. Taking steps to educate public officials and other agents of the state as to their obligations with respect to the rights to equality and non-discrimination.

**Recommendation 9:
Education on Equality**

Solomon Islands is urged to take action to raise public awareness about equality, and to ensure that all educational establishments, including private, religious and military schools, provide suitable education on equality as a fundamental right. Such action is particularly necessary in order to modify social and cultural patterns of conduct and to eliminate prejudices and customary practices which are based on the idea of the inferiority or superiority of one group within society over another.

**Recommendation 10:
Prohibition of Regressive Interpretation,
Derogations and Reservations**

In adopting and implementing laws and policies to promote equality, Solomon Islands should not allow any regression from the level of protection against discrimination that has already been achieved.

No derogation from the right to equality should be permitted. Any reservation to a treaty or other international instrument, which would derogate from the right to equality, should be considered null and void.

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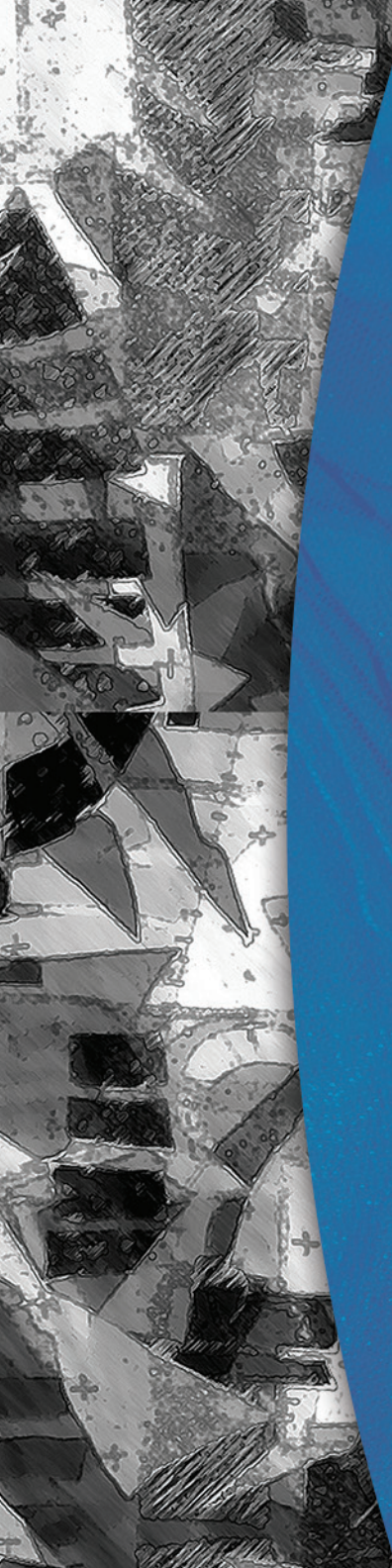
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The Equal Rights Trust is an independent international organisation whose purpose is to combat discrimination and promote equality as a fundamental human right and a basic principle of social justice.

The Secretariat of the Pacific Community (SPC) is an international organisation that provides technical assistance, policy advice, training and research services to 22 Pacific Island countries. The SPC Solomon Islands country office coordinates the Secretariat's work in Solomon Islands. The Regional Rights Resource Team is the Human Rights Programme of the SPC.

It is a little over a decade since Solomon Islands emerged from a period of ethnic conflict known as “the Tensions”, which resulted in 200 deaths and the displacement of thousands. While peace has returned to the islands, many of the underlying inequalities which precipitated the conflict remain. This report concludes that if these inequalities are to be addressed, Solomon Islanders must stand up and fight traditions which emphasise and exacerbate difference.

The report finds that people’s tendency to identify by their *wantok* – a community defined by shared language and culture – or island of origin can encourage discrimination and foster division. Patriarchal and sexist attitudes pervade law and society, with the result that women experience severe discrimination and inequality in all areas of life and violence against women is widespread and widely accepted. These same attitudes permit the continued criminalisation of same-sex sexual activity, while other traditional beliefs lead to persons with disabilities being seen as either “cursed” or as objects of charity.

An ongoing process of constitutional reform – now entering its thirteenth year – offers an opportunity to address many of these problems. This opportunity must be seized: all those affected by discrimination must stand up and fight for a new framework which guarantees equal participation for all.



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