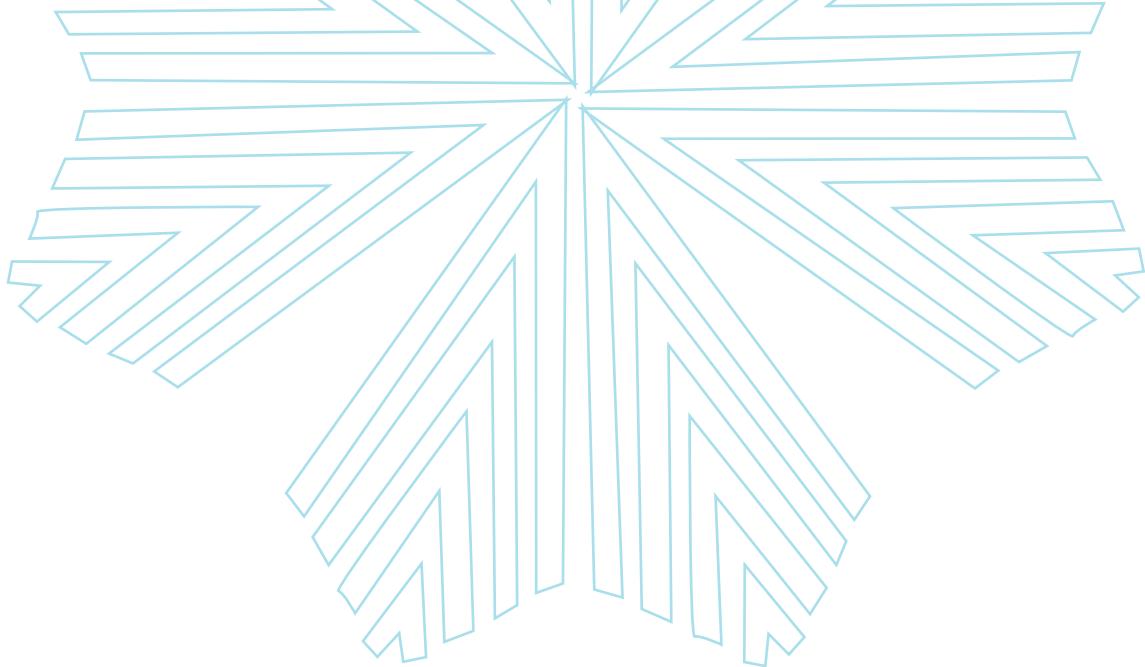




HUMAN RIGHTS IN
THE PACIFIC

A Situational Analysis
2020





HUMAN RIGHTS IN THE PACIFIC

A Situational Analysis 2020



Pacific
Community
Communauté
du Pacifique



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> Foreword

Human rights are a fundamental pillar of Pacific island societies. Enshrined in the region's national laws, policies and other normative frameworks, human rights also find meaningful purchase in the culture and customs embodying the Pacific way of life. Core human rights principles such as dignity, fairness, respect, participation, non-discrimination, and the responsibilities of individuals to the community, resonate widely in the diverse tapestry of Pacific cultures. Yet the challenges before us are also numerous and acute, with multiplying inequalities and a changing environment.

This situational analysis is an opportunity to reflect on human rights progress and challenges in the region. It is not a scorecard or assessment of the rights records of the countries covered but rather a window shedding light on some of the most critical issues, areas of advancement and contemporary risks. It highlights the resilience of Pacific communities and showcases promising developments including new ratifications and progress on United Nations human rights treaties, strengthened legal systems and improved access to remedies, and efforts to enhance participation of marginalised groups and individuals.

With this, however, comes a disclaimer. In compiling the information, major obstacles were faced in the form of a rapidly shifting human rights landscape, precipitously reshaped by the COVID-19 pandemic. The pandemic started out as posing a major health threat to the Pacific and has since highlighted existing and underlying structural and institutional issues. COVID presents new challenges to human rights as derogations or emergency measures are employed to prevent or contain its spread. Taking broad stock of the human rights situation in the Pacific is therefore timely.

Pacific Island Countries have high vulnerability to outbreaks of communicable disease due to relatively weak health systems, the prevalence of non-communicable diseases, and social norms that are both challenging to effective prevention and conducive to rapid transmission. Governments in the region have generally responded quickly, which, combined with the region's isolation, has meant that many of the world's last remaining outbreak free holdouts are in the Pacific.

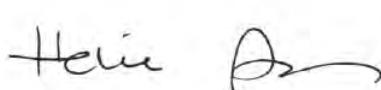
However, there are many groups and individuals who face particular risk during this period and have little or no voice in shaping the socio-economic response and recovery effort. Women and girls, children, refugees, internally displaced persons, stateless persons, national minorities, migrant workers, lesbian, gay, bisexual, transgender, intersex and queer people, persons with disability, older persons and persons living with HIV/AIDS – all face the extra burden of being historically under-represented in policy discussions.

In responding to COVID-19, a careful balancing act is required to ensure that measures, including physical distancing, curfews and restrictions on movement, achieve desired public interest outcomes without adversely impacting human rights. As UN Secretary General António Guterres says, human rights should be at the centre of the pandemic response: "Human rights responses can help beat the pandemic, putting a focus on the imperative of healthcare for everyone. But they also serve as an essential warning system – highlighting who is suffering most, why, and what can be done about it."

The theme for Human Rights Day 2020 is "Recover Better – Stand Up for Human Rights". This is a reflection on a challenging year for all of humanity as well as a forward-looking exhortation that we can and must do better than the pre-pandemic status quo. The information contained within the pages of this situational analysis compels us to drive this effort forward regionally and to realise universal human rights in the lived reality of all Pacific peoples.



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Director-General,
Pacific Community



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Office of the United Nations High Commissioner
for Human Rights, Regional Office for the Pacific

> Acknowledgements

I am delighted to commend to you the 2020 Human Rights in the Pacific: A Situational Analysis report.

This report is a comprehensive update of the 2016 report of the same name, and was again produced by the Pacific Community (SPC) through its Human Rights & Social Development (HRSD) Division, in partnership with the United Nations through its Office of the High Commissioner for Human Rights Regional, Office for the Pacific (OHCHR ROP).

This 2020 report would not have been possible without funding support from the Governments of Sweden and, through the Pacific Commonwealth Equality Project, United Kingdom. A number of people worked diligently to ensure this report is an accurate, fair and high quality representation of the current state of affairs of human rights in the Pacific. Aarni Seger, Albert Seluka, Amberoti Nikora, Ashley Bowe, George Isom, Dr Jayshree Mangubhai, Kathryn Relang, Martin Child, Neomai Maravuakula, Pasai Teafiula, Patricia Sango and Stella Duburiya from SPC, and staff from OHCHR ROP in Suva and the OHCHR headquarters in Geneva provided input into drafting the content of this report. Carol Nelson expertly edited their work and provided the overarching analysis, while Romulo Nayacelevu and OHCHR ROP appraised the penultimate draft and offered suggestions that informed the final version of the report. Kalpana Prasad from SPC helped shepherd the project through the editing and formatting stage. To all of them, and any others who worked on the report in some way – vinaka vakalevu for a job well done.

I trust the 2020 Human Rights in the Pacific: A Situational Analysis report will make a useful contribution to the protection and promotion of human rights in the Pacific.



Miles Young

Director of HRSD

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> Abbreviations and Acronyms

ADB	Asian Development Bank
AGO	Attorney General's Office
APF	Asia Pacific Forum on National Human Rights Institutions
AUD	Australian dollar
CAT	Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
CBR	Community based rehabilitation
CEDAW	Convention on the Elimination of all forms of Discrimination Against Women
CRC	Convention on the Rights of the Child
CRPD	Convention on the Rights of Persons with Disabilities
CSO	Civil society organisation
DCO	Disability Coordination Office
DHS	Demographic and Health Survey
DOI	Department of Immigration
DRR	Disaster risk reduction
DPO	Disabled Persons Organisation
DV	Domestic violence
ECE	Early childhood education
FHSS	Family Health and Safety Study
FJD	Fiji dollar
FPA	Family Protection Act
FSM	Federated States of Micronesia
FSW	Female sex workers
FWRM	Fiji Women's Rights Movement
GANHRI	Global Alliance of National Human Rights Institutions
GBV	Gender-based violence
GDP	Gross domestic product
GNI	Gross national income
HIES	Household Income and Expenditure Survey
ICAAD	International Centre for Advocates Against Discrimination
ICCPR	International Covenant on Civil and Political Rights
ICERD	International Convention on the Elimination of All forms of Racial Discrimination
ICESCR	International Convention on Economic, Social and Cultural Rights
ICT	Information Communication and Technology
IEP	Inclusive Education Policy

IFC	International Finance Corporation
ILO	International Labour Organization
IOM	International Organization for Migration
JNAP	Joint National Action Plan on Climate Change and Disaster Risk Management
LCC	Leadership Code Commission
LDC	Least developed countries
LGBTI	Lesbian, gay, bisexual, transgender and intersex
MDGs	Millennium Development Goals
MHMS	Ministry of Health and Medical Services
MLSC	Micronesian Legal Services Corporation
MNPDC	Ministry of National Planning and Development Coordination
MOE	Ministry of Education
MOH	Ministry of Health
MOHHS	Ministry of Health and Human Services
MOJ	Ministry of Justice
MSF	Médecins Sans Frontières
MSM	Men who have sex with men
NAP	National Action Plan
NCCCRC	National Coordinating Committee for the Convention on the Rights of the Child
NCDs	Non-communicable diseases
NDC	National determined contribution
NDMO	National Disaster Management Office
NEP	National Education Plan
NER	Net enrolment ratio
NGO	Non-governmental organisation
NHRI	National Human Rights Institution
NHRPS	National Human Rights Protection System
NPM	National preventive measures
NSDP	National Sustainable Development Plan
NSP	National Strategic Plan
NTHT	National Taskforce on Human Trafficking
NZD	New Zealand dollar
NZDF	New Zealand Defence Force
OHCHR	Office for the High Commissioner for Human Rights
OP-CRPD	Optional Protocol–Convention on the Rights of Persons with Disabilities
PACER	Pacific Agreement on Closer Economic Relations
PDF	Pacific Disability Forum

PIANGO	Pacific Islands Association of Non-Governmental Organisation
PIC	Pacific Island country
PIDC	Pacific Immigration Development Community
PIFS	Pacific Islands Forum Secretariat
PJCHR	Parliamentary Joint Committee on Human Rights
PPDA	Police Powers and Duties Act
PSU	Professional Standards Unit
RAMSI	Regional Assistance Mission to the Solomon Islands
REDD	Reducing emissions from deforestation and forest degradation
RPC	Regional Processing Centre
RSE	Recognised seasonal employer
RSIPF	Royal Solomon Islands Police Force
SDGs	Sustainable Development Goals
SDS	Strategy for the Development of Samoa
SOP	Standard operating procedures
SPC HRSD	Pacific Community Human Rights and Social Development Division
SRH	Sexual and reproductive health
TCU	Transnational Crimes Unit
TIP	Trafficking in persons
UHC	Universal health coverage
UN	United Nations
UN CAC	United Nations Convention Against Corruption
UNAIDS	Joint United Nations Programme on HIV and AIDS
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNFCCC	United Nations Framework Convention on Climate Change
UNFPA	United Nations Population Fund
UNHCR	UN High Commissioner for Refugees
UNICEF	United Nations Children's Fund
UPR	Universal Periodic Review
USD	United States dollars
VAW	Violence against women
WASH	Water, sanitation and hygiene
WHO	World Health Organization
WST	Western Samoa Tālā

► Introduction and Overview

Human Rights in the Pacific¹: A Situational Analysis 2020 is the result of a partnership between the Pacific Community Human Rights and Social Development Division (SPC HRSD) and the Office of the United Nations High Commissioner for Human Rights, Regional Office for the Pacific (OHCHR ROP). This report covers the period from June 2016 to November 2020. It updates the situational analysis produced by the two organisations in 2016, which had updated a 2012 OHCHR report. These reports describe the general state of selected human rights in the 16 independent Pacific Island Forum Member States.

There have been many developments since publication of the 2016 report, including the election of new governments, new measures and programmes to advance human rights, and increased participation by Pacific Island countries in reporting under the United Nations (UN) human rights treaty system. This version captures some of the developments since the 2016 country outlines were produced, prior to the impact of the Novel Coronavirus 2019 (COVID-19) felt in the region in early 2020. Due to changing dynamics in the Pacific, new areas have been identified for reporting, such as human trafficking and climate justice. Cyber security laws also feature, where information is available. This report includes a special chapter on the impacts of COVID-19 on human rights in the region rather than integrating specific new developments relating to COVID-19 into the country chapters.

This situational analysis is not a comprehensive review of all of the laws and policies of the countries covered. It provides an overview of the challenges, achievements and progress experienced by the countries in implementing their duty to protect, promote and fulfil human rights. It provides a brief insight into the human rights issues across the Pacific in order to support legislatures, policy-makers, advocacy campaigners and other relevant actors to continue to achieve obligations under international human rights law that countries have voluntarily committed to, and to realise the vision of Pacific leaders in the new Framework for Pacific Regionalism, which is for a “region of peace, harmony, security, social inclusion, and prosperity, so that all Pacific people can lead free, healthy, and productive lives.”² All these objectives, as well as the Sustainable Development Goals of the UN 2030 Agenda for Sustainable Development, can be achieved when human rights are respected, protected, promoted and fulfilled.

Purpose

The purpose and objectives of this report are to:

- contribute to research on the current human rights situation in the Pacific region, including opportunities, challenges and gaps;
- improve understanding of the human rights situation for partners working in the region;
- provide a basis for decision-making and planning, and support the creation of new laws, policies and strategies to improve the human rights situation in Pacific Island countries (PICs), including the creation of national plans of action.

Method

A situational analysis involves the systematic collection and analysis of present and past information on a particular subject in order to assess the trajectory of future trends, strengths, opportunities and weaknesses.³ This situational analysis is based on the 1948 Universal Declaration of Human Rights and the treaties it inspired, which form the contemporary internationally recognized human rights framework.

¹ In this context, the Pacific refers to Pacific countries that are independent States and members of the Pacific Islands Forum Secretariat.

² Pacific Islands Forum Secretariat. <https://www.forumsec.org/pacific-regionalism/> (accessed 9 November 2019).

³ The Law Dictionary. <https://thelawdictionary.org/situation-analysis/> (accessed 9 November 2019)

Human rights theories borrow from a variety of disciplines, including the legal field, the social sciences and other disciplines, depending on the nature of the rights in question.⁴ The Universal Declaration, with its 30 articles, has translated widely accepted norms into human rights standards and principles. The principles include the inalienability, indivisibility, interdependence and universality of human rights.

Each country covered in this report has a unique political, economic and cultural context that shapes its respective human rights environment and protection system. A national human rights protection system (NHRPS) consists of a nation's laws, policies and institutions that promote and protect human rights.⁵ This is often called the country's human rights infrastructure or machinery and includes structural and systemic efforts to encourage and promote the advancement and fulfilment of rights. Specifically, an NHRPS includes: the laws that ensure the rights of citizens; the policies and procedures that protect rights; and strong civil society and human rights groups that operate without undue interference to advocate for human rights.

This report uses a systems analysis approach to assess effectiveness based on certain criteria, and in doing so, is able to provide an objective situational assessment of each country.⁶ The core components of the human rights system in each country are examined to assess which areas receive sufficient attention and which require further consideration. By looking at each component, the degree of fulfilment of rights on the ground can be assessed. The impact of new laws for example, as well as policies and procedures, is assessed in terms of achieving certain human rights results and outcomes. The final outcome is the tangible enjoyment by rights-holders and the positive measurable impact on human rights conditions in the countries.

For each country, this report considers a number of diverse issues in relation to the status of basic civil, political, economic, social and cultural rights, including:⁷

- equality and non-discrimination;
- life, liberty and security of the person;
- access to justice and the right to remedy;
- refugees and asylum seekers;
- rights of migrants;
- trafficking;
- freedom of information;
- rights to health and education;
- rights of women and children;
- persons with disabilities; and
- climate justice.

In looking at these issues, the factors affecting each area were assessed, including the observance of international standards, patterns of inequality, and practices that can hinder the advancement of rights. Furthermore, the examination of group rights, such as women's and children's rights, takes into consideration issues that are prevalent and particular to each country given the national human rights protection system in place.

⁴ Donnelly, J. 2013. *Universal Human Rights in Theory and Practice*. Ithaca, USA: Cornell University Press. Available at: <https://www.jstor.org/stable/10.7591/j.ctt1xx5q2> (accessed 25 November 2020).

⁵ Human Rights Division, Ministry of Foreign Affairs, Government of the Netherlands 2009. *Strengthening the National Human Rights Protection Systems: A Manual for Embassies of European Union Member States*. Available at: <http://www.globalequality.org/storage/documents/pdf/manual%20nhrps-web.pdf> (accessed 9 November 2019).

⁶ An all-encompassing definition of how human rights are manifested appears in Landman, T. 2004. *Measuring human rights: Principles, practice and policy*. *Human Rights Quarterly* 4:906-931. DOI: 10.1353/hrq.2004.0049. Available at: https://www.academia.edu/832318/Measuring_human_rights_principle_practice_and_policy (accessed 9 November 2019).

⁷ These criteria were developed based on the OHCHR Universal Periodic Review compilation report and through discussions with SPC HRSD and staff and field experts who have determined these to be priority areas.

Scope and limitations

The greatest limitation of this study is the inaccessibility of published data and other information on human rights in PICs and in-depth examinations into specific areas and aspects of NHRPSs. Human rights protection system analysis traditionally relies on information from other areas, including good governance, anti-corruption and sector reform reports, among others. In this case, there is limited knowledge of these areas for countries in the Pacific and some available information is out of date.

The 2016 situational analysis noted several urgent and understudied areas, including the rights of the lesbian, gay, bisexual, transgender and intersex (LGBTI) communities, the rights of migrant workers, environment and climate justice, and human rights in emergencies.⁸ This report introduces information on most of these areas but acknowledges that more exploration could be undertaken in a number of areas, such as on indigenous persons and older persons, when improved information is available. This report also comments on refugees and asylum seekers, trafficking in persons, mental health, and the influx of illegal drugs and how the above impact livelihoods. Again, more exploration is required when improved information is available.

COVID-19 perspective

Introduction

The coronavirus pandemic has affected the lives of people across the world on an unprecedented scale. As of 7 December 2020, the World Health Organisation reported that globally there have been 65,870,030 confirmed cases of COVID-19 and 1,523,583 deaths.⁹ The pandemic has reversed many developmental gains and the World Bank predicts between 88 million and 115 million people will be sent back into extreme poverty in 2020 alone.¹⁰

Moreover, COVID-19 has not impacted everyone equally. It has entrenched social divisions, worsened inequality and further marginalised groups including, but not limited to, women, persons with disabilities, children, older persons, and LGBTIQ persons of diverse sexual orientation, gender identity and sex characteristics.

Rapid response among Pacific Island countries has lessened the direct consequences of the pandemic. Several countries have remained COVID-19 free, whilst among the others there have been 23,887 cases and 221 deaths.¹¹ This translates to 205 cases and 1.9 deaths per 100,000 people compared to a global average of 867 cases and 20 deaths per 100,000 people.¹² Although this comparison is favourable, the consequences of the restrictions imposed to keep the number of cases under control have been severe. The pandemic has disproportionately affected already marginalised communities, set the development agenda back years and decimated economies.

The mental, physical and economic consequences of COVID-19 will be felt across the Pacific for years to come. It is important to understand and document these ramifications for two reasons: firstly, to address and prevent emerging or worsening areas of human rights violations; and secondly, to analyse weaknesses in previous developmental responses to ensure more inclusive, participatory and accountable approaches that truly ‘leave no-one behind’, and to give substance and strategy to the objective of ‘building back better’.

⁸ Human Rights in the Pacific: A Situational Analysis 2016. Secretariat of the Pacific Community (SPC), Noumea. ISBN:978-982-00-1026-0.

⁹ World Health Organisation COVID-19 Dashboard 2020. <https://covid19.who.int/> (accessed 7 December 2020).

¹⁰ World Bank Group 2020. Poverty and Shared Prosperity 2020: Reversals of Fortune. Available at: <https://openknowledge.worldbank.org/bitstream/handle/10986/34496/9781464816024.pdf>

¹¹ World Health Organisation 2020. <https://www.who.int/westernpacific/emergencies/covid-19/covid-19-in-the-pacific> (accessed 7 December 2020).

¹² Based on a current total population of the Pacific Islands of 11.65 million and a global population of 7.6 billion.

Consequences of COVID-19 in the Pacific

Economic impact

Prior to COVID-19, Pacific economies were largely dependent on tourism, fisheries, informal agriculture and remittances. Unemployment rates were high, particularly among young people, and informal work was prevalent. Gender disparity in employment outcomes was a concern. The global pandemic has exacerbated these labour market conditions due to the direct and indirect impact on its dependencies.

Borders closed to all but essential travel across the region and remained so at the time of publication. For countries such as the Cook Islands, where tourism previously constituted nearly 70% of GDP, the economic impact was immediate and devastating.¹³ Overnight, tourism disappeared. For the period August to October 2020, visitor numbers were down 95% on the same period the previous year.¹⁴ Across the Pacific the loss of the tourism sector has led to widespread service industry job losses, closure of hotels and associated businesses, and a knock-on effect on the industries that support tourism, including local agriculture and fisheries.

Travel restrictions and shrinking global demands have led to a drop in exports and imports and further disrupted Pacific commodity markets and essential supply chains, such as those in agriculture and fisheries, thereby also impacting Pacific countries not heavily reliant on tourism. Furthermore, the global effects of COVID-19 are predicted to reduce the number of remittances flowing into the Pacific in the longer term due to reduced overseas employment opportunities and reduced migration.

Fiscal response packages announced by Pacific Island countries have put great strain on already suffering economies. These include additional health spending, temporary financial schemes for displaced workers, and credit support to small and medium-sized firms and affected sectors.

Traditional development partners are also experiencing significant economic downturns, and foreign aid budgets are being reconsidered and reduced. The economic outlook for the Pacific is not positive and recovery will be a long and painful process.

The protection and promotion of human rights and economic health are inherently interconnected. The level and rate of the progressive realisation of economic, social and cultural rights are dependent on the resources available to any particular state. A significant reduction in available resources caused by the pandemic may slow progress. In building back from COVID-19, it is important for Pacific states to remember that the conditions for sustainable development are created by the widespread enjoyment of human rights and that it remains necessary for them to allocate the maximum of its available resources to fulfil their duty to respect, protect and fulfil the rights of their people.

Economic pressures can also have a more immediate and direct impact on the enjoyment of human rights. The right to work and to safe and healthy working conditions is adversely impacted by job losses and reductions in workforces. Loss of income can have a knock-on effect on other rights, including the right to education, or it can increase the conditions in which domestic violence prevails. Respect of human rights in places of detention can diminish if temporary special measures such as early or humanitarian releases are offset by increased prosecutions, leading to overcrowding. Similarly, the right to freedom of expression can be unduly limited in times of national emergency.

By further examining the knock-on effects, it is then possible to understand how to build back better.

¹³ Prior to COVID-19, the Government of the Cook Islands estimated visitor expenditure would constitute 67% of GDP in the financial year 2019/20. Ministry of Finance and Economic Management, The Government of the Cook Islands 2019. Cook Islands Tourism Forecasts 2020-2024. Available at: http://www.mfem.gov.ck/images/WP3_CI_Tourism_model_paperV5.pdf

¹⁴ Ministry of Finance and Economic Management, The Government of the Cook Islands 2020. <http://www.mfem.gov.ck/statistics/social-statistics/tourism-and-migration>

Violence against women and children

Despite the complexity of obtaining accurate data in relation to violence against women and children, it is widely accepted that the Pacific has some of the highest rates in the world,¹⁵ and as a region, it is around twice the global average. In the early months of the pandemic, an increased demand for domestic violence support services indicated that this situation was deteriorating further still. Helpline calls in Samoa jumped 150% from the same time the previous year while in Fiji the national domestic violence helpline recorded 500% more calls in April than it did in February.¹⁶

Emerging evidence of the causes of this trend points to women and children being confined for longer periods with their perpetrators due to job losses and restrictions on movement. Those job losses also lead to increased financial pressures on families which can act as a trigger for family violence.¹⁷ Furthermore, gender roles in the Pacific commonly mean women are responsible for preparing food for the family. Growing food insecurity caused by supply chain disruptions and reduced income puts this role under threat and could also trigger additional violence.

This situation has likely been compounded by formal and informal support services becoming less reliable due to the reallocation of resources and reduced capacity of civil society organisations.¹⁸ Accessibility may have also been impacted by increased freedom of movement restrictions or the reduced ability of survivors to travel because of diminished financial resources and lack of time away from their perpetrator.

Inequality, social exclusion and mental health

Addressing inequality and social exclusion has been widely understood to be a pre-requisite for progress towards the Sustainable Development Goals. Substantial financial and human resources were dedicated to addressing these issues across the region, particularly in relation to women and girls, children, older persons, persons with disabilities, LGBTIQ persons of diverse sexual orientation and gender identity, and rural communities.

The pandemic has exacerbated these inequalities and social divisions at an alarming rate. The lack of social protection safety nets means these groups are being disproportionately affected in their access to basic services, food security, livelihoods, safety and protection, and psychosocial support. Examining the situation for children, older persons and persons with disabilities serves to highlight the ways in which these groups are being further disadvantaged through COVID-19.

Persons with disabilities and older persons are generally at greater risk of human rights violations in times of emergency due to barriers to accessing information and health services. Many in this group are at greater risk of contracting COVID-19 due to needing to be in close physical contact with their immediate environment or carers. If contracted, pre-existing health conditions increase the likelihood of worse outcomes. The initial pandemic response raised fears that the needs of persons with disabilities and older persons would be overlooked and people would be left alone and isolated in their homes without access to essential services and healthcare, particularly if carers contracted the virus or restrictions on movement affected access. There is growing recognition within the region of the urgency to address these barriers for persons with disabilities and older persons and to ensure the recovery effort does not expose them to such levels of vulnerability again.¹⁹ In the meantime, persons with disabilities and older persons continue to live with the increased health risks the pandemic has created and the anxiety which arises as a result.

15 Pacific Women Shaping Pacific Development 2019. <https://pacificwomen.org/our-work/focus-areas/ending-violence-against-women/>

16 UN Women 2020. <https://www.unwomen.org/en/news/stories/2020/6/feature-pacific-crisis-centres-respond-to-covid-19-amid-natural-disasters>

17 For example, see the findings from the Samoa Ombudsman's National Inquiry into Family Violence 2018. Available at: https://ombudsman.gov.ws/wp-content/uploads/2019/01/2018_SHRR-2018-National-Public-Inquiry-into-Family-Violence_English.pdf

18 UN Women Asia and the Pacific 2020. <https://asiapacific.unwomen.org/en/digital-library/publications/2020/06/rapid-assessment-impact-of-covid-19-on-womens-civil-society-organizations>

19 Xinhua Net 2020. http://www.xinhuanet.com/english/2020-12/03/c_139561137.htm

For children, the immediate pandemic response saw widespread closure of schools, depriving them of their education. Diminished food security and income levels have affected the ability of families to maintain the healthy diet required for effective childhood cognitive development. Anxiety among this group about their long-term employment opportunities in a post COVID-19 Pacific compounds this situation. Many children have experienced psychosocial trauma and/or neglect arising from witnessing increased family violence, increased economic stress due to job losses, or direct and indirect health consequences for guardians.

Both children and persons with disabilities are therefore facing increased inequalities, exclusion and health risks, resulting in heightened anxiety and requiring greater psychosocial support. The outlook and mental health consequences for many marginalised groups across the Pacific is similar. In Guam it is estimated that there was a suicide every six days between June and August in 2020,²⁰ around three times higher than the global average.²¹ Many other Pacific Island countries are reporting increased community anxiety. This constitutes a ticking time bomb for the enjoyment of human rights in the region, which does not have the counselling competency or capacity to deal with widespread mental health issues.²²

What COVID-19 has starkly highlighted is that previous development efforts were deficient in that they did not adequately protect against future disasters and the risk of further marginalisation. This is a lesson which must be heeded in the recovery process and beyond. This chapter concludes by giving further consideration to how this may be meaningfully addressed.

Temporary States of Emergency

It is necessary to consider and detail the measures instituted by states in response to the global pandemic to protect the health of their nations and their respective economies. This is important because temporary special measures of this nature are governed by an international legal framework requiring proportionality in order to ensure limitations do not unduly impede the enjoyment of human rights.

In the early months of the pandemic, 13 Pacific Island countries declared a state of emergency,²³ implementing a range of measures to protect their people and prevent the spread of COVID-19. Primarily, these were stringent border controls and quarantine requirements, internal travel restrictions, school closures and social distancing measures.

International human rights law and the principles that govern such measures in times of national emergency are clear, including that they are defined by law, are reasonable and proportionate, with the least possible intrusion and restriction, of limited duration, maintain the respect of human dignity, and are subject to timely and systematic review.²⁴ The premise is that any limitations must amount to the least possible intrusion necessary to return a situation back to normal, and that once this happens the limitations must be lifted.

In Fiji, a curfew was introduced as a COVID-19 measure. The prosecution of curfew infringements came under the spotlight when a court highlighted that a number of those punished were unable to pay the fines and would disproportionately suffer as a result. The economic consequences of COVID-19 lie at the root of any human rights concerns and disproportionate punishments could further exacerbate these. It is therefore essential for Pacific states to continuously apply the proportionality test to ensure rights are not violated and not just at the time of their creation.

20 The Guam Daily Post 2020. https://www.postguam.com/news/local/1-suicide-every-6-days/article_f4a7ffe6-eccb-11ea-9490-1ffd12de187a.html

21 The Guam rate for this three-month period would constitute an annual rate of 36 suicides per 100,000 people. The global rate is 10.5 suicides per 100,000 people. World Health Organisation 2020. <https://www.who.int/data/gho/data/themes/mental-health#:~:text=Age%2Dstandardized%20suicide%20rates%3A%20There,10.5%20per%20100%20000%20population>

22 Pacific Women Shaping Pacific Development 2017. Review of counselling services in the Pacific Final Report. Available at: https://pacificwomen.org/wp-content/uploads/2017/08/ReviewofEVAWCounsellinginthePacific_FINAL_April2017.pdf

23 American Samoa, FSM, Guam, Nauru, CNMI, Palau, PNG, RMI, Samoa, Solomon Islands, Tonga Tuvalu and Vanuatu. UNESCO 2020. Pacific response to COVID-19 and education data issues and challenges. Available at: <http://tgc.uis.unesco.org/wp-content/uploads/sites/4/2020/05/UNESCO-APIA-Office.pdf>

24 UN Commission on Human Rights 1984. The Syracuse Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights. UN Doc E/CN.4/1984/4. Available at: <https://www.refworld.org/docid/4672bc122.html> and OHCHR 2020. Emergency Measures and COVID-19: Guidance. Available at: https://www.ohchr.org/Documents/Events/EmergencyMeasures_COVID19.pdf

High Commissioner for Human Rights, Michelle Bachelet, has referred to the need for governments to implement COVID-19 measures consistent with international legal standards:²⁵

“Emergency powers should not be a weapon governments can wield to quash dissent, control the population, and even perpetuate their time in power. They should be used to cope effectively with the pandemic – nothing more, nothing less.”

Her warning was necessitated by a history of governments worldwide routinely using times of national emergency to entrench their power and institute measures which would otherwise not be possible. Within the Pacific, such concerns have been raised during the pandemic in relation to restrictions on media reporting²⁶ and access to social media sites,²⁷ threatening freedom of information and freedom of expression. There have also been allegations of attempts to rush through major constitutional changes under the cover of a state of emergency.²⁸ It is essential that measures taken in the ongoing COVID-19 response and subsequent recovery efforts are aligned with international legal standards to avoid violating the rights of people and to ensure the foundations for sustainable development are guaranteed.

Opportunity to build back better

The impact of COVID-19 on the realisation of human rights in the Pacific and progress towards the Sustainable Development Goals has resulted in a devastating blow. In building a post COVID-19 Pacific there are, however, opportunities to address the harsh lessons the pandemic has taught about previous shortcomings. To do so, and to give meaning to the aim of ‘building back better’, it is necessary to reiterate and clarify the root causes of the consequences this chapter has documented.

Firstly, the immediate and blunt driving force of the vast majority of pandemic impacts was the economic repercussions of the preventive measures necessary to largely keep the virus under control. Public debt among the Pacific Islands, on average, has already risen since the end of the global financial crisis. The COVID-19-induced economic downturn across the region means new borrowing and debt funding for infrastructure and social welfare by Pacific Island governments is extremely limited.²⁹ Consideration should be given to how social safety nets can be created in the short, medium and longer term to better protect against significant and widespread economic hardships.

Secondly, the prevalence of systemic and widespread human rights violations, such as violence against women and girls, are exacerbated in times of emergency and undermine recovery efforts and progress towards the Sustainable Development Goals. The experience of women and girls throughout the pandemic has seen their rights under threat more than ever, reducing their capacity to play an active role in recovery in the process. Looking forward, the Pacific can learn from this lesson in relation to the most pressing and emerging issue which threatens the rights of its people – climate change. In responding to COVID-19, climate change adaptation, mitigation and prevention efforts should not diminish nor should allocated resources be redirected. To do so would risk further undermining rights and development progress into the future.

Thirdly, the increasing inequalities, social exclusion and discrimination point towards a critical failure in the past to ensure the meaningful inclusion and participation of marginalised communities in the life cycle of development initiatives, from planning to implementation and monitoring, particularly disaster preparedness.

25 UN Human Rights Office 2020. <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25828&LangID=E>

26 ABC Pacific Beat 2020. <https://www.abc.net.au/radio-australia/programs/pacificbeat/pac-countries-lockdown-but-censorship-concerns-in-vanuatu/12095518>

27 Radio New Zealand 2020. <https://www.rnz.co.nz/international/pacific-news/430939/solomon-islands-facebook-ban-under-attack>

28 Radio New Zealand 2020. <https://www.rnz.co.nz/international/pacific-news/414336/samoa-govt-pushes-major-change-under-cloak-of-covid-19-law-society>

29 Australian Trade and Investment Commission, Australian Government 2020. <https://www.austrade.gov.au/news/covid-19/updates/nz-and-pacific> (accessed 2 December 2020).

Participation is a civil right and there is a growing realisation that a failure to do so in the past has led to development projects not enjoying community support or strong sense of ownership. In a Pacific Islands Forum Economic Ministers Meeting in August 2020 to address the socio-economic impacts of COVID-19, Forum Members agreed and it was highlighted that “there is... the need return to basic living, relative to traditional knowledge and social practices on slow food production and food preservation, and acknowledging how COVID has brought to the fore, the importance of reviving these practices in the Pacific.”³⁰

To build back better in the Pacific therefore means adopting a human rights-based approach and seeking to transform social norms in the course of any development work or disaster preparedness initiative. It means enabling the meaningful participation of affected communities throughout all stages of development work, to foster inclusion, inspire ownership and to draw on local understanding and traditional knowledge to ensure sustainable development in the project design process. This also means governments and development partners need to be more accountable through access to information for marginalised and affected communities so they can routinely provide feedback and raise concerns.

The United Nations has developed strategies with guidance and tools that should ensure the inclusion of a human rights based-approach in response and recovery action. The Pacific Community has developed a ‘People Centred Approach’ to development that brings together a human rights-based approach, gender equality and social inclusion lens, and cultural development and environmental sustainability. It seeks to empower Pacific people to achieve the maximum social and environmental outcomes by fostering community ownership and drawing on the rich cultural diversity of the region. By adopting these approaches, Pacific states and development partners can ensure that the lessons of COVID-19 do not go unheeded and we build back better, together.

Governments and human rights

The State is the primary architect of a national system to protect human rights, and each PIC continued efforts during the reporting period to establish a strong NHRPS. Recognising the importance of international human rights standards and applying them to the region, all PICs have taken action to progress human rights commitments and obligations as well as ratify and report under core human rights treaties.

While ratification of core human rights treaties is steadily increasing, many countries have yet to ratify the 1966 International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic Social and Cultural Rights (ICESCR). During the reporting period, both Fiji and the Marshall Islands ratified or acceded to ICESCR and ICCPR, with Fiji becoming the first PIC, and one of the first in the world, to ratify all core nine human rights treaties. The Marshall Islands acceded to the Covenant on the Elimination of All Forms of Racial Discrimination (ICERD).

Ratification of human rights treaties in the Pacific tends to favour conventions that protect group rights, especially those of women and children. All countries in the region have ratified the Convention on the Rights of the Child (CRC), and with the exception of Palau and Tonga, all have ratified the Convention on the Elimination of all forms of Discrimination against Women (CEDAW). Despite the Convention on the Rights of Persons with Disabilities (CRPD) being a relatively new treaty, 13 PICs have now ratified it, with Fiji, Federated States of Micronesia (FSM) and Samoa doing so in 2016. New Zealand acceded to the Convention on the Rights of Persons with Disabilities (CRPD) Optional Protocol.

Australia and New Zealand both remain at seven ratifications of the core nine treaties. Kiribati, Marshall Islands and Samoa ratified the Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment (CAT), bringing the total number of PICs to eight, while Australia ratified the CAT Optional Protocol.

Of the 16 PICs discussed in this report, Samoa and Fiji are the only two countries to have ratified the Convention against Enforced Disappearances (CED), and Fiji is the only PIC to have ratified the Convention on the Protection of the Rights of All Migrant Workers and Members of their Families. Palau has signed all nine major international human rights conventions, although it has only ratified the CRC and CRPD.

30 Pacific Islands Forum Secretariat 2020. https://www.forumsec.org/wp-content/uploads/2020/08/PIFS20FEMM.4bRev.1-Socio-economic-Impacts-of-COVID-19_Final.pdf

While it is not a core human rights treaty, the United Nations Convention against Corruption has been ratified by all PICs, with Niue and Samoa acceding in 2016.³¹

Compliance with international human rights standards at the national level has been evident through various steps taken by PICs, including reporting to treaty bodies, engaging the Special Procedures of the Human Rights Council through Standing Invitations and hosting the visits of special rapporteurs, and engagement with the Universal Periodic Review (UPR) process. All PICs have been through two rounds of UPR reporting, and some three³², generating more assessments, dialogue and commitments to human rights in the region than ever before. Despite resource and capacity challenges, countries have been able to dedicate time and effort to the process, starting with the preparation of the state report and including consultations, finalising submissions, and attending the interactive peer review in Geneva. While state reporting to individual treaty bodies is challenging for PICs, their participation in the UPR process continues to be positive as a platform to share their human rights stories with the world.

Turning commitments into real action in each country is challenging. However, during the reporting period, several PICs invited delegations from SPC HRSD, OHCHR and the Asia Pacific Forum on National Human Rights Institutions (APF) for consultations on establishing a National Human Rights Institution (NHRI).³³ One of the tasks of the NHRI will be to support governments to advance the implementation of treaty commitments.

31 UN Office on Drugs and Crime 2019. <https://www.unodc.org/unodc/en/treaties/CAC/signatories.html> (accessed 8 November 2019).

32 UN Human Rights Council. <http://www.ohchr.org/EN/HRBodies/UPR/Pages/UPRMMain.aspx> (accessed 8 November 2019).

33 Asia Pacific Forum of National Human Rights Institutions 2019. <https://www.asiapacificforum.net/news/vanuatu-expresses-support-human-rights-body/> (accessed 30 September 2019).

STATUS OF HUMAN RIGHTS TREATIES RATIFICATION IN THE PACIFIC

(8 December 2020)

The following chart shows which States are a party (indicated by the date of adherence: ratification, accession or succession) or signatory (indicated by an “S” and the date of signature) to the United Nations human rights treaties listed below. Self-governing territories that have ratified any of the treaties are also included in the chart.

	ICESCR	ICCPR	CERD	CEDAW	CAT	CRC	CRMW	CRPD	CPPED
AUSTRALIA	10 Dec 75	13 Aug 80	30 Sep 75	28 Jul 83	08 Aug 89	17 Dec 90		17 Jul 08	
COOK ISLANDS				11 Aug 06		6 Jun 97		8 May 09	
FIJI	16 Aug 18	16 Aug 18	11 Jan 73	28 Aug 95	14 Mar 16	13 Aug 93	19 Aug 19	7 Jun 17	19 Aug 19
KIRIBATI				17 Mar 04	22 Jul 19	11 Dec 95		27 Sept 13	
MARSHALL ISLANDS	12 Mar 18	12 Mar 18	11 Apr 19	2 Mar 06	12 Mar 18	4 Oct 93		17 Mar 15	
FED. STATES MICRONESIA				1 Sep 04		5 May 93		7 Dec 16	
NEW ZEALAND	28 Dec 78	28 Dec 78	22 Nov 72	10 Jan 85	10 Dec 89	06 Apr 93		28 Sep 08	
NAURU		S 12 Nov 01	S 12 Nov 01	23 Jun 11	26 Sept 12	27 Jul 94		27 June 12	
NIUE						20 Dec 95			
PALAU	S 20 Sep 11	4 Aug 95	S 20 Sep 11	11 Jun 13	S 20 Sep 11				
PAPUA NEW GUINEA	21 Jul 08	21 July 08	27 Jan 82	12 Jan 95		2 Mar 93		26 Sept 13	
SAMOA		15 Feb 08		25 Sep 92	28 Mar 19	29 Nov 94		2 Dec 16	27 Nov 12
SOLOMON ISLANDS	17 Mar 82		17 Mar 82	6 May 02		10 Apr 95		S 23 Sep 08	
TONGA			16 Feb 72			6 Nov 95		S 15 Nov 07	
TUVALU				6 Oct 99		22 Sep 95		18 Dec 13	
VANUATU		21 Nov 08		8 Sep 95	12 Jul 11	7 Jul 93		23 Oct 08	S 6 Feb 07

KEY:	
	Indicates the date of adherence: ratification, accession or succession. (<i>Italicized = Accession</i>)
S	Indicates the date of signature
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICCPR	International Covenant on Civil and Political Rights
CERD	Convention on the Elimination of All Forms of Racial Discrimination
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CAT	Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
CRC	Convention on the Rights of the Child
CRMW	Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families
CRPD	Convention on the Rights of Persons with Disabilities
CPPED	Convention for the Protection of all Persons from Enforced Disappearance

Parties and signatories to optional protocols of the United Nations Human Rights treaties listed above.

	ICESCR-OP	ICCPR-OP1	ICCPR-OP2	OP-CE-DAW	OP-CRC-AC	OP-CRC-SC	OP-CRC-CP	OP-CAT	OP-CRPD
AUSTRALIA		25 Sep 91	02 Oct 90	04 Dec 08	26 Sep 06	08 Jan 07		21 Dec 17	21 Aug 09
COOK ISLANDS				27 Nov 07					8 May 09
FIJI					S 16 Sep 05	S 16 Sep 05			S 2 Jun 10
KIRIBATI					16 Sep 15	16 Sep 15			
MARSHALL ISLANDS				29 Jan 2019		29 Jan 2019	29 Jan 2019		
FED. STATES MICRONESIA					26 Oct 15	23 Apr 12			
NAURU		S 12 Nov 01			S 8 Sep 00	S 8 Sep 00		24 Jan 13	
NEW ZEALAND		26 May 89	22 Feb 90	07 Sep 00	12 Nov 01	20 Sep 11		14 Mar 07	04 Oct 16
NIUE									
PALAU									11 Jun 13
PAPUA NEW GUINEA									
SAMOA					17 May 16	29 Apr 16	29 Apr 16		
SOLOMON ISLANDS	S 24 Sep 09			6 May 02	S 24 Sep 09	S 24 Sep 09			S 24 Sep 09
TONGA									
TUVALU									
VANUATU				17 May 07	26 Sep 07	17 May 07			
KEY:									
	Indicates the date of adherence: ratification, accession or succession. (<i>Italicized = Accession</i>)								
S	Indicates the date of signature								
ICESCR OP	Optional Protocol to the International Covenant on Economic Social and Cultural Rights								
ICCPR-OP1	Optional Protocol to the International Covenant on Civil and Political Rights								
ICCPR-OP2	Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty								
OP-CEAW	Optional Protocol to the Convention on the Elimination of Discrimination against Women								
OP-CRC-AC	Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict								
OP-CRC-SC	Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography								
OP-CRC-CP	Optional Protocol to the Convention on the Rights of the Child on a communications procedure								
OP-CAT	Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment								
OP-CRPD	Optional Protocol to the Convention on the Rights of Persons with Disabilities								

PICs have endorsed various regional declarations to create stronger frameworks around specific human rights issues. The Framework for Pacific Regionalism was endorsed in 2014 and in 2017, Forum leaders endorsed the Blue Pacific identity as the core driver to advance this vision of the Framework for Pacific Regionalism. Forum leaders are seeking to do this through harnessing the collective potential of the region's shared stewardship of the Pacific Ocean, which is based on an explicit recognition of its shared ocean identity, ocean geography and ocean resources, to reaffirm the connections of Pacific people with their natural resources, environment, culture and livelihoods.³⁴

The 2012 Pacific Leaders Gender Equality Declaration was reaffirmed by leaders in 2015. While progress remains slow in achieving gender equality³⁵, the Pacific Partnership to End Violence Against Women and Girls programme was launched in 2018, bringing together governments, UN Pacific, SPC HRSD, the Pacific Islands Forum Secretariat (PIFS) and other partners to promote gender equality, prevent violence against women and girls, and increase access to quality response services for survivors.³⁶

In 2016, a Pacific Framework for the Rights of Persons with Disabilities 2016 - 2025³⁷ was developed in support of the 2009 Pacific Regional Strategy on Disability.³⁸ The strategy commits Pacific countries to working on crucial areas that affect people with disabilities. By 2019, some PICs had developed, or were in the process of developing, national framework documents to align with the strategy.

In 2018, Forum leaders endorsed the Boe Declaration on Regional Security, which applied an expanded concept of security, inclusive of human security, humanitarian assistance, environmental security and regional cooperation in building resilience to disasters and climate change.³⁹

Domestic laws on human rights

Work continued in the region to align laws and create policies consistent with human rights treaty commitments. The constitutions of Pacific countries provide protections in many, but not all, human rights areas. Solomon Islands and Tuvalu were revising their constitutions in 2019.

Fiji passed the Rights of Persons with Disabilities Act 2018 which domesticated the CRPD. In Kiribati, a scoping study on CRPD domestication took place in 2019. Nauru's Mentally-Disordered Persons (Amendment) No.2 Act 2017 articulates the rights of persons admitted to a mental health facility, including informed consent and access to personal treatment records. Marshall Islands reviewed and amended existing legislation on the rights of persons with disabilities in compliance with the CRPD.

Work to address violence against women and children remains ongoing and a priority for the region. Nauru's Domestic Violence and Family Protection Act 2017 provides protection for victims of domestic violence and related matters. The Solomon Islands Penal Code (Amendment) (Sexual Offences) Act 2016 sets out new definitions for different sexual offences and provides specific sentencing. The Solomon Islands Child and Family Welfare Act 2017 extends to children the protection from violence and neglect, with specific provisions for courts to make care and protection orders, and orders to uplift. New Zealand's Family Violence Act 2018 updates the Domestic Violence Act 1995 to stop and prevent perpetrators from inflicting family violence and to keep victims, including children, safe. In Australia, the Family Violence (Amendments) Act 2018 amends the Crimes Act, Care of Children Act and four other acts to introduce new criminal offences of strangulation or suffocation, assault on a person in a family relationship, and coerced marriage or civil union. The Marshall Islands made amendments to its Domestic Violence Prevention and Protection Act to align penalties within the jurisdiction limit of community courts and increase penalties for second and subsequent offences.

34 Pacific Islands Forum Secretariat. <https://www.forumsec.org/pacific-regionalism/> (accessed 7 November 2019).

35 Pacific Islands Forum Secretariat. <https://www.forumsec.org/2012/08/30/pacific-leaders-gender-equality-declaration/> (accessed 7 November 2019).

36 European Union External Action 2018. https://eeas.europa.eu/headquarters/headquarters-homepage/54418/new-pacific-partnership-addresses-gender-equality-and-violence-against-women_et

37 Pacific Islands Forum Secretariat. <https://www.forumsec.org/wp-content/uploads/2018/05/PFRPD.pdf> (accessed 7 November 2019).

38 Pacific Islands Forum Secretariat 2009. Pacific Regional Strategy on Disability 2010-2015. Available at: https://www.un.org/development/desa/disabilities/wp-content/uploads/sites/15/2019/10/Pacific-Islands-Forum_Pacific-Regional-Strategy-on-Disability.pdf

39 Pacific Islands Forum Secretariat. <https://www.forumsec.org/boe-declaration-on-regional-security/> (accessed 7 November 2019).

The Marshall Islands passed the Gender Equality Act 2019 to domesticate CEDAW obligations. In November 2018, the FSM Congress amended the Federation Code to prohibit discrimination based on sexual orientation, and Pohnpei State Legislature passed the Domestic Issues Act 2017, providing mechanisms and procedures to deal with incidents of domestic violence. In 2019, both Chuuk and Pohnpei States enacted legislation to raise the age of consent to 18 years. Aiming to harmonise domestic legislation with international obligations, Tuvalu passed the following legislation: Island Courts (Amendment) Act 2017; Leadership (Amendment) Act 2017; Marriage (Amendment) Act 2017; National Human Rights Institution Act 2017; and Labour and Employment Relations Act 2017.

New Zealand's Child Poverty Reduction Act 2018 aims for a significant and sustained reduction in child poverty by facilitating political accountability against published targets and requiring transparent reporting on levels of child poverty. New Zealand also brought in the Criminal Records (Expungement of Convictions for Historical Homosexual Offences) Act 2018, which enables those with convictions for historical homosexual offences under previous law, to have the record expunged. Fiji introduced the Information Act 2018, recognising the right of a person to access information held by a public agency and request corrections and deletions to that information.

Legislation relating to climate justice was also enacted, such as Fiji's Climate Relocation of Communities Trust Fund Act 2019, Climate Action Trust Fund Act 2019, Environment Management Act 2019, and the Environment and Climate Adaptation Levy Act 2019. These were developed to help finance the relocation of vulnerable communities affected by climate change.

At the same time, new security legislation was criticised for potentially undermining personal privacy. For example, Australia's Assistance and Access Act 2018 requires technology companies to allow law enforcement agencies to access encrypted communications on grounds that include preventing terrorism and crime, which rights groups criticised due to the law's broad reach and relative lack of oversight. Further, Australia's Telecommunications (Interception and Access) Amendment (Data Retention) Act 2017 requires telecommunications companies to store users' metadata for two years for access by government security agencies. Some experts warned of the potential for data breaches and argued that the law undermines civil liberties. New Zealand's Intelligence and Security Act 2017 resulted in changes to the Privacy Act, reducing exemptions to the handling of personal information by government security intelligence agencies. Additionally, concerns were expressed about the definition of private communication which, it was proposed, could enable mass collection of communications and mass surveillance of New Zealanders. In December 2017, Samoa reintroduced criminal libel as an offence, prompting their journalists' association to express concern that the law risks undermining the role of media as a public watchdog and weakens its ability to hold those in power to account. In November 2020, the Solomon Islands decided to ban Facebook, which led to criticism from human rights advocates for unnecessary restrictions on freedom of expression.

Regional organisations such as SPC HRSD, PIFS and UN agencies are working to support PICs in enacting domestic laws that reflect and protect international standards and to take measures to build strong human rights mechanisms and protection systems at the legal and policy level.

Human rights policies

PICs continue to enact numerous policies aimed at advancing the protection of certain rights, although few countries, apart from Australia and New Zealand, have developed a comprehensive national human rights policy to advance NHRPS as a whole. Tuvalu developed the Tuvalu National Human Rights Action Plan 2016-2020. In other countries, the absence of overarching human rights policies contributes to a lack of coordination and cohesiveness in formulating human rights action plans, especially around reporting and the implementation of recommendations from the treaty bodies, and addressing gaps in NHRPS.

While there are no comprehensive human rights education programmes, Kiribati, Tuvalu and Marshall Islands have been introducing Social Citizenship Education programmes in schools since 2018. In November 2018 Kiribati held a training workshop for Kiribati Teachers College lecturers that focused on the foundational concepts of human rights and responsibilities, gender equality, social citizenship, and violence against women.⁴⁰

40 Pacific Community 2019. <http://www.spc.int/uploads/blog/2019/03/kiribati-forging-ahead-on-human-rights-education> (accessed 7 November 2019).

Other countries are engaging with the United Nations Population Fund (UNFPA) to introduce a Family Life Education module into school curricula.

A range of other human rights policies have been introduced since the previous report was published. The Cook Islands established the National Policy Framework for Children 2017 - 2021 in response to the Committee on the Rights of the Child's recommendation in 2017.⁴¹ The Kiribati National Disability Policy and Action Plan 2018 - 2021 paves the way to coordinate, drive, monitor and report on the progress of national initiatives on the rights of peoples with disabilities. Palau introduced a Gender Mainstreaming Policy in 2018. Tonga's National Women's Empowerment and Gender Equality Policy and Strategic Plan of Action 2019 - 2025 was launched in 2019. Fiji continues to review policies relating to the advancement of human rights, such as the National Employment Policy 2017 and the National Youth Policy 2018. New Zealand's Māori Health Strategy guides the health and disability sector to improve disparities and achieve the best health outcomes for Māori, and the Pathways to Pacific Health and Wellbeing Action Plan (2014 - 2018) was in the process of being updated in 2019. In Australia, a national strategy for the prevention of family violence and sexual violence and an investment strategy for family violence and sexual violence services were in place in 2019. The Australian Human Rights Commission conducted research in 2018 aimed at identifying priorities for federal discrimination law reform, implementation of human rights through law, policy and practice, human rights education, and national accountability frameworks.

Most PICs have aligned new policies and strategies with the Sustainable Development Goals (SDGs), and many have an overarching national development plan in place that promotes gender equality and human rights through equal opportunities. Most countries also have a Joint Nation Action Plan on Climate Change and Disaster Risk Management that integrates equality and human rights.

At the regional level, Pacific Islands Forum Leaders annual meetings have resulted in agreement on regional commitments to be implemented nationally in order to progress shared development aspirations. In 2015, Forum Leaders proposed contextualising the global agenda to national and regional priorities, and for reporting to be streamlined across the SDGs. The SIDS⁴² Accelerated Modalities for Action (SAMOA) Pathway, Framework for Pacific Regionalism and Pacific Roadmap for Sustainable Development guide regional efforts and provide support to countries for implementation, monitoring and reporting on global and regional sustainable development commitments. In 2018, Forum Leaders endorsed the first Quadrennial Pacific Sustainable Development Report and committed to ensuring that sustainable development in the region is achieved on Pacific terms and in a way that recognises the region's rich culture, national circumstances and oceanic resources.⁴³

Judicial systems and administration of justice

Strong and effective legal systems, institutions and structures are key to ensuring accountability, addressing impunity and providing remedies for victims of human rights violations. All PICs have functioning judicial and administrative justice systems, although the process for the delivery of justice can be cumbersome and slow. Legal and judicial systems in the region are mostly modelled after the British judicial system, with the exception of the North Pacific countries, which are modelled after the United States (US) judicial system. Each country has its own unique system that complies with traditional legal customs, which may raise compliance issues with international human rights law.

All PIC constitutions guarantee the independence of the judiciary. In Tuvalu, the Chief Justice is appointed by the head of state, acting in accordance with the advice of Cabinet (Section 122[2] of the Constitution), while judges in Kiribati are appointed by the President on the advice of Cabinet and tendered after consultation with the Public Service Commission (Section 81 [1] of the Constitution). In Vanuatu, the constitution states that the judiciary is only subject to the constitution and the law. The Chief Justice is appointed by the President after consultation with the Prime Minister and Leader of the Opposition (Section 49 [3] of the Constitution).

⁴¹ CRC/COK/2-5. Available at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC/C/COK/CO/2-5&Lang=En

⁴² Small Island Developing States

⁴³ Pacific Islands Forum Secretariat. <https://www.forumsec.org/sustainable-development/> (accessed 7 November 2019).

In countries such as Micronesia (FSM), the constitution makes a compromise in that it allows the President to appoint high-ranking judges with two-thirds approval of Congress.⁴⁴ It also stipulates that all matters relating to judicial officials be dealt with in conjunction with Congress leading the way and setting standards for the independence of the judiciary and separation of powers.

In Nauru, the President appoints judges to serve until age 65 (Section 49 of the Constitution). There have been concerns about undue influence by the government over the judiciary and accusations of judges being dismissed for rulings found unfavourable to officials.⁴⁵ In late 2017, the government revoked the 1976 High Court Appeals Act which allowed appeals beyond the Nauruan Supreme Court on civil and criminal matters,⁴⁶ to the High Court of Australia.⁴⁷ The Nauruan government established its own appeals court,⁴⁸ severing links with Australia's highest court.⁴⁹ In the Kingdom of Tonga, the monarch retains authority over judicial appointments and dismissals with advice from the Judicial Appointments and Discipline Panel, a committee of the Privy Council. The monarch in Privy Council (the advisory organ that has both judicial and legislative powers) has final jurisdiction over cases in the Land Court relating to hereditary estates and titles, and appeals beyond the Court of Appeal.⁵⁰ In Samoa, the Chief Justice is appointed by the head of state acting on the advice of the Prime Minister (Section 65[2] of the Constitution).

In April 2018, New Zealand hosted the Chief Justices' Leadership Forum as part of the Pacific Judicial Strengthening Initiative. The forum was attended by 13 Chief Justices, or their representatives, from Cook Islands, FSM, Kiribati, Marshall Islands, Nauru, Niue, Palau, Papua New Guinea (PNG), Samoa, Solomon Islands, Tonga, Tokelau and Vanuatu. The Chief Justices discussed issues related to promoting improvements to justice, including: exploring options to strengthen and align existing court performance measurements and reporting with international approaches; administering tools and mechanisms to improve efficiency in the disposal of cases; improving transparency by internally monitoring and evaluating court performance and collecting and externally publishing annual court performance data; identifying existing information, communication and technology (ICT) options that enable courts to deliver more efficient, accessible and timely justice services; and building education and knowledge through the USP Certificate of Justice and the PNG Centre for Judicial Excellence. The initiative builds on the achievements of earlier phases of the Pacific Judicial Development Programme and the Pacific Judicial Education Program to enhance the professional competence of judicial and court officers, along with the processes and systems that they use, in order to provide more accessible and responsive justice services.⁵¹

For enhanced judicial understanding of the application of international human rights commitments, dedicated training is still required. PIC judges and magistrates are gradually applying human rights law in their judgements. For example, Volume 6 of the Pacific Human Rights Law Digest, produced in 2019 by SPC HRSD, reported the 2017 Fijian case of State vs SS (the Juvenile) in which a magistrate considered case law and international human rights principles in relation to evidence of admissions made by juvenile defendants and ruled that it was unsafe to admit the evidence of a confession because the police failed to prove that voluntariness and general fairness existed at the caution interview.⁵² Further, in a victory for Tongan human rights defenders in September 2019, the Supreme Court rejected a decision by a senior magistrate to refuse to hear a case brought by a lawyer from the Family Protection Legal Aid Centre on behalf of a woman filing against her husband for maintenance, custody and a restraining order. The Lord Chief Justice hearing the appeal said the magistrate could not refuse

⁴⁴ Legal Information System of the Federated States of Micronesia. FSM Constitution, Article 11 (3). Available at: <http://www.fsmlaw.org/fsm/constitution/article11.htm> (accessed 20 November 2018).

⁴⁵ Freedom House 2018. Freedom in the World 2018. Available at: https://freedomhouse.org/sites/default/files/2020-02/FreedomintheWorld2018COMPLETEBOOK_0.pdf (accessed 15 October 2019).

⁴⁶ Ibid.

⁴⁷ Ibid.

⁴⁸ Op cit.

⁴⁹ Radio New Zealand 2018. <https://www.rnz.co.nz/international/pacific-news/362538/nauru-govt-sets-up-court-of-appeal> (accessed 15 October 2019).

⁵⁰ CIA World Factbook. <https://www.cia.gov/library/publications/the-world-factbook/geos/tn.html> (accessed 4 October 2019).

⁵¹ Courts of New Zealand. <https://www.courtsfonz.govt.nz/assets/PRAL.pdf> (accessed 7 November 2019).

⁵² Yuen C. 2019. Pacific human rights law digest 6. Available at: <https://rrrt.spc.int/resources/publications/pacific-human-rights-law-digest-vol6>

to accept the application brought by the Legal Aid Centre.⁵³ However, in the 2018 PNG case of *Yasause v Kek*, the National Court rejected a prisoner's claim of being subjected to inhuman treatment by applying criteria that is not aligned with CAT.⁵⁴

Access to justice and the right to remedy

In all PICs, the right to due process is protected and generally respected, although some challenges remain. There are limited available studies in the Pacific region that outline the situation of access to justice or provide updated information on legal needs and services to the vulnerable. However, a number of national access to justice programmes were operating in 2020 in places such as Fiji, Vanuatu and Tonga, which should result in improved information collection. In 2017 and 2018, the United Nations Children's Fund (UNICEF) updated its country analyses on the situation for children, including access to justice, and many of these country reports are referenced in the chapters. Juvenile justice remains a challenge around the region, including in Australia and New Zealand.

Studies conducted in the past have shed light on some of the barriers, including the physical inaccessibility of courts for those living in remote islands, the level of experience of adjudicators, and the reliance on foreign expertise. Other challenges include gaps in law enforcement in legal and administrative procedures, deficiencies in the prosecution system, lack of administrative capacity, and the lack of an ombudsman or national human rights institution in compliance with international standards in most countries.⁵⁵ Many of these challenges are still evidenced in different countries in 2020.

Governments in most PICs provide limited free legal aid to the disadvantaged, but these services are under-resourced in a number of countries. Australia and New Zealand have networks of non-profit community legal centres.⁵⁶ In the North Pacific, the non-profit Micronesian Legal Service Corporation continues to operate in FSM, Marshall Islands and Palau. In Kiribati and Tuvalu, the Peoples' Lawyer provides free legal advice for people who are at a financial disadvantage or who are unable to access private legal representation. Countries such as Cook Islands, Marshall Islands, Tonga and Fiji have non-governmental women's rights organisations that provide legal assistance to women and children experiencing sexual and gender-based violence.

The Family Protection Legal Aid Centre in Tonga is showing potential for replication in other PICs. Opened in Nukualofa in March 2018, the centre aims to address the gap in access to justice and protection under the Family Protection Act, including the limited availability of free legal advice and services for survivors of domestic violence. The centre was established by the Ministry of Justice with support from SPC HRSD and donor funding, and extends services to the outer islands through the court circuit. In the first year of operation, the centre dealt with 367 clients, many of whom received legal assistance to obtain protection orders, legal representation in court, and where required, referrals to other service providers, such as police, family violence counselling services or access to a safe house. The Ministry of Justice plans to fully fund the centre from 1 July 2022.⁵⁷

In Fiji, the Legal Aid Commission is a key entry point for accessing justice and in the past five years has expanded its geographic outreach by opening several offices across the country, increasing both its workforce and the range of cases it helps resolve. The commission provides services in all areas of family law and criminal law and in limited civil law matters, and in 2019 it received increased funding from the Fiji government.⁵⁸

⁵³ Kaniva Tonga 2018. <https://kanivatonga.nz/2018/09/lord-chief-justice-slams-senior-magistrates-decision-to-turn-away-legal-aid-case/> (accessed 30 September 2019).

⁵⁴ Ibid.

⁵⁵ Paterson D. 2000. Legal challenges for small jurisdictions in relation to privacy, freedom of information and access to justice. *Journal of South Pacific Law* 4. Available at: <http://www.paclii.org/journals/fjSPL/vol04/4.shtml> (accessed 20 November 2019).

⁵⁶ A/HRC/WG.6/23/AUS/1. Available at: <https://www.refworld.org/docid/58344d394.html>

⁵⁷ Information provided by SPC HRSD.

⁵⁸ Fiji Sun 2019. <https://fijisun.com.fj/2019/05/21/fiji-budget-2019-investing-in-access-to-justice/> (accessed 7 July 2019).

In December 2017, Australia's Royal Commission into Institutional Responses to Child Sexual Abuse published its final report, making 409 recommendations on how to improve laws, policies and practices to prevent and better respond to child sexual abuse in institutions.⁵⁹ The Australian government has committed to implementing the recommendations. In 2018, the New Zealand government announced a Royal Commission of Inquiry into Historical Abuse in State Care and in the Care of Faith-based Institutions, aimed at access to justice and remedy for affected individuals.⁶⁰

National human rights institutions

National human rights institutions (NHRIs) are state-funded and created bodies established for the purpose of protecting, monitoring and raising awareness of human rights in a country, and holding governments accountable. NHRIs take many forms and functions. NHRIs are operational in Fiji, Samoa and Tuvalu, while the Cook Islands, FSM, Nauru, Palau, PNG, Solomon Islands, Tonga and Vanuatu have an Ombudsman Office that may have a degree of human rights mandate. To meet international standards, NHRIs must comply with the Paris Principles. Australia, New Zealand and Samoa are the only Pacific states with Paris Principles - compliant NHRIs.⁶¹

In 2013, Fiji established the Human Rights and Anti-Discrimination Commission, extending the earlier commission's functions to include anti-discrimination. Human Rights Commissioners were appointed by the government in May 2015 for a three-year term, which expired in 2018 and resulted in a new chairperson and new members being appointed.⁶² During Fiji's UPR processes in 2014 and 2019, several recommendations were made to strengthen the commission's role and align it with the Paris Principles. The Fiji government's third UPR report in 2019 stated that there had been progress on those recommendations and that Fiji remained committed to ensuring that it is Paris Principles - compliant and has continued to engage with APF and the Global Alliance of National Human Rights Institutions (GANHRI) to regain its accreditation.⁶³

In Samoa, the Office of the Ombudsman was established in 2013 as the country's official NHRI. Samoa's NHRI launched the 2019 State of Human Rights in Samoa annual report, which identified progress and gaps in implementation of recommendations from annual reports since 2015.⁶⁴ The report highlighted that commendable efforts had been made in addressing recommendations from previous state of human rights reports through law, policy change and activities, but gave an overall B grade average because the majority of the implementation of recommendations fell within the 50-75% bracket.⁶⁵ Challenges to improved implementation were identified as lack of funding, resources, effective measures in place to assist with implementation, monitoring and evaluation, and poor cooperation between organisations.⁶⁶

In 2017, Tuvalu passed the NHRI Act, establishing the office under the direction of the Ombudsman. This development resulted from a 2016 scoping study on the feasibility of establishing an NHRI by SPC HRSD and APF.⁶⁷ In 2019, the office was operating but to a limited extent.

Nauru, Solomon Islands, Cook Islands, FSM, RMI, Kiribati and Vanuatu have all conducted NHRI scoping studies. Many of these countries currently have national human rights coordination bodies with the reporting and related human rights functions and responsibilities of the state.

⁵⁹ Australian Government Response to the Royal Commission into Institutional Responses to Child Sexual Abuse. <https://www.childabuseroyalcommissionresponse.gov.au/about-the-royal-commission> (accessed 24 September 2019).

⁶⁰ Abuse in Care Royal Commission of Inquiry. <https://www.abuseincare.org.nz/> (accessed 10 October 2019).

⁶¹ Global Alliance of National Human Rights Institutions 2019. Chart of the status of national institutions. Available at: <https://nhri.ohchr.org/EN/Documents>Status%20Accreditation%20Chart%20%2804%20March%202019.pdf>

⁶² A/HRC/WG.6/34/FJI/1. Available at: <https://www.ohchr.org/EN/HRBodies/UPR/Pages/FJindex.aspx>

⁶³ Op cit.

⁶⁴ Office of the Ombudsman, Samoa National Human Rights Institution 2019. State of Human Rights Report. Available at: https://ombudsman.gov.ws/wp-content/uploads/2019/09/FINAL-SHRR-2019_-English-copy_-26.08.19.pdf (accessed 7 November 2019).

⁶⁵ Ibid.

⁶⁶ Op cit.

⁶⁷ Pacific Information News Association 2016. <http://www.pina.com.fj/index.php?p=pacnews&m=read&o=2015617007578840bebfe1313b970e> (accessed 7 November 2019).

These include Kiribati, which established its Human Rights Task Force in 2014 by a cabinet decision; Palau, which established the Human Rights Committee by Presidential Executive Order; Vanuatu, which created a National Human Rights Committee; FSM, which has a national UPR and Human Rights Taskforce; and Marshall Islands, which established a multi-stakeholder Human Rights Committee. Other PICs have established ad hoc bodies to look at specific treaties. Further, most PICs have offices or desks under respective departments that have a human rights mandate; however, much work is still needed to establish NHRIs that are compliant with the Paris Principles. All PICs have accepted recommendations at their respective UPRs to consider establishing Paris Principles - compliant NHRIs.

Regional Human Rights Mechanisms (RHRM)

The Pacific region is part of the only region in the world, Asia-Pacific, that does not have a regional human rights mechanism (RHRM). Such mechanisms can play an important role in negotiating regional human rights treaties and declarations that help to localise international human rights norms and standards, reflecting the particular human rights concerns of the region.⁶⁸ While the Pacific has explored options for an RHRM, no recent concrete steps toward establishment have been taken. In June 2019, SPC HRSD and representatives from the Pacific, including the NHRIs of Fiji, Samoa and Tuvalu, held a side event at the 41st session of the UN Human Rights Council in Geneva to explore how Pacific culture and values could play a role in demystifying human rights in the region.⁶⁹ A 2013 discussion paper, Pathways for the Pacific: Regional Human Rights Mechanisms, noted the benefits of a regional human rights mechanism to support existing human rights initiatives in the region, such as: the steady increase in the number of ratifications of core human rights treaties and the reporting to treaty committees; the successful completion of two UPR rounds by all PICS; the increasing use of human rights standards in judgements by Pacific courts; and the increasing number of human rights-based Pacific non-governmental organisations (NGOs) that lobby and advocate for stronger human rights protection and observation by Pacific states.⁷⁰

Civil society and human rights defenders

Many PICs have vibrant civil societies with multiple NGOs working in a range of human rights areas. Those working in health and education often deliver services on behalf of governments. There are national women's councils, national youth councils affiliated with the Pacific Youth Council, and most countries have a recognised organisation of persons with disabilities (OPD) affiliated with the Pacific Disability Forum. These organisations have been effective in lobbying for ratification of the CRPD. When it comes to victims of family, gender-based and sexual violence, non-governmental, faith-based and civil society organisations (CSOs) are the main providers of counselling services, legal literacy, preliminary legal assistance and refuge for those who need to escape violent relationships. They have actively lobbied for, and raised awareness on, legislation relating to family violence protections. Most are members of the Pacific Women's Network Against Violence Against Women, a coordination mechanism working to eliminate sexual and gender-based violence around the region.

Human rights defenders in PICs have formed alliances but continue to face many challenges and have been threatened with harm, attacked and intimidated by authorities and the general public. In countries where mining is present, environmental activists reportedly face being harassed by the government and mining company officials and are censored when trying to raise environmental issues in the media.⁷¹ Other challenges include financial uncertainties and changes in donor funding and priorities. Training is provided by various regional agencies on key human rights issues and information on accessing international mechanisms. Many CSOs around the Pacific contribute to alternative reports under the UN human rights treaty system. Increasingly, some PIC governments coordinate with CSOs on human rights initiatives, although others maintain more uneasy or adversarial relationships.

⁶⁸ UN Human Rights South-East Asia Regional Office. <http://bangkok.ohchr.org/programme/regional-systems.aspx> (accessed 7 October 2019).

⁶⁹ Pacific Community 2019. <http://www.spc.int/updates/blog/2019/07/demystifying-human-rights-through-the-exploration-of-pacific-culture-and> (accessed 7 November 2019).

⁷⁰ Pacific Community 2013. Pathways for the Pacific: Regional Human Rights Mechanisms. Available at: <https://rrrt.spc.int/resources/publications/pathways-for-the-pacific-regional-human-rights-mechanisms> (accessed 10 June 2019).

⁷¹ Amnesty International 2019. <https://www.amnesty.org/en/latest/news/2019/05/portrait-of-an-activist-emmanuel-peni/> (accessed 7 November 2019).

PIFS annually hosts a CSO Regional Forum in the lead up to Forum meetings to discuss policy issues and provide governments and policy makers with evidence-based, collective positions on regional level policy.⁷² In 2014, the Civil Society Regional Forum recognised and agreed that a human rights-based approach should be adopted and integrated into all national and regional processes on all development, human rights, social justice, monetary financial and trade policy in the Pacific region. Further, the Pacific Islands Democratic Forum also has a CSO-government forum on the margins of the Forum Leaders' meeting. The OHCHR supports a regional human rights defenders network.

Freedom of information

Freedom of information (FOI) is not just about free speech or media freedom but also includes access by the public to government information and services as well as information held about individuals by government agencies. FOI can contribute to government openness and accountability, and help prevent and combat corruption, thereby enhancing good governance. FOI laws alone are not enough to achieve such goals, which also depend on broader elements of governance.⁷³

Access to government information has improved in some PICs but remains a challenge for others, in large part because of the lack of FOI laws or policies, weak communication infrastructure, or difficult bureaucratic processes. The constitutions of Palau (Article IV, s. 20), Fiji (Clause 17 [25]) and PNG (Clause 51) all protect the right to information. The Cook Islands was the first PIC to enact FOI legislation with its Official Information Act 2008. Tonga launched its Freedom of Information Policy in 2012, while Fiji's Information Act 2018 aims to increase transparency and accountability in the private and public sectors and establishes the Accountability and Transparency Commission. Palau has the Open Government Act 2014, while in 2019, Vanuatu passed the third and final order of the Right to Information Act, requiring all government agencies and relevant private entities to respond to public requests for information. In 2019, FSM, RMI, Kiribati, Nauru, PNG, Samoa, Solomon Islands, Tonga and Tuvalu still did not have stand-alone FOI legislation.

Women's rights and gender equality

Tonga and Palau are the only countries in the region not to have ratified CEDAW. Discrimination against women and gender inequality are regarded as the most prevalent and pressing social issue in the Pacific. Baseline studies for Fiji, Kiribati, Papua New Guinea, Solomon Islands, Samoa and Vanuatu reveal that over 60% of women in those countries have experienced physical or sexual violence, or both. These rates of violence against women are among the highest in the world.

Most countries now have legislation for the protection of women and children in violent situations in the household. However, despite there being domestic laws for the protection of women and children from violence and harm, there are societal elements that hinder women's development. Information in this report, including from Australia and New Zealand, reaffirm that harmful gender stereotypes continue to define what women should do and be, rather than recognising their individual rights as human beings. These stereotypes inform and reinforce formal and informal restrictions on women's active participation and involvement in all aspects of public and private life – from decision-making in the home to political representation, from having access to their earnings to owning land and businesses, and being able to trust the formal justice system.

As of April 2020, only 49 of 560 (8.8%) parliamentarians in Pacific Islands Forum member countries, excluding Australia and New Zealand, were women.⁷⁴ By comparison, the global average of all elected members on 1 May 2020 was 25% women.⁷⁵

72 Pacific Islands Forum Secretariat. <https://www.forumsec.org/2016/08/11/civil-society-discuss-priorities-ahead-of-pacific-islands-forum/> (accessed 7 November 2019).

73 UNESCO 2011. Freedom of Information: The Right to Know. Available at: <https://unesdoc.unesco.org/ark:/48223/pf0000193653> (accessed 10 November 2019).

74 Pacific Women in Politics. <https://www.pacwip.org/women-mps/national-women-mps/> (accessed 7 November 2019).

75 Op cit.



Samoa is the only PIC to introduce temporary special measures at the national level, reserving five seats (10%) for women, although in the past two elections, four of the five women won their seats in the elections proper.⁷⁶ Vanuatu maintains 30-34% reserved seats for women contesting municipal elections.

New Zealand has a female head of government, Jacinda Ardern. The first and only female head of state of any PIC was Dr Hilda Heine, the President of the Marshall Islands until early 2020, although in 2019, Tuvalu appointed Teniku Talesi as its first female Acting Governor-General. Samoa appointed Afioga Fiame Naomi Mataafa as its first female Deputy Prime Minister in March 2016, until 2020. In the Cook Islands, the Speaker of Parliament continues to be Niki Rattle. In Fiji, the late Dr Jiko Fatafehi Luveni remains the country's first and only female speaker (2014-18), while Ro Teimumu Vuikaba Kepa remains the only former female leader of the opposition, although Fiji has had two female Deputy Prime Ministers.

Several regional policies and actions have been taken to address the gaps facing the advancement of women's rights in the region, including the Pacific Leaders Gender Equality Declaration 2012,⁷⁷ which was reaffirmed by the Forum leaders in 2015 and is reported on annually at Pacific Islands Forum meetings. This declaration renewed the commitment of Pacific leaders to lift the status of women and empower them to be active participants in economic, political and social life. A trend assessment report in June 2016 found that since 2012, there had been greater efforts towards mainstreaming gender and eliminating violence against women.⁷⁸ A number of public service policies, programmes and activities have been rolled out to support women's leadership, economic empowerment and end violence against women. Implementation of the 10% reserved seats in parliament for Samoa was considered a significant national and regional milestone. In addition, there has been an increase in women reporting on domestic violence and accessing counselling services, and receiving government scholarships and senior level appointments to the public sector. However, despite these advances, the challenge of changing attitudes, behaviour and negative perceptions of women's and girls' roles in Pacific societies persists.

Children's rights

All PICs have ratified the CRC, although many are struggling with their reporting and implementation obligations. Three quarters of PICs have child protection legislation, either as a stand-alone law or within civil codes, and more than half have family protection or domestic violence legislation.⁷⁹ Food poverty is relatively low; however, the incidence of basic needs poverty varies considerably, with rates above 25% in three countries.⁸⁰ While child mortality rates have decreased steadily since 1990, the region as a whole fails to meet international development targets on neo-natal and under-5 child mortality. Good progress has been made in fighting vaccine-preventable diseases, but overall coverage rates remain low compared to global averages. Data from six PICs shows evidence that childhood stunting was a regional concern, affecting 18% of under-5-year-olds. Childhood wasting was less prevalent.⁸¹

PICs rely heavily on external donor funding and technical assistance to support education and in some countries insufficient funds are allocated towards developing the sector, or funds are not distributed to the parts of the system most in need of investment.⁸² A further issue is that although free education initiatives have been introduced by some PICs, access to schooling is lacking in remote areas, while school fees and hidden education costs, such as uniforms, textbooks and transport, hinder equal access in several PICs.⁸³

76 Pacific Women in Politics. <https://www.pacwip.org/country-profiles/samoa/> (accessed 28 August 2019).

77 Pacific Islands Forum Secretariat. <https://www.forumsec.org/pacific-leaders-gender-equality-declaration/> (accessed 2 December 2019).

78 Pacific Islands Forum Secretariat 2016. Pacific Leaders Gender Equality Declaration Trend Assessment Report 2012-2016. Available at: https://www.aidsdatahub.org/sites/default/files/publication/Pacific_Leaders_Gender_Equality_Declaration_2016.pdf

79 UNICEF 2017. Situation analysis of children in the Pacific Island countries. Available at: <https://www.unicef.org/pacificislands/reports/situation-analysis-children-pacific-island-countries>

80 Ibid.

81 Ibid.

82 Ibid.

83 Ibid.

Concerns over school dropout rates were reported in most countries, as was low coverage and low access to Early Childhood Education.⁸⁴

Data collected by UNICEF from 10 of the PICs indicate that around 25% of school children aged 13-15 years had attempted suicide in 2016-2017, which suggests that adolescent mental health is a significant concern. Just over half of children in the same age range had experienced bullying.⁸⁵ Corporal punishment in schools is prohibited in most countries, although data suggests that the practice continues.⁸⁶ Apart from violent discipline, other challenges to child protection in the region include sexual abuse, cyber safety and online bullying and exploitation.⁸⁷

Some PICs have achieved universal access to improved water sources, while others remain some way from achieving international development targets. Urban populations fair better than rural populations for access to improved drinking water. 2016 data from UNICEF's State of the World's Children reports suggests that an average of 75% of the PIC population uses improved sanitation facilities but there were large country disparities. Other UNICEF information suggests that, on average, only 23% of schools had improved sanitation facilities and 22% had no toilets at all.⁸⁸ When sanitation is compromised, growth stunting is more prevalent, vaccines are less effective, child mortality rates are higher, and children miss more school due to illness. Such issues cannot be addressed in isolation; the health and well-being of children must be addressed from every angle and at all levels of society.⁸⁹

Persons with disabilities

More work needs to be done in fulfilling the rights of persons with disabilities (PWD) in the region, although there was heightened awareness and political will in 2020. PIC leaders were reported to have strengthened their commitments to tackle barriers faced by PWD. The 2016-2025 Pacific Regional Framework for the Rights of Persons with Disabilities is viewed by the Pacific Disability Forum (PDF) as an important step forward. PIC governments also prioritised PWD in the 2017 Roadmap for Sustainable Development. PDF reported that commitments have begun to translate into greater efforts and progress in terms of awareness raising, legal harmonisation, data collection, inclusive education, vocational training and access to assistive devices, social protection, disaster risk reduction and humanitarian response. Engagement with OPDs was said to have significantly increased in many countries.⁹⁰ To date, 13 of the 16 PIF countries have ratified the CRPD. The Asia-Pacific region is home to an estimated 690 million persons with disabilities who face numerous barriers to their full participation in society.⁹¹ Access to education, employment, social protection and political participation can all be a challenge, and this directly affects their well-being, autonomy and dignity.⁹² No new regional estimates could be found.

Of concern to PDF is low domestic resource allocation for the inclusion of persons with disabilities, which is below 0.15% of the GDP for most countries, and a strong reliance on donor funding to invest in developing required disability-specific and disability inclusive services. Further, countries have not yet adopted a whole-of-government approach to inclusion.⁹³

⁸⁴ Ibid.

⁸⁵ Ibid.

⁸⁶ Ibid.

⁸⁷ UNICEF 2016. Looking back moving forward: A snapshot of UNICEF's work for Pacific Island children 2015-16. Available at: https://www.unicef.org/Look_Back_Moving_Forward_final_web.pdf

⁸⁸ UNICEF 2017. Situation analysis of children in the Pacific Island countries. Available at: <https://www.unicef.org/pacificislands/reports/situation-analysis-children-pacific-island-countries>

⁸⁹ Note. 71.

⁹⁰ Pacific Disability Forum 2018. Pacific Disability Forum SDG-CRPD Monitoring Report 2018, Executive Summary, From Recognition to Realisation of Rights: Furthering Effective Partnership for an Inclusive Pacific 2030. Available at: http://www.pacificdisability.org/What-We-Do/Research/FINAL_SDG-Report_Exec-Summary_2018.aspx (accessed 10 September 2019).

⁹¹ UN ESCAP 2018. Building Disability-Inclusive Societies in Asia and the Pacific. Available at: <https://www.unescap.org/sites/default/files/publications/SDD%20BDIS%20report%20A4%20v14-5-E.pdf> (accessed 7 December 2020).

⁹² Ibid.

⁹³ Note. 74.



Women and men with disabilities are known to be over-represented among the poor and have significantly fewer economic opportunities than persons without disabilities. Women with disabilities are more likely to experience violence and children with disabilities are less likely to benefit from education. Most countries do not yet have adequate support services and regulations in place to create a barrier-free environment.⁹⁴ According to PDF, PWD in the Pacific face entrenched cultural and physical barriers to full participation, along with exclusion from communities, education and the workplace.⁹⁵ In 2018, PDF and its members called on all countries to pursue their efforts to implement the CRPD and inclusive SDGs, in close cooperation with Disabled Person's Organisation (DPOs).⁹⁶

94 Ibid.

95 Pacific Disability Forum. <http://www.pacificdisability.org/About-Us/Disability-in-the-Pacific.aspx> (accessed 7 November 2019).

96 Note. 76.



COUNTRY CHAPTERS



COUNTRY CHAPTERS

AUSTRALIA

Australia

Key facts

Capital city	Canberra, Pop. 397,392 ⁹⁷	Total land area	7.68 million sq. km ⁹⁸
Population (year)	23,232,413 (July 2017 est.) ⁹⁹	Population growth % (year)	1.03% (2017 est.) ¹⁰⁰
GDP per capita (year)	USD 50,400 (2017 est.) ¹⁰¹	GNI per capita (Atlas method) (year)	USD 53,190 (2018) ¹⁰²
Type of government	Parliamentary democracy (Federal Parliament) under a constitutional monarchy (British monarch) represented by a Governor-General; a Commonwealth realm. ¹⁰³		
Electoral system	Proportional representation (Senate); preferential voting (House of Representatives) ¹⁰⁴		
Number of members of parliament (MPs): total/female (year)	Senate 76 seats (44 male/32 female); House of Representatives 151 seats (111 male/40 female). ¹⁰⁵ Ratio of women: 42% Senate; 26.5% House, over 31.7%.		
Religions: by % of population (year)	Protestant 23.1% (Anglican 13.3%, Uniting Church 3.7%, Presbyterian and Reformed 2.3%, Baptist 1.5%, Pentecostal 1.1%, Lutheran 0.7%, other Protestant 0.5%), Roman Catholic 22.6%, other Christian 4.2%, Muslim 2.6%, Buddhist 2.4%, Orthodox 2.3% (Eastern Orthodox 2.1%, Oriental Orthodox .2%), Hindu 1.9%, other 1.3%, none 30.1%, unspecified 9.6% (2016 est.) ¹⁰⁶		
Ethnic groups: by % of population (year)	English 25.9%, Australian 25.4%, Irish 7.5%, Scottish 6.4%, Italian 3.3%, German 3.2%, Chinese 3.1%, Indian 1.4%, Greek 1.4%, Dutch 1.2%, other 15.8% (includes Australian Aboriginal 0.5%), unspecified 5.4% (2011 est.) ¹⁰⁷		
Languages: by % of population (year)	English 76.8%, Mandarin 1.6%, Italian 1.4%, Arabic 1.3%, Greek 1.2%, Cantonese 1.2%, Vietnamese 1.1%, other 10.4%, unspecified 5% (2011 est.) ¹⁰⁸		
Life expectancy: male/female (year)	80m/85f (2016) ¹⁰⁹	% youth aged 15-24 years: total male/female (year)	12.79% (51.3%m/48.7%f) ¹¹⁰
% disability: total male/female (year)	18.3% (2015) ¹¹¹ (18%m/18.6%f) ¹¹²		

97 Index Mundi. https://www.indexmundi.com/australia/demographics_profile.html (accessed 1 June 2019).

98 CIA World Factbook. <https://www.cia.gov/library/publications/the-world-factbook/geos/as.html> (accessed 1 June 2019).

99 Australian Bureau of Statistics 2017. [http://www.censusdata.abs.gov.au/CensusOutput/copsub2016.nsf/All%20docs%20by%20catNo/Data-in-pictures/\\$FILE/australiaER.html](http://www.censusdata.abs.gov.au/CensusOutput/copsub2016.nsf/All%20docs%20by%20catNo/Data-in-pictures/$FILE/australiaER.html) (accessed 1 June 2019).

100 Index Mundi. https://www.indexmundi.com/australia/demographics_profile.html (accessed 1 June 2019).

101 CIA World Factbook. Note. 75.

102 World Bank. <https://data.worldbank.org/indicator/NY.GNP.PCAP.CD?locations=AU> (accessed 1 June 2019).

103 CIA World Factbook. Note. 75.

104 Ibid.

105 Parliament of Australia 2015. https://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/Parliamentary_Handbook/womennow/44th#Senators (accessed 1 June 2019).

106 Index Mundi. https://www.indexmundi.com/australia/demographics_profile.html (accessed 1 June 2019).

107 Ibid.

108 Ibid.

109 Australian Bureau of Statistics 2019. <https://www.abs.gov.au/AUSSTATS/abs@.nsf/mf/3105.0.65.001> (accessed 1 June 2019).

110 Index Mundi. https://www.indexmundi.com/australia/demographics_profile.html (accessed 1 June 2019).

111 Australian Bureau of Statistics 2018. [https://www.abs.gov.au/ausstats/abs@.nsf/Latestproducts/4431.0.55.002>Main%20Features62012%20-%202016?opendocument&tabname=Summary&prodno=4431.0.55.002&issue=2012%20-%202016&num=&view="](https://www.abs.gov.au/ausstats/abs@.nsf/Latestproducts/4431.0.55.002>Main%20Features62012%20-%202016?opendocument&tabname=Summary&prodno=4431.0.55.002&issue=2012%20-%202016&num=&view=) (accessed 2 June 2019).

112 Australian Bureau of Statistics 2016. <https://www.abs.gov.au/ausstats/abs@.nsf/Lookup/4430.0main+features202015> (accessed 2 June 2019).

International human rights treaty ratification and reporting obligations

Treaty	Date of signature (S) ratification (R) accession (a) ¹¹³	Reservations	Latest report submitted	Reporting status
ICESCR	10 December 1975 (R)		5 th period report 1 February 2016	6 th periodic report due 30 June 2022
ICCPR	13 August 1980 (R)	Art. 10(2)(a),(b) and (3); Art 14 para 6; Art 20 ¹¹⁴	6 th periodic report 2 May 2016 ¹¹⁵	7 th periodic report due 10 November 2023
ICERD	30 September 1975 (R)	Art 4(a)	Combined 18 th - 20 th periodic reports 2 February 2016	Combined 21 st and 22 nd periodic reports due 30 October 2020
CEDAW	28 July 1983 (R)	Art 11(2)	8th periodic report 8 December 2016 ¹¹⁶	9 th periodic report due July 2022
CAT	8 August 1989 (R)		6 th periodic report 16 January 2019	Still to appear before the committee
CRC	17 December 1990 (R)	Art 37(c)	Combined 5 th and 6 th periodic reports 15 January 2018	7 th periodic report due 15 January 2024
CRPD	17 July 2008 (R)		Combined 2 nd and 3 rd periodic reports 7 September 2018	Combined 4 th and 5 th periodic reports due 17 August 2026
ICCPR-OP1	25 Sept. 1991 (a)		N/A	
ICCPR-OP2	2 October 1990 (a)		N/A	
OP-CAT	15 Dec. 2017 (R)		N/A	
OP-CEDAW	4 Dec. 2008 (a)		N/A	
OP-CRC-AC	26 Sep. 2006 (R)		Initial report 25 June 2009	In future considered as part of the CRC review
OP-CRC-SC	8 January 2007 (R)		Initial report 25 June 2009	In future considered as part of the CRC review
OP-CRPD	21 August 2009 (a)		N/A	

¹¹³ A state party to a treaty is legally bound by the treaty once it ratifies the document. A signature does not create a binding legal obligation but demonstrates the state's intention to ratifying. It obliges a state to refrain from acts that would defeat or undermine the objective and purpose of the treaty.

¹¹⁴ Australia also made the following declaration upon its ratification of the International Covenant on Civil and Political Rights: 'Australia has a federal constitutional system in which legislative, executive and judicial powers are shared or distributed between the Commonwealth and the constituent states. The implementation of the treaty throughout Australia will be effected by the Commonwealth, state and territory authorities having regard to their respective constitutional powers and arrangements concerning their exercise.' See: https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-4&chapter=4&lang=en#EndDec

¹¹⁵ The State party had until 10 November 2019 to provide relevant information on its implementation of the Committee's recommendations made in paragraphs 34 (Non-refoulement), 36 (Offshore immigration processing facilities) and 38 (Mandatory immigration detention).

¹¹⁶ The State party was to provide by July 2020, written information on the steps taken to implement the recommendations contained in paragraphs 12 (b), 46 (b), 50 (a) and 54 (b).

Special Procedures:

Standing invitation issued: 7 August 2008.

Requests for visits have been accepted for the Special Rapporteurs on human rights and counter terrorism (2018); housing (2018); the Working Group on People of African Descent (2020); and the Working Group on Arbitrary Detention (postponed until 2020).

Country visits:

- Special Rapporteur on freedom of religion or belief: 1997
- Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance: 2001
- Working Group on Arbitrary Detention: 2002
- Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context: 2006
- Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health: 2009
- Special Rapporteur on the rights of indigenous peoples: 2009
- Independent Expert on the effects of foreign debt and other related international financial obligations of states on the full enjoyment of all human rights, particularly economic, social and cultural rights: 2011
- Special Rapporteur on trafficking in persons, especially women and children: 2011
- Special Rapporteur on the situation of human rights defenders: October 2016
- Special Rapporteur on the human rights of migrants: November 2016
- Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance: November/December 2016
- Special Rapporteur on violence against women: February 2017
- Special Rapporteur on indigenous peoples: April 2017

Universal Periodic Review: 1st cycle: January 2011; 2nd cycle: November 2015; 3rd cycle: January 2021.

International Criminal Court: (R) the Rome Statute on 1 July 2002.

Australia was elected to the UN Human Rights Council for the period 2018 - 2020.¹¹⁷

System of government

The Commonwealth of Australia is a parliamentary democracy under a constitutional monarchy with the British monarch as the head of state and the Prime Minister as head of government. The British monarch is represented

¹¹⁷ Department of Foreign Affairs and Trade. <https://dfat.gov.au/international-relations/international-organisations/un/unhrc-2018-2020/Pages/australias-membership-unhrc-2018-2020.aspx> (accessed 10 June 2019).

by a Governor-General who usually serves a five-year term.¹¹⁸ Australia has a democratic parliamentary system of government and a federal constitutional system in which legislative, executive and judicial powers are shared or distributed between federal institutions, six states and three self-governing territories.¹¹⁹ The Senate and the House of Representatives make up the bicameral parliament and the head of government is the Prime Minister who, by convention under the constitution, must be appointed by the Governor-General as the parliamentary leader of the party, or coalition of parties, that has a majority of seats in the House of Representatives. This majority party becomes the government and provides the ministers, all of whom must be elected members of parliament.¹²⁰

The states retain the power to make their own laws over matters not controlled by the Commonwealth under Section 51 of the Constitution. State governments also have their own constitutions as well as a structure of legislature, executive and judiciary.¹²¹ Federal elections are held every three years, most recently in May 2019, where all 151 seats in the House of Representatives (lower house) and 40 of the 76 seats in the Senate (upper house) were up for election. State senators are elected for a period of six years using a system of rotation that ensures only half the senators end their term every three years. Two territory senators are elected for a period of three years at the same time as the members of the House of Representatives and half of the Senate.¹²² State and territory elections are held every four years on dates determined by the State, based on the last election date.¹²³ Between 2017 and 2018, 15 MPs and senators across parties were removed from office for violating a constitutional rule that prohibits federal political candidates from being dual nationals, which temporarily destabilised Australian politics.¹²⁴

Overall, elected women make up 31.7% of parliament. The Senate has the higher ratio of women at 42%, with the House of Representatives at only 26.5%. The Australian electoral system does not provide quotas for women's representation, but the Labour Party has an affirmative action policy that sets a mandatory quota of 40% women to be pre-selected in winnable seats, rising to 45% in 2022 and 50% in 2025. The Liberal and the National Parties do not have gender quotas, but the Liberal Party has adopted a target of 50% female representation by 2025. In 2019, the Liberal National Coalition pre-selected only 27% women candidates.⁹¹¹⁴ The Green Party does not have a formal quota policy but has gender equality as a core principle, including in candidate selection.¹²⁵ In 2018, the CEDAW Committee repeated its recommendation to put into place temporary special measures to accelerate the equal participation of women in political and public life.¹²⁶ In 2019, the first Indigenous Australian was appointed to Cabinet as the Minister for Indigenous Australians.¹²⁷

Also in 2019, the first Indigenous woman was returned to Federal Parliament, having been first elected in 2016, and was the Shadow Minister for Indigenous Australians.¹²⁸

118 Parliamentary Education Office. <https://www.peo.gov.au/learning/fact-sheets/governor-general.html> (accessed 10 June 2019).

119 Department of Infrastructure, Transport, Cities and Regional Development. https://www.regional.gov.au/territories/jervis_bay/governanceadministration.aspx (accessed 10 June 2019).

120 Parliament of Australia. http://www.aph.gov.au/About_Parliament/Work_of_the_Parliament/Forming_and_Governing_a_Nation/parl

121 Australian Government. <https://www.australia.gov.au/about-government/how-government-works>

122 Parliamentary Education Office. <https://www.peo.gov.au/learning/fact-sheets/federal-elections.html>

123 Hawker Britton 2018. Forthcoming Australian and New Zealand Election Dates, January 2018. Available at: http://www.hawkerbritton.com/wordpress/wp-content/uploads/2018/01/Hawker-Britton_Forthcoming-Australian-and-New-Zealand-Election-Dates.pdf (accessed 10 June 2019).

124 BBC News 2018. <https://www.bbc.com/news/world-australia-44049929> (accessed 10 June 2019).

125 ABC News 2019. <https://www.abc.net.au/news/2019-05-01/vote-compass-election-women-quotas/11053956> (accessed 20 July 2019).

126 Pacific Women in Politics 2018. <https://www.pacwip.org/resources/news/tasmania-elects-majority-of-women-in-australia-state-first/> (accessed 2 June 2019).

127 CEDAW/C/AUS/CO/8. Available at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fAUS%2fCO%2f8&Lang=en

128 Australian Electoral Commission 2019. <https://www.aec.gov.au/indigenous/milestones.htm> (accessed 22 August 2019).

There are also seven offshore territories¹²⁹ administered by the Commonwealth which are situated across thousands of kilometres of ocean within the Pacific, Indian and Southern Oceans and the Coral Sea, extending from Antarctica almost to the equator.¹³⁰ One of these, Norfolk Island, was absorbed into the state of New South Wales in 2015 and the Norfolk Island Legislative Assembly was abolished. The Norfolk Island People for Democracy Inc. mounted opposition to the changes¹³² and lodged a petition with the UN Special Committee on Decolonization in April 2016 to include the island on its list of non-self-governing territories.¹³³ In March 2018, the group lodged a case¹³⁴ with the UN Human Rights Committee under the Optional Protocol to the ICCPR.¹³⁵ In December 2018, the group's lawyer was advised of registration of the case and that a copy of the communication would be sent to Australia, requesting any reply to be made to the Human Rights Committee within six months.¹³⁶ In 2019, Norfolk Islanders were awaiting notification of the arrival of a UN team to assess the situation.¹³⁷

Judicial system and administration of justice

The Attorney-General's Department has primary responsibility for supporting the Australian government in protecting and promoting the rule of law. The department acknowledges that everyone – including citizens and the government – is bound by and entitled to the benefit of laws that help ensure the Australian government is accountable for actions and protecting human rights.¹³⁸ All draft legislation must be accompanied by a Statement of Compatibility with Human Rights,¹³⁹ which is examined by the Parliamentary Joint Committee on Human Rights (PJCHR) and reported on to both Houses of Parliament.¹⁴⁰ However, the Human Rights Committee, in its November 2017 concluding observations on Australia's periodic report on the ICCPR, expressed concern that bills are sometimes passed into law before the conclusion of review by PJCHR and about reports questioning the quality of some statements of compatibility.¹⁴¹

In October 2018, the Special Rapporteur on privacy urged the government to drop proposed legislation that forces technology companies to help spy on citizens in various ways, including granting access to phones and other devices. The Telecommunications and Other Legislation Amendment (Assistance and Access) Bill 2018 was said to unduly undermine human rights and was out of step with international rulings.¹⁴² In July 2019, a Federal Court judge publicly criticised the Australian government for not complying with court orders and federal law. A 14 June judgement ordered the transfer of a refugee with medical and psychiatric issues to Australia under the medevac laws.¹⁴³

129 Creative Spirits 2019. <https://www.creativespirits.info/aboriginalculture/politics/aboriginal-politicians> (accessed 6 June 2019).

130 Ashmore and Cartier Islands; Australian Antarctic Territory; Christmas Island; Cocos (Keeling) Islands; Coral Sea Islands; Heard and McDonald Islands; and Norfolk Island.

131 Geoscience Australia. <http://www.ga.gov.au/scientific-topics/national-location-information/dimensions/remote-offshore-territories> (accessed 10 June 2019).

132 Radio New Zealand 2016. <https://www.rnz.co.nz/international/pacific-news/306686/norfolk-pleads-for-canberra-to-delay-nsw-absorption> (accessed 10 June 2019).

133 Norfolk Island People for Democracy . <https://www.norfolkschoice.com/final-decisions-adopted-by-the-human-rights-committee-to-be-made-public-norfolk-island-continues-to-wait-for-australias-response/> (accessed 26 September 2019).

134 Acknowledged and registered as No. 3274/2018.

135 Norfolk Island People for Democracy. Note. 105.

136 Op cit.

137 Australian Institute of International Affairs 2019. <http://www.internationalaffairs.org.au/resource/norfolk-islanders-take-bitter-independence-row-to-un/> (accessed 10 June 2019).

138 Attorney-General's Department. <https://www.ag.gov.au/about-us/what-we-do/rule-law> (accessed 10 June 2019).

139 Attorney-General's Department. <https://www.ag.gov.au/RightsAndProtections/HumanRights/Human-rights-scrutiny/Pages/Statements-of-Compatibility-Templates.aspx> (accessed 10 June 2019).

140 Parliament of Australia. https://www.aph.gov.au/parliamentary_business/committees/joint/human_rights

141 OHCHR 2017. CCPR/C/AUS/CO/6. https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR/C/AUS/CO/6&Lang=En

142 OHCHR 2018. <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=23734&LangID=E> (accessed 12 June 2019).

143 The Guardian 2019. <https://www.theguardian.com/australia-news/2019/jul/06/judge-accuses-australia-of-putting-relationship-with-nauru-before-the-law> (accessed 30 September 2019).



The transfer was being held up by the Nauruan government and the judge commented that the Australian government had only done what it was prepared to do rather than taking all the steps within its power. The judge ordered the Australian government to explicitly set out what steps it had taken to secure the man's transfer from Nauru, among others.¹⁴⁴

Access to justice and the right to remedy

The right to due process in Australia is generally respected. Defendants and detainees are presumed innocent until proven guilty and can only be held for 24 hours without being charged for a crime, with exceptions for terrorism cases.¹⁴⁵²⁹

The Australian government funds a range of legal assistance services to help disadvantaged people with legal issues, such as legal aid commissions, community legal centres and indigenous legal services.¹⁴⁶ In March 2017, LexisNexis Australia – an information analytics company focusing on the rule of law – expressed concern that an AUD 35 million reduction (30%) in Commonwealth funding would constrain the ability of these services to continue providing vital assistance, despite rising demand.¹⁴⁷

In 2017, the Human Rights Committee advised Australia to take robust measures to address the overrepresentation of Indigenous Australians in the prison system by identifying and revising regulations and policies leading to their high rates of incarceration, and by enhancing the use of non-custodial measures and diversion programmes. Australia was advised to give due consideration to the recommendations of the Australian Law Reform Commission's inquiry into the incarceration of Aboriginal and Torres Strait Islander peoples, and of the Royal Commission's inquiry into the Protection and Detention of Children in the Northern Territory.¹⁴⁸

The CAT Committee in 2017 followed up on concerns that mandatory sentencing continued to disproportionately affect Indigenous peoples and reports that legal assistance services were not adequately funded.¹⁴⁹ The CEDAW Committee in July 2018 expressed concern over budget cuts that limit access for women and girls to legal aid for employment litigation, welfare benefit litigation, and criminal and family law disputes. Amongst the committee's recommendations was a proposal to postpone the reorganisation of the family court system until after the Australian Law Reform Commission's review of the family law system was released in March 2019.¹⁵⁰

In September 2019, the Committee on the Rights of the Child expressed concerns about the administration of child justice and made recommendations, including explicitly prohibiting the use of isolation and force on children under supervision, and providing information to children in conflict with the law about their rights and how to report abuses.¹⁵¹

The Royal Commission into Institutional Responses to Child Sexual Abuse published its final report in December 2017, making 409 recommendations on improving laws, policies and practices to prevent and better respond to child sexual abuse in institutions.¹⁵² A national apology by the Prime Minister followed in October 2018, with the government committing to reporting annually on the implementation of recommendations until 2022 and conducting a 10-year review in 2027.¹⁵³

¹⁴⁴ Op cit.

¹⁴⁵ Freedom House 2018. Freedom in the World 2018. Available at: https://freedomhouse.org/sites/default/files/2020-02/FreedomintheWorld2018COMPLETEBOOK_0.pdf

¹⁴⁶ A/HRC/WG.6/23/AUS/1. Available at: <https://www.refworld.org/docid/58344d394.html>

¹⁴⁷ LexisNexis Australia 2017. <https://www.lexisnexis.com.au/en/insights-and-analysis/rule-of-law/2017/01mar2017-fund-equal-justice-challenges-facing-community-legal-centres> (accessed 13 June 2019).

¹⁴⁸ ICCPR Committee. Note. 118.

¹⁴⁹ Attorney-General's Department. <https://www.ag.gov.au/About/Pages/Ruleoflaw.aspx> (accessed 12 June 2019).

¹⁵⁰ CEDAW Committee. Note. 112.

¹⁵¹ CRC/C/AUS/CO/5-6. Available at https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2fc%2fAUS%2fCO%2f5-6&Lang=en

¹⁵² Australian Government Response. <https://www.childabuseroyalcommissionresponse.gov.au/about-the-royal-commission> (accessed 24 September 2019).

¹⁵³ Australian Government Response. <https://www.childabuseroyalcommissionresponse.gov.au/> (accessed 24 September 2019).

National Human Rights Institutions (NHRI)

The Australian Human Rights Commission Act 1986 established Australia's NHRI (AHRC), giving it a wide range of functions in relation to various international instruments to which Australia is a party. It is an independent statutory authority and enjoys A-status accreditation with GANHRI. The AHRC has special purpose commissioners for Aboriginal and Torres Strait Islander social justice, children, human rights, sex discrimination, disability discrimination, age discrimination and race discrimination. In 2019, the Aboriginal and Torres Strait Islander Social Justice Commissioner was working on constitutional reform to recognise Aboriginal and Torres Strait Islander people, indigenous health, and identifying key challenges, priorities and aspirations for women and girls and their communities.¹⁵⁴ The Age Discrimination Commissioner focusses on the rights of older workers, the blight of elder abuse, and the need to encourage innovative solutions to homelessness and the risk of homelessness amongst older Australians.¹⁵⁵

In November 2017, the ICCPR Committee expressed concern over reports of attempts by senior politicians to discredit the work of the AHRC in ways which might threaten its independence and high public esteem. Budget cuts to the AHRC were noted, and the committee welcomed assurance that such cuts were temporary.¹⁵⁶ The CEDAW Committee in July 2018 also expressed concern about past reductions in public financial resources allocated to the AHRC, making it dependent on the fundraising and support of private entities and thereby endangering its independence.¹⁵⁷ Further, in 2019 the Committee on the Rights of the Child recommended strengthening support to the AHRC for the implementation of the UN Guiding Principles on Business and Human Rights.¹⁵⁸

Security sector

The Australian Federal Police is the principal national law enforcement agency, and there are also state police forces. In April 2019, 6695 federal police staff (38% female) were spread across the country, including some in overseas missions and territories.¹⁵⁹ Australia's federal constitution does not protect fundamental human rights, nor does it regulate the use of force by the police; however, federal rules on police use of force generally comply with international standards.¹⁶⁰

The Professional Standards Unit is responsible for investigating allegations of excessive use of force resulting in serious harm, with the final outcome determined by an adjudication panel.¹⁶¹ Where a death results from police use of force, a coroner will investigate whether that force was lawful.¹⁶² The Human Rights Committee in 2017 expressed concern that the close relationship between police investigations and coroners may compromise the independence of coroners' investigations and called for all deaths in custody to be investigated in a fully independent and impartial manner.¹⁶³

In 2019, an Illicit Drug Data Report was released, compiling data from law enforcement agencies from 2017 to 2018.¹⁶⁴ The report revealed a record 30.6 tonnes of illicit drugs were seized nationally during that period, with an estimated street value of AUD 5 billion.¹⁶⁵ A corruption report in 2018 stated that the government has effective mechanisms in place to prevent and detect corruption in the police, and there are no reports of impunity.¹⁶⁶

¹⁵⁴ Australian Human Rights Commission. <https://www.humanrights.gov.au/our-work/aboriginal-and-torres-strait-islander-social-justice> (accessed 12 June 2019).

¹⁵⁵ Australian Human Rights Commission. <https://www.humanrights.gov.au/about/commissioners/age-discrimination-commissioner-hon-dr-kay-patterson-ao> (accessed 12 June 2019).

¹⁵⁶ ICCPR Committee. Note. 118.

¹⁵⁷ CEDAW Committee. Note. 112.

¹⁵⁸ CRC Committee. Note. 128.

¹⁵⁹ AFP. <https://www.afp.gov.au/news-media/facts-and-stats/afp-staff-statistics> (accessed 30 September 2019).

¹⁶⁰ The Law on Police Use of Force Worldwide. <https://www.policinglaw.info/country/australia> (accessed 30 September 2019).

¹⁶¹ Op cit.

¹⁶² Op cit.

¹⁶³ ICCPR Committee, Note. 118.

¹⁶⁴ News.com.au 2019. <https://www.news.com.au/lifestyle/health/health-problems/aussies-snort-more-than-four-tonnes-of-cocaine-every-year-a-new-report-has-revealed/news-story/fdd8d7d93b463727818cd1fac53ee1e9> (accessed 20 Oct. 2019).

¹⁶⁵ ABC News 2017. <https://www.abc.net.au/news/2017-08-10/police-bust-alleged-border-force-smuggling-ring/8793626> (accessed 20 October 2019).

¹⁶⁶ GAN Business Anti-Corruption Portal 2018. <https://www.ganintegrity.com/portal/country-profiles/au>

The Human Rights Committee in 2017 expressed concern about the necessity and proportionality of certain counterterrorism powers of the federal police, including: control orders; stop, search and seizure powers; questioning and detention warrants; preventative and post-sentence detention order regimes; offences relating to declared areas; and revocation of citizenship.¹⁶⁷ The committee welcomed the mandate of the Independent National Security Legislation Monitor (INSLM) to review the counterterrorism legislation but was concerned that Australia did not act promptly on some past recommendations and had instead reauthorized measures such as control orders and preventative detention orders, and as a result, referred them to a new round of reviews by the INSLM and the Parliamentary Joint Committee on Intelligence and Security.¹⁶⁸

The Australian Defence Force, made up of Army, Navy and Air Force Services, is responsible for defending Australia and its national interests, and is accountable to the Commonwealth Parliament through the government of the day.¹⁶⁹ The CEDAW Committee welcomed ongoing consultations with CSOs to develop a second national action plan on women, peace and security, due for completion by the end of 2019. However, it expressed concern over plans by Australia to become one of the world's top 10 exporters of military hardware, possibly contradicting its engagement in the implementation of Security Council Resolution 1325 (2000) and subsequent resolutions on women, peace and security.¹⁷⁰ An internal investigation into military misconduct in Afghanistan by members of the Australian Defence Force was released in November 2020, prompting the Chief of the ADF to deplore a "destructive" culture of impunity among special forces leading to alleged murders of civilians and other abuses, including cover-ups spanning years.¹⁷¹ The Australian Government has since announced that charges would be brought against alleged perpetrators and other reforms would be undertaken.

Migration and Asylum

Australia's policy of mandatory detention and offshore processing of asylum seekers has been controversial since its introduction in 2013. Memoranda of understanding with PNG and Nauru provided for offshore processing for all asylum seekers irregularly arriving into Australia. Significant concerns have been raised domestically and internationally since then about detention facilities.¹⁷² Australia's obligations under the 1951 Convention relating to the Status of Refugees were originally incorporated into the Migration Act of 1958, which contains the overarching provisions relating to the granting of visas to noncitizens of Australia.¹⁷³ The Migration Regulations 1994 set out further rules for different "classes" and "subclasses" of visas.¹⁷⁴ All noncitizens who enter Australia without a valid visa, or who remain in Australia after their visa has expired or is cancelled, are classified by law as "unlawful non-citizens". Unlawful noncitizens are subject to mandatory immigration detention. A person may be held in detention until her or she is granted a visa or is deported. There is no limit to the length of time that a person may be held in immigration detention.¹⁷⁵

In February 2016, the High Court of Australia ruled that offshore detention processing was lawful under Australian domestic law.¹⁷⁶ In April 2016, the PNG Supreme Court found that detention of refugees and asylum seekers in its Australian-funded processing centres was unconstitutional because it deprived the right to liberty.¹⁷⁷

¹⁶⁷ ICCPR Committee. Note. 118.

¹⁶⁸ Ibid.

¹⁶⁹ Department of Defence. <https://www.defence.gov.au/AboutUs.asp> (accessed 30 September 2019).

¹⁷⁰ CEDAW Committee. Note. 112.

¹⁷¹ CBS News 2020. <https://www.cbsnews.com/news/australia-special-forces-afghanistan-unlawfully-killed-39-civilians-military-chief-says-war-crimes/>

¹⁷² Parliament of Australia 2015. Available at: https://www.aph.gov.au/parliamentary_business/committees/senate/regional_processing_nauru/regional_processing_nauru/final_report (accessed 30 September 2019).

¹⁷³ Migration Act 1958, Division 3.

¹⁷⁴ Migration Regulations 1994, Part 2.

¹⁷⁵ Migration Act 1958, Division 7.

¹⁷⁶ Library of Congress. <https://www.loc.gov/law/foreign-news/article/australianauru-high-court-rules-offshore-detention-of-asylum-seekers-is-lawful/> (accessed 30 September 2019).

¹⁷⁷ Alternative Law Journal. <https://www.altj.org/news-and-views/downunderallover/duao-vol-41-2/1037-implications-of-the-png-supreme-court-decision-on-offshore-detention> (accessed 30 September 2019).

In 2017, the Manus Island detention centre was closed, prompting a three-week standoff before the men there were forcibly moved into alternative accommodation in the township, with food and security services, but a lower level of access to health services.¹⁷⁸

In April 2017, an Australian Senate Committee report described numerous allegations of physical and sexual abuse, self-harm and neglect of refugees and asylum seekers in offshore refugee processing centres in Nauru and PNG. The legal framework for processing asylum seekers in Nauru and Papua New Guinea replicates Australian law and the Refugee Convention in part, however, each country has signed different international human rights treaties and has different processes of assessing ‘complementary protection’. Both Nauru and Papua New Guinea have limited experience in receiving refugees and undertaking proper procedures to process them.¹⁷⁹ The committee found that the main contributing factors were a harmful living environment, uncertainty about the future, an inadequate regulatory framework (including child protection policies), a lack of transparency in operations affecting refugees, and a failure to hold authorities accountable for abuses.¹⁸⁰

By March 2019, all remaining refugees and asylum seekers on Nauru had moved out of the detention centre and were living in the community.¹⁸¹ US resettlement of refugees from PNG and Nauru commenced towards the end of 2017, resulting from an agreement in September 2016 between the Australian and US governments.¹⁸² The US initially offered to take up to 1200 people assessed as refugees by the PNG Foreign Minister and the Nauruan government. However, the arrangement was placed on hold when the US government changed in November 2016, resuming in September 2017.¹⁸³ In February 2019, the last four refugee children on Nauru left for resettlement in the US, among a group of 19 people.¹⁸⁴ As at 22 August 2019, a total of 619 refugees had departed for the US¹⁸⁵ and around the same time, there were about 300 refugees and asylum seekers on Nauru and 350 in PNG. UNHCR has in the past expressed grave concern for people on Nauru and Manus who have not been found to be refugees but who nevertheless remain vulnerable.¹⁸⁶ OHCHR has also expressed concern to the Australian government about the low level of health care available, especially for mental health issues, and called for urgent action.¹⁸⁷

In Australia, the alternative to refugee protection under international human rights law is referred to as ‘complementary protection’.¹⁸⁸ To enjoy Australia’s complementary protection obligations, one must first apply for protection under the refugee mechanisms. A person who enters Australia without a valid visa is entitled to much narrower legal protections. Such migrants typically enter Australia by boat and are referred to as ‘unauthorised maritime arrivals’.¹⁸⁹

The Department of Home Affairs is responsible for immigration, citizenship and multicultural affairs, domestic and national security arrangements, law enforcement, emergency management, counter-terrorism, social cohesion, the protection of sovereignty, the integrity of Australia’s borders, and the resilience of its national infrastructure.¹⁹⁰

¹⁷⁸ The Guardian 2019. <https://www.theguardian.com/australia-news/2019/may/31/where-does-the-coalitions-re-election-leave-refugees-on-manus-and-nauru> (accessed 30 September 2019).

¹⁷⁹ McAdam J. and Chong F. 2014. *Refugees: why seeking asylum is legal and Australia’s policies are not*. Sydney, Australia: UNSW Press

¹⁸⁰ Amnesty International 2018. *The State of the World’s Human Rights*. Available at: <https://www.amnesty.org/en/documents/pol10/6700/2018/en/>

¹⁸¹ CNN 2019. <https://edition.cnn.com/2019/04/18/australia/nauru-former-president-intl/index.html> (accessed 15 Oct. 2019).

¹⁸² The Guardian 2018. <https://www.theguardian.com/australia-news/2018/nov/18/us-believed-australia-would-take-more-refugees-in-exchange-for-nauru-and-manus-deal> (accessed 30 September 2019).

¹⁸³ Kaldor Centre 2019. <https://www.kaldorcentre.unsw.edu.au/publication/australia%20%93united-states-resettlement-arrangement> (accessed 10 October 2019).

¹⁸⁴ The Guardian 2019. <https://www.theguardian.com/world/2019/feb/28/last-four-refugee-children-leave-nauru-for-resettlement-in-us> (accessed 15 October 2019).

¹⁸⁵ Kaldor Centre. Note. 156.

¹⁸⁶ Op cit.

¹⁸⁷ OHCHR 2019. <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=24709&LangID=E> (accessed 10 October 2019).

¹⁸⁸ Migration Amendment (Complementary Protection) Act 2011.

¹⁸⁹ Migration Act s 5AA.

¹⁹⁰ Department of Home Affairs 2019. Annual Report 2018-19. Available at: <https://www.homeaffairs.gov.au/reports-and-pubs/Annualreports/home-affairs-annual-report-2018-19.pdf>

The Department of Immigration and Border Protection oversees the initial assessment and interviews of migrants as well as the assessment against health and character requirements. Applicants must provide a detailed written statement about why they fear remaining in their home country. In addition to being assessed against the relevant criteria for the different visa subclasses, all Australian permanent residence visas have health and character requirements, as well as public interest criteria.¹⁹¹ The 2016 census recorded 28.2% of the resident population as being born overseas.¹⁹²

In 2018-19, the department updated the occupation lists for skilled migration, reflecting government priorities to better target occupations and delivering overseas workers to occupations with identified skill shortages. During the 2018 calendar year, the Continuous Survey of Australia's Migrants found that 77.5% of surveyed migrants were employed at the 18-month stage of settlement.¹⁹³ At 31 August 2019, there were 1339 people, including 1264 men, 72 women and 3 children, being held in immigration detention facilities in various parts of Australia. Countries of origin were Iran, New Zealand, Vietnam, Sri Lanka and Sudan.¹⁹⁴

Like most countries, Australia deports non-citizens who come into conflict with the law. Tension has been emerging between the Australian and New Zealand governments since deportation legislation changes were introduced in 2014, which has resulted in the deportation of New Zealand citizens on character grounds.¹⁹⁵ New Zealanders who stay in Australia to appeal their deportation are placed in immigration detention and some have been held in the offshore Christmas Island detention centre.¹⁹⁶

Many people deported from Australia under the character test rule arrived in Australia as children, have spent very little time in New Zealand, and are said to have experienced significant trauma because of the deportation process and grief from the loss of contact with children and other loved ones in Australia.¹⁹⁷ An estimated 1800 people have been deported to New Zealand since 2015.¹⁹⁸ Additionally, New Zealand's offer to resettle 150 refugees imprisoned in Australia's offshore detention centre in Nauru has been refused a number of times, reportedly because of Australia's concern that refugees could eventually use reciprocal visa-free access as a backdoor to Australian residency.¹⁹⁹

The CRPD Committee in 2019 expressed concern about the situation of migrant, refugee and asylum seeking children with disabilities being kept in detention facilities in Australia and offshore, and recommended that Australia review and amend its migration laws and policies to ensure that persons with disabilities do not face current discriminations and to allow migrants to more easily access the Age Support Pension and the Disability Support Pension.²⁰⁰ The Committee on the Rights of the Child in 2019 made numerous recommendations on migrant children, including amending the Immigration (Guardianship of Children) Act 1946 to create an independent guardian for children and amending the Migration Act to prohibit the detention of children.²⁰¹

¹⁹¹ Migration Act 1958, Division 7.

¹⁹² Parliament of Australia. https://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/BriefingBook45p/MigrationFlows (accessed 30 September 2019).

¹⁹³ Ibid.

¹⁹⁴ Department of Home Affairs 2019. Immigration, detention and community statistics summary. Available at: <https://www.homeaffairs.gov.au/research-and-stats/files/immigration-detention-statistics-31-august-2019.pdf> (accessed 24 October 2019).

¹⁹⁵ New Zealand Herald 2019. https://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=12252700 (accessed 25 October 2019).

¹⁹⁶ TV One News 2018. <https://www.tvnz.co.nz/one-news/new-zealand/australian-government-finally-reveals-number-kiwis-locked-up-christmas-island-detention-centre> (accessed 24 October 2019).

¹⁹⁷ Op cit.

¹⁹⁸ News Hub 2019. <https://www.newshub.co.nz/home/new-zealand/2019/06/exclusive-kiwi-mistakenly-deported-by-australia-speaks-out.html> (accessed 24 October 2019).

¹⁹⁹ Stuff 2018. <https://www.stuff.co.nz/national/politics/106816490/winston-peters-suggests-closing-backdoor-to-australia-for-nauru-refugees> (accessed 24 October 2019).

²⁰⁰ CRPD/C/AUS/CO/2-3. Available at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRPD%2fC%2fAUS%2fCO%2f2-3&Lang=en

²⁰¹ CRC Committee. 128.

Human Trafficking, Forced Labour, and Contemporary Forms of Slavery

Australia and Indonesia have co-chaired the Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Crime (the Bali Process) since it was established in 2002. Australia and Indonesia also co-chair the Working Group on Trafficking in Persons.²⁰² The Australian Modern Slavery Act 2018 represents an important advancement for business and human rights, both regionally and further afield, requiring more than 3000 businesses and other entities to publish annual statements on actions to address modern slavery in their operations and supply chains on a government-administered public register.²⁰³

Globally, every year thousands of men, women and children fall into the hands of traffickers, both in their own countries and abroad.²⁰⁴ There are women from Asia and, to a lesser extent, Eastern Europe and Africa, who migrate to Australia to work legally or illegally in a number of sectors, including commercial sex, and some of these women are compelled to enter or remain in prostitution in both legal and illegal brothels, parlours and private apartments. Some have reportedly been held in captivity, subjected to physical and sexual violence and intimidation, manipulated through illegal drugs, and forced to pay off unexpected or inflated debts. There are also women who migrate to Australia for arranged or forced marriages and are exploited by their husbands or families into domestic servitude.²⁰⁵ An investigation by the Fair Work Ombudsman found some fraudulent foreign contracting companies exploited farm workers in bonded labour. Exploitation in the fruit picking industry – in which many Pacific Islanders are employed through temporary migrant worker schemes – has also been reported.²⁰⁶

Under the US State Department's ranking, Australia is ranked as a Tier 1 country in 2020 as it fully meets the minimum standards for the elimination of trafficking.²⁰⁷ However, the government reportedly did not convict any traffickers, initiated fewer prosecutions, did not adequately screen for indicators of trafficking among vulnerable groups, and limited some victims' access to services based on their participation in law enforcement investigations.²⁰⁸ In 2018, the government prosecuted 11 defendants for allegedly travelling overseas to engage in child sex tourism but did not report any convictions. In 2019, the government referred 213 suspected cases of trafficking for investigation, an increase compared to 179 in 2018 and 166 in 2017.²⁰⁹

Authorities often opted to pursue labour or employment violations in lieu of trafficking charges, resulting in potential labour traffickers receiving only fines and other civil penalties that are inadequate to deter trafficking crimes.²¹⁰ There were no investigations, prosecutions, or convictions of government officials complicit in trafficking offences; however, government-funded and facilitated training was provided on trafficking investigations, legal provisions, and victim support for more than 400 Australian Federal Police officers and 380 immigration officials. The government also updated its Victims of Crime Manual, including providing guidance on working with child victims and more comprehensive information on victim impact statements in sentencing proceedings.²¹¹

The CEDAW Committee in 2018 welcomed Australia's leadership in the Bali Process but expressed concern about the lack of a gender perspective in the reports issued by the Australian Interdepartmental Committee on Human Trafficking and Slavery, amongst other issues.

²⁰² IOM UN Migration. Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Crime. Available at: <https://www.iom.int/bali-process> (accessed: 27 November 2020).

²⁰³ Business and Human Rights Resource Centre. Reflections on the Australian Modern Slavery Act and Beyond. Available at: [https://www.business-humanrights.org/en/blog/?opinion_series=11&backdate_after=&backdate_before=&query="](https://www.business-humanrights.org/en/blog/?opinion_series=11&backdate_after=&backdate_before=&query=) (accessed 7 December 2020).

²⁰⁴ UNODC. <https://www.unodc.org/unodc/en/human-trafficking/what-is-human-trafficking.html> (accessed 7 December 2020).

²⁰⁵ Op cit.

²⁰⁶ Op cit.

²⁰⁷ Ibid.

²⁰⁸ Op cit.

²⁰⁹ Ibid.

²¹⁰ Ibid.

²¹¹ US Department of State (2019). Trafficking in Persons Report: Australia. Available at: <https://www.state.gov/reports/2019-trafficking-in-persons-report-2/australia/> (accessed 27 November 2020).



The committee recommended the government integrate the Office for Women into its Interdepartmental Committee and ensure that it issues gender-sensitive recommendations.²¹² The Committee on the Rights of the Child in 2019 welcomed the establishment of the Australian Centre to Counter Child Exploitation in March 2018 but urged Australia to define and criminalise child prostitution and child pornography, and harmonise legislation across its states and territories, among other recommendations.²¹³

Civil society and human rights defenders

Australia has over 300,000 non-governmental, non-profit organisations operating in the areas of social services, health, education and the environment.²¹⁴

NGOs and CSOs are highly influential in the area of health, and organisations such as the Heart Foundation and the Cancer Council play major roles in promoting scientific research and healthy lifestyles and influencing government policy.²¹⁵ Various environmental international and local NGOs also operate, including the Climate Action Network of Australia, a coalition of more than 360 NGOs and CSOs.²¹⁶ Around 40 international NGOs have accreditation.²¹⁷ Organisations are generally free to form, function, and receive funding.

The CEDAW Committee in 2018 welcomed the establishment of the Office of the eSafety Commissioner to ensure online safety for users; however, concerns were expressed over a number of civil society-related issues, including: provisions in the National Partnership Agreement on Legal Assistance Services that restrict the ability of civil society organisations to advocate for women's rights; the risk that the ongoing review of the electoral legislation amendment bill would place further restrictions on the freedom of expression of civil society organisations; and online harassment and abuse of women advocating for women's rights.²¹⁸ In 2019, the Committee on the Rights of Child recommended strengthened support to Aboriginal and Torres Strait Islander organisations and the prioritisation of these groups as service providers, in addition to increasing support to organisations working with asylum seeking, refugee and migrant children as well as those working on climate change and environmental issues.²¹⁹

Domestic law and human rights

Human rights are enshrined in common law, which has developed principles of statutory interpretation to protect human rights.²²⁰ Mechanisms exist at the federal, state and territory levels which aim to ensure that governments act in accordance with Australia's international obligations.²²¹ Recent laws with human rights implications include:

- Modern Slavery Act 2019, which requires certain large businesses and other entities in Australia to make annual public reports on their actions to address modern slavery risks in their operations and supply chains.²²²
- Youth Justice Legislation Amendment Act 2018 in the Northern Territory to address the findings of the Royal Commission into the Protection and Detention of Children.²²³

²¹² CEDAW Committee. Note. 112.

²¹³ CRC Committee. Note. 128.

²¹⁴ Commonwealth Network. http://www.commonwealthofnations.org/sectors-australia/civil_society/ (accessed 10 October 2019).

²¹⁵ Op cit.

²¹⁶ Op cit.

²¹⁷ Op cit.

²¹⁸ CEDAW Committee. Note. 112.

²¹⁹ CRC Committee. Note. 128.

²²⁰ A/HRC/WG.6/23/AUS/1. Available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G15/175/09/PDF/G1517509.pdf?OpenElement>

²²¹ Op cit.

²²² Parliament of Australia. https://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bld=r6148

²²³ CAT/C/AUS/6. Available at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CAT%2fC%2fAUS%2f6&Lang=en

- National Redress Scheme for Institutional Child Sexual Abuse Act 2018 to recognise and alleviate the impact of past institutional child sexual and related abuse, and to provide justice for the survivors of that abuse.²²⁴
- Aged Care Quality and Safety Commission Act 2018, which establishes a regulatory framework for the well-being and quality of life of aged care consumers.²²⁵
- Assistance and Access Act 2018, requiring technology companies to provide law enforcement agencies with access to encrypted communications on grounds that include preventing terrorism and crime, which has been criticised by rights groups due to the law's broad reach and relative lack of oversight.²²⁶
- Telecommunications (Interception and Access) Amendment (Data Retention) Act 2017, which requires telecommunications companies to store users' metadata for two years for access by government security agencies. Some experts have warned of the potential for data breaches and have argued that the law undermines civil liberties.²²⁷

In 2019, the Australian Human Rights Commission released a discussion paper on priorities for federal discrimination law reform as part of a national conversation on human rights in order to identify reform proposals to better protect human rights in Australia.²²⁸

Human rights policies

The Australian Human Rights Commission conducted research in 2018 identifying priorities for federal discrimination law reform, implementation of human rights through law, policy and practice, human rights education, and national accountability frameworks for human rights.²²⁹ The Child Safeguarding Framework, launched on 17 October 2017, is proposed as the blueprint for continuing to build and strengthen policies, processes and systems to protect children in the delivery of immigration programs to maintain a child's safety and well-being.²³⁰ Additionally, the National Framework for Protecting Australia's Children 2009 - 2020 is in place, aimed at enabling women and children experiencing domestic and family violence to remain at home safely.

The Multicultural Access and Equity Policy acknowledges that to properly serve Australia's multicultural society, government departments and agencies have an obligation to ensure programmes and services are accessible to all eligible Australians and deliver equitable outcomes for them, regardless of their cultural or linguistic backgrounds.²³¹ The CERD Committee in 2017 urged Australia to reconsider the anti-terrorism and national security clauses of the multicultural policy as they may lead to practices prohibited under the convention, such as ethnic and racial profiling by law enforcement officers and agencies.²³² Also in 2017, the Towards 2025 strategy commenced, aimed at boosting the participation of women in the workforce, and the National Plan to Reduce Violence against Women and their Children (2010 - 2022) was being delivered through its third three-year action plan (2016 - 2019).²³³

224 Federal Register of Legislation. <https://www.legislation.gov.au/Details/C2018A00045> (accessed 20 October 2019).

225 Federal Register of Legislation. <https://www.legislation.gov.au/Details/C2018A00149> (accessed 20 October 2019).

226 Freedom House. Freedom in the World 2018. Note.122.

227 Ibid.

228 Australian Human Rights Commission. Available at: https://www.humanrights.gov.au/sites/default/files/document/publication/ahrc_discrimination_law_reform_2019.pdf (accessed 25 October 2019).

229 Australian Human Rights Commission Annual Report 2018-19. Available at: <https://www.humanrights.gov.au/our-work/commission-general/publications/annual-report-2018-2019> (accessed 18 October 2019).

230 CAT/C/AUS/6. Note 191.

231 CCPR/C/AUS/6. Note. 118.

232 CERD/C/AUS/CO/18-20. Available at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CERD%2fC%2fAU_S%2fCO%2f18-20&Lang=en

233 CEDAW/C/AUS/CO/8. Note. 112.

Right to life, liberty and security of person

Australia has a high rate of violence against women, with intimate partner violence accounting for 10.9% of the disease burden amongst Indigenous women aged 18 to 44 years – a rate of burden more than six times higher than amongst non-Indigenous women.²³⁴

The government ratified OP-CAT in December 2017 and announced the Office of the Commonwealth Ombudsman as the National Preventive Mechanism (NPM) Coordinator. The Office is responsible for facilitating and coordinating the Commonwealth, State and Territory NPMs.²³⁵ The Office was also designated as the NPM for inspecting places of detention under the control of the Commonwealth, including defence detention facilities, immigration detention facilities and Australian Federal Police cells.²³⁶

In 2017, the Human Rights Committee expressed concern over reports of prison overcrowding, inadequate mental healthcare facilities, solitary confinement and routine strip searches in places of detention, and recommended Australia ensure that persons deprived of liberty are treated with humanity and with respect for the inherent dignity of the human person.²³⁷ In 2018, the CEDAW Committee recommended implementation of the 2017 Australian Law Reform Commission report entitled Pathways to Justice: Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples and the 2014 Productivity Commission report on its inquiry into access to justice arrangements.²³⁸ In 2019, the Committee on the Rights of the Child raised concern over the excessive reliance on police interference in the criminal justice system when dealing with children's behavioural problems, without ensuring appropriate therapeutic services intervention.²³⁹

Equality and non-discrimination

Men and women have the same legal rights, and discrimination based on sexual orientation or gender identity is prohibited; however, in practice, women and the lesbian, gay, bisexual, and transgender populations experience employment discrimination and occasional harassment.²⁴⁰ In 2017, Parliament legalised same-sex marriage following a nationwide, non-binding postal survey in which more than 60% of participants favoured legalisation.²⁴¹ In July 2019, the Minister for Indigenous Australians announced that a proposal for Indigenous constitutional recognition would be put to a referendum.²⁴² The overrepresentation of Aboriginal and Torres Strait Islander peoples as both victims and offenders in the criminal justice system remains one of the most glaring disparities between Aboriginal and Torres Strait Islander Australians and non-Indigenous Australians, and that people with disabilities have higher rates of interaction with the criminal justice system than other Australians.²⁴³

In 2017, the CERD Committee expressed concern that protection against racial discrimination is still not guaranteed by the constitution and that Sections 25 and 51 (xxvi) of the Constitution in themselves raise issues of racial discrimination. While noting the existence of anti-discrimination legal provisions at state level, the committee remained concerned about the convention not being fully incorporated into domestic legal order and the inconsistency of anti-discrimination legislation across Australian states. The committee was also concerned that the Racial Discrimination Act 1975 does not have primacy over other legislation and includes a provision on special measures that is not in compliance with the convention.²⁴⁴

²³⁴ Australian Human Rights Commission. Violence against women in Australia (2017). Available at: <https://humanrights.gov.au/our-work/legal-submission/violence-against-women-australia-2017> (accessed 7 December 2020).

²³⁵ Commonwealth Ombudsman. <https://www.ombudsman.gov.au/what-we-do/monitoring-places-of-detention-opcat> (accessed 20 October 2019).

²³⁶ Op cit.

²³⁷ ICCPR/C/AUS/6. Note. 118.

²³⁸ CEDAW/C/AUS/CO/8. Note. 112.

²³⁹ CRC/C/AUS/CO/5-6. Note. 128.

²⁴⁰ Freedom House. Freedom in the World 2018. Note. 122.

²⁴¹ Ibid.

²⁴² ABC News 2019. <https://www.abc.net.au/news/2019-07-10/indigenous-constitutional-recognition-to-go-to-referendum-wyatt/11294478>

²⁴³ Australian Human Rights Commission 2016. Submission to the UN Committee Against Torture under the Convention Against Torture. Available at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2fCAT%2fIIR%2fAUS%2f24538&Lang=en (accessed 7 December 2020).

²⁴⁴ CERD/C/AUS/CO/18-20. Note. 200.

The Human Rights Committee in 2017 continued to be concerned about the high standard of proof required to demonstrate ongoing connection with the land under the Native Title Act 1993 and about extreme difficulties in obtaining compensation under the current native title scheme for those people who have had their native title extinguished. Australia was advised to remove the barriers to the full protection of Indigenous land rights and to establish a national reparation mechanism for victims of the so-called stolen generation.²⁴⁵ In 2019, an Indigenous leader announced that his community would be taking legal action against the Commonwealth, seeking compensation for the loss of native title over minerals exploited by mine operators and the destruction of key sacred sites.²⁴⁶

Freedom of information

The right to privacy is not referred to in the Australian Constitution. The Privacy Act 1988 aims to promote the protection of the privacy of individuals in a manner that is balanced with the interests of entities in carrying out their functions or activities. Privacy protection is primarily based around the Australian Privacy Principles.²⁴⁷ The Australian Information Commissioner is the main privacy authority. The Privacy Act applies to a wide range of both private organisations and government agencies.²⁴⁸

An agency must use lawful and fair means to collect private information; however, there is provision to collect personal information from someone other than the individual if there is consent, if it is required or authorised by a law, or if it is unreasonable or impracticable to do so.²⁴⁹ Any other agency, body or person to whom the agency might usually disclose this type of personal information, including any overseas recipients, must be notified to the individual before, during or as soon as practicable after, the collection of the personal information.²⁵⁰ Information that is collected for a particular primary purpose cannot be used or disclosed for another secondary purpose unless there is consent from an individual or there are exceptional circumstances including that the use or disclosure of the information is necessary for one or more enforcement related activities conducted by, or on behalf of, an enforcement body.²⁵¹

Agencies must take reasonable steps to ensure that the personal information collected, used and disclosed is accurate, up-to-date, complete and relevant, and must give access to the personal information held by the agency about the individual on request; however, the agency can refuse access under the Freedom of Information Act 1982 or other relevant law.²⁵² The agency must take reasonable steps to correct personal information upon a request by an individual.²⁵³ If the agency no longer needs the information for the purpose for which it was collected, the information must be destroyed or de-identified, unless required by an Australian law or court order to retain the information.²⁵⁴ The agency must also take reasonable steps to protect personal information from misuse, interference, loss, and unauthorised access, modification or disclosure.²⁵⁵

Freedom of expression, association and peaceful assembly

The constitution explicitly prohibits laws that would either impose or restrict religious expression, and individuals are generally able to express religious beliefs or non-belief.²⁵⁶ Freedom of expression concerns have been rising due to new legislation providing law enforcement agencies with access to technology-based communications of individuals on grounds that include preventing terrorism and crime.²⁵⁷

245 ICCPR/C/AUS/6. Note. 118.

246 The Guardian 2019. https://www.theguardian.com/australia-news/2019/aug/04/australia-to-be-sued-over-mining-projects-unmerciful-destruction-of-indigenous-land?CMP=Share_iOSApp_Other (accessed 20 October 2019).

247 Office of the Australian Information Commissioner 2019. <https://www.oaic.gov.au/privacy-law/privacy-act/australian-privacy-principles> (accessed 10 September 2019).

248 Ibid.

249 Op cit.

250 Ibid.

251 Op cit.

252 Ibid.

253 Op cit.

254 Op cit.

255 Op cit.

256 Ibid.

257 Ibid.

Freedom of assembly is not explicitly codified in law, but the government generally respects the right to peaceful assembly, subject to restrictions meant to ensure public safety.²⁵⁸ Workers can freely organise and bargain collectively, and trade unions actively engage in political debates and campaigns; however, strikes are only allowed when negotiating new union agreements and may only pertain to issues under negotiation.²⁵⁹

The CERD Committee in 2017 expressed concern that racism, racial discrimination and xenophobia were on the rise in the public sphere, in political debates and in the media. The committee recommended that Australia increase its measures to combat racist hate speech and xenophobic political discourse, and ensure that public officials not only refrain from such speech, but also formally reject and condemn it. Additionally, the committee urged the government to encourage the media to adopt a code of good conduct to end hate speech expressed in the print and electronic media.²⁶⁰

The constitution does not explicitly protect press freedom, although in the past, journalists were able to scrutinise lawmakers and cover controversial topics, generally without encountering serious obstacles or risking harassment or violence.²⁶¹ However, in June 2019, the Australian Federal Police conducted two high-profile raids on journalists who had exposed government secrets and their sources.²⁶² Enhanced data surveillance powers and new secrecy offences introduced in late 2018 sparked concern over media freedom and the future of public interest journalism in Australia.²⁶³

The Human Rights Committee in 2017 expressed concern over the lack of judicial authorisation to access metadata retained by telecommunications providers for two years and its extensive use in national security, including counterterrorism and criminal investigations, advising Australia to strengthen the safeguards against arbitrary interference with the privacy of individuals by introducing judicial control over such access.²⁶⁴

Economic rights

In Australia's report to the Economic, Social and Culture Rights (ESCR) Committee in 2016, Australia is described as a stable, democratic and culturally diverse nation with a highly skilled workforce and one of the strongest performing economies in the world in terms of income per person.²⁶⁵ However, while Australians generally enjoyed robust economic opportunities and freedom from exploitation, Indigenous people continued to face economic hardships and their employment rates in remote areas had declined in recent years.²⁶⁶

While the ESCR Committee encouraged the inclusion of ESCR in legislation and in the mandate of the Human Rights Commission, it remained concerned that Indigenous peoples continue to experience high levels of disadvantage across all socioeconomic indicators and that the Closing the Gap strategy of 2008 had made limited progress.²⁶⁷ Further, the committee recommended a redoubling of efforts to reduce the gender wage gap by taking effective measures to enable women to access traditionally male-dominated sectors, including by promoting opportunities for both men and women to reconcile their professional and family responsibilities.²⁶⁸

The CEDAW Committee in 2018 welcomed initiatives to work with businesses to increase the participation of women in leadership positions. However, it noted the following issues: industrial and occupational segregation together account for 30% of the 15.3% gender pay gap; the lack of obligations on employers regarding flexible

258 Ibid.

259 Ibid.

260 CERD/C/AUS/CO/18-20. Note. 200.

261 Freedom House. Note. 122.

262 The Conversation 2019. <https://theconversation.com/why-the-raids-on-australian-media-present-a-clear-threat-to-democracy-118334> (accessed 20 October 2019).

263 Op Cit.

264 CCPR/C/AUS/CO/6. Note 118.

265 E/C.12/AUS/5. Available at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2fAUS%2f5&Lang=en.

266 Freedom House. Note. 122.

267 Ibid.

268 Ibid.

working arrangements; parental leave is paid at the minimum wage for only 18 weeks and is not counted towards superannuation benefits; and the average superannuation balance for men is 37% higher than for women, which puts women at a particularly high risk of poverty and homelessness in old age.²⁶⁹ Amongst the recommendations, the committee urged Australia to implement the recommendations of both the 2017 inquiry into gender segregation in the workplace and the report of the Australian Human Rights Commission on working parents.²⁷⁰ The committee was also concerned that single-headed households in particular were suffering the impact of rises in prices for utilities and a loss of financial support due to budget cuts, resulting in high debt levels and one in five children experiencing food insecurity; and about the high rate of homelessness among women, with the fastest-growing homelessness rate being among women over the age of 55.²⁷¹ Additionally, the committee was concerned that 48% of women had experienced sexual harassment in the workplace and that fear of dismissal often prevents them from reporting such incidents.²⁷²

The ESCR Committee in 2017 expressed concern over the inadequacy of social security entitlements and recommended a reconsideration of financial cuts to the social security system, with a view to ensuring that all beneficiaries, especially disadvantaged and marginalised individuals and groups, and those in need of income support benefits, are able to enjoy an adequate standard of living.²⁷³ In a 2019 commentary on additional information received by the committee, it was noted that barriers such as compulsory income management schemes and welfare conditionality policies remain key features of Australia's social security system.²⁷⁴

Right to health and education

In 2017, Australia's healthcare system was ranked second best in the world by a team of researchers that studied 11 different national healthcare models.²⁷⁵ The healthcare system is jointly run by all levels of Australian government: federal, state and territory, and local.²⁷⁶ The Medicare Benefits Schedule is a list of all health services that the government subsidises and is capped annually to make sure less is paid for services once a certain amount of out-of-pocket costs is reached. Medicines are also subsidised with the same annual cap.²⁷⁷ Australia's report to the ESCR Committee noted that Indigenous Australians experience poorer health outcomes at higher rates and at younger ages than non-Indigenous Australians, and the government is committed to achieving equality in health outcomes between Indigenous and non-Indigenous Australians.²⁷⁸ An overarching national strategic policy, the National Aboriginal and Torres Strait Islander Health Plan 2013–2023 is an evidence-based strategic framework designed to guide policy and programme development, and an implementation plan articulating the collaborative actions to be undertaken by the Commonwealth and key participants to achieve the plan's vision.²⁷⁹

Australian governments are committed to mental health reform as a national priority, to reducing the stigma and discrimination in society, and to significantly reduce suicide rates. Governments are also working to ensure that people affected by mental health issues, and their families, have access to appropriate services and supports, stable and safe homes, and are able to participate successfully in education and employment.²⁸⁰

269 CEDAW/C/AUS/CO/8. Note 112.

270 Ibid.

271 CEDAW/C/AUS/CO/8. Note. 112.

272 Ibid.

273 E/C.12/AUS/CO/5. Note 236.

274 INT_CESCR_FUL_AUS_34553_E.pdf. Available at: https://tbinternet.ohchr.org/Treaties/CESCR/Shared%20Documents/AUS/INT_CESCR_FUL_AUS_34553_E.pdf

275 ABC News 2017. <https://www.abc.net.au/news/2017-07-17/australian-healthcare-ranked-second-best-in-developed-world/8716326> (accessed 20 October 2019).

276 Department of Health website. <https://www.health.gov.au/about-us/the-australian-health-system> (accessed 20 October 2019).

277 Op Cit.

278 E/C.12/AUS/5. Note 236.

279 Ibid.

280 Ibid.

The Commonwealth and state and territory governments worked together in 2017 to develop a Fifth National Mental Health Plan,²⁸¹ which expires in 2022.

The ESCR Committee in 2017 recommended a redoubling of efforts to achieve the health targets outlined in the Closing the Gap strategy and allocating sufficient funding to the National Aboriginal and Torres Strait Islander Health Plan 2013-2023, including increased investment in healthcare services in remote areas, and involving Indigenous peoples and their representatives and CSOs in its implementation and evaluation. The committee also recommended taking effective steps to ensure refugees and asylum seekers are able to exercise their right to the highest attainable standard of health, with particular attention to mental health services.²⁸²

The CEDAW Committee in 2018 acknowledged Australia's comprehensive health coverage but was concerned about inadequate funding for the provision of culturally appropriate, gender-sensitive and non-discriminatory healthcare services, and for the training of Indigenous health professionals, including in rural and remote areas. Additional concerns raised were: abortion services; the deteriorating mental health situation of women and girls facing intersecting forms of discrimination; that only severe mental health disabilities are addressed through the national disability insurance scheme; that Indigenous women, migrant women and their daughters, including those born in Australia, and lesbian, bisexual and transgender women and intersex persons face discrimination by health service providers or through insufficient access to health services; and barriers to legally changing gender.²⁸³

The Australian government is committed to providing children with quality education. In the 2017-2018 Budget, the government announced it would increase funding for schools, investing a record AUD 23.4 billion in recurrent funding over the next decade, including AUD 8.1 billion for 2018-2021. In 2016, 3,798,226 students were enrolled in schools across Australia, and 207,852 identified as Indigenous. The apparent retention rate for students from Year 7/8 to Year 12 was 84.3%.²⁸⁴ In July 2017, the government commissioned the Review to Achieve Educational Excellence in Australian Schools, which will continue to build an evidence base to ensure the additional funding is spent on proven initiatives that make a difference to student outcomes.²⁸⁵ Since 2016, the government has made funding available to states and territories to support all children's participation in a quality preschool programme for 600 hours per year, and in 2018, AUD 428 million was budgeted for this purpose.²⁸⁶

The Australian National Education Curriculum incorporates knowledge and understanding of human rights for students in Years 3 - 10. Lead organisation, Our Watch, distributes educational resources to help children better understand online image-based abuse.²⁸⁷ The government has set targets for Indigenous populations on school attendance, Year 12 attainment, numeracy and literacy, and is working alongside Indigenous communities to meet these targets. In May 2017, an AUD 138 million Indigenous education package was created to invest in scholarships, mentoring and support services for secondary students, and assistance to Indigenous students to study and secure jobs in science, technology, engineering and mathematics. This included AUD 15 million to develop an academy for Indigenous girls and women,²⁸⁸ which commenced enrolment in July 2019. In 2016, the overall attendance rate for Indigenous students nationally was 83.4%, compared with 93.1% for non-Indigenous students. The national indigenous school attendance rate has been the same since 2014 and decreases with remoteness.

²⁸¹ Ibid.

²⁸² Ibid.

²⁸³ CEDAW/CAUS/CO/8. Note. 112.

²⁸⁴ Australian Bureau of Statistics. <https://www.abs.gov.au/AUSSTATS/abs@.nsf/Lookup/4221.0Main+Features12016?OpenDocument> (accessed 20 October 2019).

²⁸⁵ Op cit.

²⁸⁶ Ibid.

²⁸⁷ Ibid.

²⁸⁸ Ibid.

For example, in 2016, indigenous attendance rates ranged from 86.9% in inner regional areas to 66.4% in very remote areas.²⁸⁹ Targets for improvements in literacy and numeracy are considered to be within reach.²⁹⁰

In September 2019, the Committee on the Rights of the Child continued to be concerned that efforts to close the gap for Aboriginal and Torres Strait Islander children remained insufficient. The committee urged Australia to: address the shortcomings of the Closing the Gap measures for Aboriginal and Torres Strait Islander children; reach the targets on school attendance, retention rates, literacy and numeracy standards, paying particular attention to remote areas; and invest in teachers' cultural competency of these communities' history. Additionally, the committee recommended strengthening the school-based Respectful Relationships initiative to promote gender equality and respect, intensifying efforts to prevent and address bullying in schools, including online bullying, through the eSafety Commissioner, and providing support to child victims, in particular lesbian, gay bisexual, transgender and intersex children.²⁹¹

Women's and children's rights

The Australian Government Office for Women works to progress four policy priorities for women: economic empowerment, leadership, safety and international engagement. The Australian government led the commitment by G20 nations to reduce the gender gap in workplace participation by 25% by 2025.²⁹² The primary legislation prohibiting discrimination against women is the Sex Discrimination Act 1984, which prohibits sexual harassment and makes it unlawful to discriminate on the basis of sex, marital or relationship status, family responsibilities, breastfeeding and pregnancy, or potential pregnancy in a number of areas of public life.²⁹³ The Workplace Gender Equality Agency data snapshot for 2017- 2018 found the workplace gender pay gap had reduced somewhat, but men still take home AUD 25,717 a year more than women on average.²⁹⁴ During that period, 43.3% of manager appointments went to women, female CEOs increased slightly to 17.1% and female representation on boards crept up to 25.8%.²⁹⁵ Almost 75% of employers had an overall gender equality strategy or policy.²⁹⁶

In 2017, the Council of Attorneys-General established a family violence working group of senior justice officials to prevent the separation of federal, state and territory child protection and family violence systems from placing children and families at increased risk.²⁹⁷ One in three women has experienced physical violence during their lives and almost one in five has experienced sexual violence.²⁹⁸ Indigenous women are 40 times more likely to be a victim of family violence compared with other Australian women.²⁹⁹

In 2018, the CEDAW Committee made several recommendations regarding women's and children's rights in Australia. These include: long-term funding for safe, secure and affordable housing for Indigenous women; consultation with Indigenous women to strengthen incentives and long-term employment opportunities in remote areas through the Community Development Programme; and elaboration of a specific national action plan on violence against Indigenous women and girls. The committee also recommended strengthening holistic early intervention, prevention and diversion strategies, and non-custodial alternatives to detention, taking into account the relevant recommendations contained in the 2017 report of the Australian Law Reform Commission entitled Pathways to Justice: Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples, and the outcomes of the Wiyi Yani U Thangani (Women's Voices) consultation process.

²⁸⁹ Ibid.

²⁹⁰ Op cit.

²⁹¹ CRC/C/AUS/CO/5-6. Note 128.

²⁹² Australian Government, Women's Workforce participation - an economic priority. Available at: <https://womensworkforceparticipation.pmc.gov.au/womens-workforce-participation-economic-priority.html>

²⁹³ Australian Government, Federal Register of Legislation, Sex Discrimination Act 1984 No 4, 1984. Available at <https://www.legislation.gov.au/Details/C2018C00431>

²⁹⁴ Workplace Gender Equality Agency 2018. Australia's gender equality scorecard. Key findings from the Workplace Gender Equality Agency's 2017-18 reporting data. Available at: https://www.wgea.gov.au/sites/default/files/documents/2017-18-gender-equality-scorecard_0.pdf (accessed 20 October 2019).

²⁹⁵ Ibid.

²⁹⁶ Ibid.

²⁹⁷ CEDAW/C/AUS/CO/8. Note 112.

²⁹⁸ Ibid.

²⁹⁹ Ibid.

Further, it was recommended that Australia finalise the national strategic framework for the mental health, and social and emotional well-being of Aboriginal and Torres Strait Islander peoples, and train more Indigenous legal professionals to provide legal assistance to Indigenous women, including making claims under statutory land rights schemes.³⁰⁰

Australia's report to the Committee on the Rights of the Child in 2018 stated that education, child protection, health care and youth justice fall predominantly within the constitutional responsibility of states and territories, many of which have Ministers for children and youth and Children's Commissioners.³⁰¹ A Child Care Safety Net has been progressively rolled out from July 2016 to give the most vulnerable children a strong start, while supporting parents into work.³⁰² The Australian government is investing approximately AUD 42 million over three years in the Connected Beginnings Programme, focusing on integrating early childhood, child and family health, and family support services with schools in up to 16 Indigenous communities so that children are healthy and well prepared for school. A formal evaluation of the programme is due for completion.³⁰³

All states and territories have separate Children's Courts which deal with criminal matters involving juvenile offenders and maintain a focus on the special needs of young offenders, which may include alcohol and drug abuse or mental health problems. In 2015 - 2016, 60,572 criminal matters and 26,211 civil matters were lodged with Children's Courts Australia-wide.³⁰⁴ Children's Courts operate in a relatively informal manner to ensure children understand the proceedings, their rights around entering a plea and the consequences of this, the offence, and any penalties. State and territory governments provide funding to ensure that children are legally represented.³⁰⁵

The Committee on the Rights of the Child in 2019 urged Australia to bring its child justice system fully into line with the convention and raise the minimum age of criminal responsibility to an internationally accepted level. The committee also recommended that Australia immediately implement the 2018 recommendations of the Australian Law Reform Commission to reduce the high rate of indigenous incarceration; explicitly prohibit the use of isolation and force as a means of coercion or discipline of children under supervision; and promptly investigate all cases of abuse and maltreatment of children in detention and adequately sanction the perpetrators.³⁰⁶

Rights of persons with disabilities (PWD)

The Disability Discrimination Act 1992 offers protection from discrimination at the federal level for PWD. The National Disability Strategy 2010 - 2020, adopted by the Australian government in 2011, provides a national policy framework for improving the lives of persons with disabilities.³⁰⁷ Australia has disability-specific legislations such as the Disability (Access to Premises – Buildings) Standards (2010), the Disability Discrimination and Other Human Rights Legislation Amendment Act (2009), the Disability Standards for Accessible Public Transport (2002) and the Disability Standards for Education (2005).³⁰⁸

Australia ratified the CRPD in 2008, the Optional Protocol in 2009 and most recently reported in 2018. According to that report, rights under the convention have been incorporated into domestic law through Commonwealth, state and territory legislation.³⁰⁹ The Australian government is committed to ensuring disability advocacy services are available for PWD and has established mechanisms to ensure the full and effective participation of PWD in actions to promote, protect and ensure their enjoyment of all the rights in the convention. In 2018 - 2019, the Australian government committed AUD 20.8 million under the National Disability Advocacy Programme to

³⁰⁰ Ibid.

³⁰¹ CRC//AUS/CO/5-6. Note. 133.

³⁰² Ibid.

³⁰³ Ibid.

³⁰⁴ CRC//AUS/CO/5-6. Note. 133.

³⁰⁵ Ibid.

³⁰⁶ CRC/C/AUS/CO/5-6. Note 128.

³⁰⁷ A/HRC/WG.6/23/AUS/1. Available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G15/175/09/PDF/G1517509.pdf?OpenElement>

³⁰⁸ Pacific Disability Forum. <http://www.pacificdisability.org/Resources/Policies-Legislation.aspx> (accessed 20 July 2019).

³⁰⁹ CRPD/C/AUS/2-3. Note 170.

fund 60 organisations across Australia; AUD 2.125 million for disability representative organisations; and more than AUD 9 million to the National Disability Insurance Scheme Appeals programme.³¹⁰ The Disability Reform Council is the key mechanism for coordinating policy and services affecting PWD, their families and carers, across all areas of the Australian government and with all state and territory governments.³¹¹

In April 2019, the government agreed to fund a Royal Commission to Bring Justice for People with Disability.³¹² The move was welcomed by the organisation People with Disability Australia, which saw it as a needed opportunity for PWD to have their needs met based on their personal circumstances, including age, sex, gender, sexual orientation, intersex status and ethnicity, acknowledging the particular situation of Aboriginal and Torres Strait Islander people and culturally and linguistically diverse people with disability.³¹³

The CRPD Committee's concluding observations in 2019 acknowledged actions being taken but expressed numerous concerns, including: insufficient harmonisation of the domestic legal framework with the convention; serious delays in releasing the third plan for implementing the National Disability Strategy 2010–2020; the weakness of the mechanisms; and the limited funding available under the National Disability Strategy and the National Disability Agreement for the full and effective engagement of PWD through their representative organisations, in policy development, and implementation and monitoring of actions relating to the convention. Further areas of concern for the committee included: the disability assessment that individuals must undergo in order to be eligible to receive services through the National Disability Insurance Scheme, which does not provide equal opportunities for older PWD, PWD from culturally and linguistically diverse backgrounds, Aboriginal and Torres Strait Islander PWD, or persons with intellectual or psychosocial disabilities; the inaccessibility of the National Disability Insurance Scheme due to complex procedures, limited publicly-available and accessible information, and the lack of services in remote areas; and the unsustainability and inadequacy of resources for continuous, individual and independent advocacy programmes.³¹⁴ Additionally, concerned that legislation allows for disability to be the basis for rejecting an immigration request, the Committee on the Rights of the Child in 2019 urged Australia to ensure that no legislation discriminated against children with disabilities. The committee also recommended that Australia repeal all legislation that authorises medical intervention without the free and informed consent of the persons with disabilities concerned, committal of individuals to detention in mental health facilities or imposition of compulsory treatment, by means of Community Treatment Orders.³¹⁵

Climate justice

In May 2019, a poll undertaken for the Lowy Institute found that 64% of adults ranked climate change number one on a list of 12 threats to Australia's national interests, the first time climate had topped the list of threats since Lowy began the research in 2006.³¹⁶ 60% of poll respondents favoured prompt action, 28% favoured gradual action in order to lower the costs of the transition, and only 10% favoured waiting until further evidence emerges.³¹⁷ At the same time, a group of Torres Strait Islanders from low-lying islands off the northern coast of Australia lodged a complaint with the UN Human Rights Committee against the Australian government, alleging climate inaction.³¹⁸ The catastrophic nature of the predicted future impacts of climate change on the Torres Strait, including the total submergence of ancestral homelands, were sufficiently severe enough to constitute a violation of the rights to culture, family and life, according to the Islanders' lawyers.³¹⁹

³¹⁰ Ibid.

³¹¹ Ibid.

³¹² Women with Disabilities Australia. <http://wwda.org.au/royal-commission-bring-justice-people-disability/>

³¹³ Op cit.

³¹⁴ CRPD/C/AUS/CO/2-3. Note 170.

³¹⁵ CRC/C/AUS/CO/5-6, Note 128.

³¹⁶ The Guardian 2019. <https://www.theguardian.com/australia-news/2019/may/08/australians-overwhelmingly-agree-climate-emergency-is-the-nations-number-one-threat> (accessed 29 October 2019).

³¹⁷ Op cit.

³¹⁸ The Guardian 2019. <https://www.theguardian.com/australia-news/2019/may/13/torres-strait-islanders-take-climate-change-complaint-to-the-united-nations> (accessed 29 October 2019).

³¹⁹ Op cit.



They went on to say that this will be the first climate change litigation brought against the Australian government based on a human rights complaint, and also the first legal action worldwide brought by inhabitants of low-lying islands against a nation state.³²⁰

The ESCR Committee in 2017 expressed concern about the continued increase of carbon dioxide emissions in Australia which run the risk of worsening in the coming years, despite commitments as a developed country under the United Nations Framework Convention on Climate Change (UNFCCC) and the Kyoto Protocol, as well as its nationally determined contribution under the Paris Agreement. The committee was also concerned that environmental protection had decreased in recent years as shown by the repeal of the emissions trading scheme in 2013 and Australia's ongoing support to new coal mines and coal-fired power stations. Recommendations included revising climate change and energy policies, immediate measures aimed at reversing the current trend of increasing absolute emissions of greenhouse gases, and the pursuit of alternative and renewable energy production. The committee also encouraged Australia to review its position in support of coal mines and coal exports, and address the impact of climate change on Indigenous peoples more effectively, while fully engaging Indigenous peoples in related policy and programme design and implementation.³²¹

In July 2018, the CEDAW Committee expressed concern about the gendered social and environmental impact of Australia's projects in extractive industries, which owing to displacement and the loss of livelihood opportunities and social services among local women, result in discrimination against them and their exclusion, marginalisation and increased risk of conflict-related gender-based violence.³²²

The CRPD Committee in October 2019 reiterated its previous recommendation that Australia, in close consultation with representative organisations of persons with disabilities, establish a fully accessible and inclusive mechanism to engage with PWD in the implementation and monitoring of the Sendai Framework for Disaster Risk Reduction.³²³

320 Op cit.

321 E/C.12/AUS/CO/5. Note 236.

322 CEDAW/C/AUS/CO/8. Note 112.

323 CRPD/C/AUS/CO/2-3. Note 170.



COUNTRY CHAPTERS

COOK ISLANDS



Cook Islands

Key facts

Capital city	Avarua	Total land area	237 sq. km ³²⁴
Population (year)	9038 (July 2018 est.) ³²⁵	Population growth % (year)	-2.72% (2018 est.) ³²⁶
GDP per capita (year)	USD 16,700 (2016 est.) ³²⁷	GNI per capita (Atlas method) (year)	Not measured for this country
Type of government	Self-Governing State in free association with New Zealand, with the Queen's Representative as head of state and the Prime Minister as head of government ³²⁸		
Electoral system	First past the post ³²⁹		
Number of members of parliament (MPs): total/female (year)	24 MPs ³³⁰ /6 female (2019) ³³¹ Ratio of women 25%		
Religions: by % of population (year)	Cook Islands Christian Church 49%, Roman Catholic Church 17%, Seventh Day Adventist Church 8%, Other denominations < 8% Atheist 7.4% (2016) ³³²		
Ethnic groups: by % of population (year)	Cook Island Māori (Polynesian) 81.3%, part Cook Island Māori 6.7%, other 11.9% (2011 est.) ³³³		
Languages: by % of population (year)	English (official) 86.4%, Cook Islands Māori (Rarotongan) (official) 76.2%, other 8.3% (2011 est.) ³³⁴		
Life expectancy: male/female (year)	76.2 years: 73.4 male/79.2 female (2018) ³³⁵	% youth aged 15–24 years: total male/female (year)	15.99% male 774 /female 671 (2019) ³³⁶
% disability: total male/female (year)	24% (2016) ³³⁷ Combined female disabilities were 2% more than males ³³⁸		

324 United Nations in the Pacific. United Nations Pacific Strategy, 2018–2022. Available at: https://www.unicef.org/about/execboard/files/Final_UNPS_2018-2022_Pacific.pdf (accessed 2 September 2019).

325 CIA World Factbook. <https://www.cia.gov/library/publications/the-world-factbook/goes/cw.html>.

326 Ibid.

327 Ibid.

328 Pacific Islands Legal Information Institute. <http://www.paclii.org/ck/government.html> (accessed 2 September 2019).

329 Ibid.

330 Election Guide. <http://www.electionguide.org/elections/id/3080/> (accessed 2 September 2019).

331 Parliament of the Cook Islands. https://parliament.gov.ck/?page_id=139 (accessed 2 September 2019).

332 Cook Islands Statistics Office 2018. Cook Islands Population Census 2016 Report. Available at: http://www.mfem.gov.ck/images/documents/Statistics_Docs/5.Census-Surveys/6.Population-and-Dwelling_2016/2016_CENSUS_REPORT-FINAL.pdf

333 CIA World Factbook. Note. 296

334 Op cit.

335 Op cit.

336 Op cit.

337 Ministry of Finance and Economic Management. <http://www.mfem.gov.ck/statistics/census-and-surveys/census/142-census-2016> (accessed 2 September 2019).

338 The 2016 Census did not report gender disaggregation for the 24% (2914) of the population but did disaggregate by type and severity of each disability experienced by an individual, arriving at an overall total of 6171, reflecting that many experienced more than one disability. Those tables showed that the combined number of disabilities males experienced totalled 3018 (48.9%) and the combined number for females was 3153 (51.1%).

International human rights treaty ratification and reporting obligations

Treaty	Date of signature (S) ratification (R); accession (a) ³⁴⁰	Reservations	Latest report submitted	Reporting status
CEDAW	11 August 2006 (a)		2 nd and 3 rd reports 28 February 2017	4 th report due 20 July 2022
CRC	6 June 1997 (a)	Articles 2 and 10	18 January 2018	2020
CRPD	8 May 2009 (a)		Initial report 8 December 2011	2 nd and 3 rd reports overdue since 8 July 2019
OP-CEDAW	27 Nov 2007 (R)			N/A
OP-CRPD	8 May 2009 (a)			N/A

Special Procedures: N/A

Country visits: N/A

Universal Periodic Review: Cook Islands does not participate in the UPR.

International Criminal Court: Ratified the Rome Statute on 18 July 2008.

System of government

Cook Islands is a parliamentary democracy in free association with New Zealand. The head of the government is the Prime Minister, who is appointed by the Queen's Representative based on the majority party or coalition in Parliament. Cook Islands became self-governing in 1965 and adopted a Westminster parliamentary style, like New Zealand and England.³⁴¹ Parliament consists of a single chamber of 24 elected members, 10 of whom are from the main island of Rarotonga and the rest are from the outer islands. Six women currently make up the total number of seats, comprising 25% female representation, and the current Speaker is female. The most recent election was June 2018 and members generally serve five-year terms.³⁴²

An advisory body of chiefs, known as the House of Ariki, advises the government in relation to customary issues and land use. The head of state is the British monarch who is represented by the Queen's Representative, who serves a three-year term and may be reappointed. Appointments are made by the Queen on the advice of the Prime Minister.³⁴³ The Prime Minister of New Zealand visited the Cook Islands Parliament in March 2018 to launch the Cook Islands Women's Parliamentary Caucus,³⁴⁴ which aims to address the low representation of female participation in parliament.

Parliament was dissolved in April 2018 with the Queen's representative announcing the date of the General Elections for 14 June 2018.³⁴⁵ The Cook Islands Party won a majority of 11 seats and formed a coalition with the One Cook Islands Movement (1 seat) and two independent candidates. The opposition consisted of the 10 seat Democratic Party.³⁴⁶

339 OHCHR. https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/countries.aspx?CountryCode=COK&Lang=EN

340 A party to a treaty is legally bound by the treaty once it ratifies the document. A signature does not create a binding legal obligation but demonstrates the state's intention to consider ratifying it. It obliges a state to refrain from acts that would defeat or undermine the objective and purpose of the treaty (Secretariat of the Pacific Community, 2016).

341 Government of the Cook Islands. <http://www.ck/govt.htm#nz> (accessed 2 September 2019).

342 Election Guide. <http://www.electionguide.org/elections/id/3080/> (accessed 2 September 2019).

343 Government of the Cook Islands. <http://www.ck/govt.htm#rep> (accessed 2 September 2019).

344 The Cook Islands Women Parliamentarians Caucus is made up of bi partisan membership and has both women representatives from the government and opposition. The Women's Caucus of the Cook Islands is a programme supported by the Pacific Parliamentary Effectiveness Initiative implemented by the UNDP Pacific Centre in Fiji with support of the NZ Ministry of Foreign Affairs and Trade.

345 Gazette No.24/18 (notice of the dissolution of Parliament).

346 Parliament of the Cook Islands Annual Report 2017–2018. Available at: <https://2ea1d92bczhh11rmgm1rcot6-wpengine.netdna-ssl.com/wp-content/uploads/2019/04/Annual-Report-2017-2018.pdf> (accessed 2 September 2019).

Judicial system and administration of justice

Cook Islands has a three-tier judicial system comprising of the High Court, the Court of Appeal (COA) and the Privy Council.³⁴⁷ Judicial independence is guaranteed in Part IV of Cook Islands Constitution.³⁴⁸ The High Court is either presided over by justices of the peace or a judge and each have different jurisdictions.³⁴⁹ The COA has jurisdiction to hear appeals from the High Court when the High Court certifies that a substantive question of law is involved, including cases of life imprisonment, and when a question of law arises regarding the interpretation of the constitution.³⁵⁰ The Privy Council hears both civil and criminal appeals from the COA in cases where there are questions of general or public importance.³⁵¹ According to the Ministry of Justice Annual Report 2015 - 2016, "In addition to the lack of resources is the increase in the number of persons who are mentally challenged that are placed in custody and on probation."³⁵²

The Criminal Division of the High Court, which is also constrained by a lack of resources, provides support and logistics to the judiciary and is also responsible for the management of the Law Trust Account on behalf of beneficiaries.³⁵³ The number of cases filed in the Criminal Division of the High Court increased in 2015 - 2016 compared to previous years, including cases involving common assault and assault on women and girls. The Civil Division of the High Court is operated by the same staff that run the Criminal Division, and its function is to provide support and logistics to the judiciary to ensure that it operates in an efficient manner. There has also been an increase in the number of civil cases filed since 2016. One of the issues faced by the Civil Division is an increase in the number of cases relating to offshore industry.

Access to justice and the right to remedy

Access to justice is a constitutionally protected right under Articles 64 and 65 of the Constitution. The Law Society of Cook Islands is estimated to have 54 members. Access to justice is limited in some cases, although there are efforts to improve access for the most vulnerable, including survivors of domestic violence.

Pacific Women Shaping Pacific Development (Pacific Women) committed AUD 320 million over 10 years to improve the political, economic and social opportunities of women in 14 Pacific Island countries. One of Pacific Women's activities in 2017 - 2018 was "Eliminating Violence against Women through Training, Advocacy and Support Services", which it seeks to achieve in the Cook Islands through funding support to Punanga Tauturu Inc., a women's counselling centre which provides counselling, legal aid and advocacy, focusing on eliminating violence against women and children.³⁵⁴ Access to justice for peoples with disabilities is hindered by current legislation, which indirectly discriminates against people with communication impairments.³⁵⁵

National Human Rights Institutions (NHRI)

Cook Islands does not have an NHRI, however, it has an Ombudsman's Office created by the Ombudsman Act 1984. The Ombudsman is an independent and impartial officer, working under jurisdiction of Parliament. The Ombudsman investigates complaints received from the general public but can also initiate an investigation.³⁵⁶

³⁴⁷ Pacific Islands Legal Information Institute. <http://www.paclii.org/ck/government.html> (accessed 2 September 2019).

³⁴⁸ Parliament of the Cook Islands. <https://parliament.gov.ck/Constitution/> (accessed 2 September 2019).

³⁴⁹ Has changing jurisdiction depending on the number of justices presiding; the court's jurisdiction is mostly over criminal offences punishable by either fines or a maximum of three years in prison. The High Court (constituted by a Judge) has unlimited original jurisdiction in relation to both civil and criminal matters and may hear appeals from all decisions of justices of the peace.

³⁵⁰ Ibid.

³⁵¹ Ibid.

³⁵² Ministry of Justice Annual Report 2015–16. Available at: <http://www.justice.gov.ck/images/reports/Annual-Report--2015-16.pdf> (accessed 2 September 2019).

³⁵³ An account set up to pay out and receive any compensation or reparation to the beneficiaries, which are ordered by the Court.

³⁵⁴ Pacific Women. <https://pacificwomen.org/map/> (accessed 2 September 2019).

³⁵⁵ According to the Concluding Observations on the initial report of the Cook Islands CRPD report, article 13 of the CRPD is hindered due to the current legislation and justice system. The Committee recommended that the Cook Islands take immediate measures to repeal laws which restrict access to courts and provide training to personnel in the justice and prison system on human rights standards for peoples with disabilities.

³⁵⁶ Ministry of Finance and Economic Management. <http://www.mfem.gov.ck/oldsite/index.php/te-mato-akamoeau-office-of-the-ombudsman> (accessed 2 September 2019).



Cook Islands, like many PICs, faces challenges, most notably due to a lack of resources, in creating an independent NHRI that is fully compliant with the Paris Principles.³⁵⁷ At the request of the government, a team of three from OHCHR ROP, SPC HRSD and APF visited in 2017 to undertake a study on the feasibility of establishing an NHRI for the Cook Islands.³⁵⁸ The CEDAW Committee in 2018 recommended that the Cook Islands establish an NHRI based on the Paris Principles, with a broad mandate to promote and protect human rights, including women's rights and gender equality.³⁵⁹

Security sector

The Cook Islands Police has strong connections and cooperation with forces in New Zealand and the US,³⁶⁰ and undertakes both joint prosecutions and investigations with foreign States, including Australia, New Zealand and the US.³⁶¹ International agreements or arrangements for special investigative techniques mentioned in the United Nations Convention Against Corruption (UNCAC) article 50 (2), aimed at investigating corruption-related offences, were reported in the Cook Islands. The country fully implemented Article 5 (3) of UNCAC, which states that in the absence of an agreement or arrangement, decisions to use special investigative techniques at the international level are made on a case-by-case basis.³⁶² The Cook Islands has not entered into any bilateral or multilateral agreements with regard to the transfer of sentenced persons.³⁶³

Civil society and human rights defenders

The Cook Islands Civil Society Organisations Incorporated (CICSO) is the peak body for 25 member organisations working on the rights of women, youth, the church, uniformed organisations, traditional groups and the Chamber of Commerce. One of CICSO's aims is to liaise between the national government, regional and international institutions, other civil societies, and funding agencies on matters of interest and benefit to all members of CICSO.³⁶⁴ The current activities of CICSO include enhancing relationships, CICSO administration and environmental preservation. The Punanga Tauturu Women's Counselling Centre, set up in 1994, is committed to human rights education and legal literacy to create an informed society to enable the community to access justice. It assists men and women in using the law when making decisions to help their families and keep them and their communities safe, secure and powerful, and to hold the government and society accountable for their actions.³⁶⁵ Punanga Tauturu Inc. received NZD 200,000 (USD 128,000) to provide support for women at risk from domestic violence to access information, advice and legal aid, and for training on the Family Law Act and related conventions for public servants, NGOs and communities on Rarotonga.³⁶⁶ Other NGOs working with women include the Business and Professional Women's Association, Cook Islands National Disability Council, Cook Islands Chamber of Commerce, and Cook Islands National Council of Women.

Domestic law and human rights

The Constitution (Part 4A) provides protection for fundamental civil and political rights, including: the right to life, liberty and security of person; equality before the law; freedom from discrimination; property rights; freedom of thought, conscience and religion; freedom of peaceful assembly and association; and due process and fair trial.³⁶⁷

The Cook Islands has undergone legislative reforms since the 2007 CEDAW initial report. The Family Protection and Support Act 2017 addresses domestic violence, provides for no-fault divorce, child support, parenting arrangements and the care and protection of children. This law allows access to justice and protection from

357 Principles relating to the status of national institutions for the promotion and protection of human rights.

358 Disability Inclusive Development Cook Islands 2018. Available at: <https://www.intaff.gov.ck/wp-content/uploads/2018/03/DID-Newsletter-2018.pdf> (accessed 2 September 2019).

359 CEDAW/C/COK/CO/2-3. Available at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fCOK%2fCO%2f2-3&Lang=en

360 CAC/COSP/IRG/2015/CRP.13. Available at: <https://www.unodc.org/documents/treaties/UNCAC/WorkingGroups/ImplementationReviewGroup/1-5June2015/V1503859e.pdf>

361 UNDP. International Cooperation: The Pacific's implementation of chapter IV of the UNCAC. Available at: https://www.unodc.org/documents/corruption/Publications/2016/Pacifics_Implementation_of_UNCAC_Chapter_IV.pdf (accessed 2 September 2019).

362 Ibid.

363 Ibid.

364 PIANGO. <http://www.piango.org/our-members/member-countries/cook-islands/> (accessed 2 September 2019).

365 PTI. <https://medium.com/punanga-tauturu/about-us-5cf07d7b2c9f> (accessed 2 September 2019).

366 CEDAW/C/COK/2-3. Note 330.

367 Parliament of the Cook Islands. https://parliament.gov.ck/?page_id=160 (accessed 4 September 2019).

gender-based violence, especially for women and children, including in the outer Islands. The Harassment Act 2017 provides for protection against violence and abuse for people not in a domestic relationship. The Crimes Bill 2017, still under discussion in 2019, provides a comprehensive code, including cybercrime offences and procedures for retaining electronic evidence. There are also new offences related to using mobile devices and computers, such as voyeurism and distribution of child abuse material.

The Proceeds of Crimes Act 2017 is an anti-corruption law domesticating some provisions of UNCAC, which the Cook Islands ratified on 18 October 2011. The government acknowledges that “corruption hurts the poor disproportionately, undermining a government’s ability to provide basic services, feeding inequality and injustice, and discouraging foreign aid and investment. Corruption is a key element in economic underperformance and a major obstacle to poverty alleviation and development.”³⁶⁸

Human rights policies

A number of government policies support human rights. The National Development Policy on Gender Equality and Women’s Empowerment and Strategic Plan of Action 2011-2016 is considered to be a milestone in the fulfilment of women’s rights.³⁶⁹ The Cook Islands National Youth Policy 2015-2020 redefined the age range for Cook Islands Youth to 15-24 years of age (previously 15-34 years).³⁷⁰ The government maintains a youth focus as outlined in the National Youth Policy to promote initiatives that support young people to become productive members of society. The Cook Islands National Health Strategy 2017-2021 builds on previous health strategies and health policies to direct and guide the advancement of healthcare services.³⁷¹ It highlighted the priority of enabling people to fulfil their potential through access to quality and affordable health care.

The National Policy Framework for Children 2017 - 2021 (NPFC) was endorsed by the government in response to the Committee on the Rights of the Child recommendation in 2017. The NPFC signifies a whole-of-government approach to ensure bright futures for children, acknowledging the shared responsibility of achieving results within available resources. The NPFC is grounded in the Cook Islands culture and also the commitments under the CRC.³⁷²

The Ministry of Finance and Economic Management enacted an anti-fraud and anti-corruption policy in March 2018, which also includes a whistleblowing protection procedure.

Right to life, liberty and security of person

The right to life, liberty and security of person is guaranteed by the constitution. Cook Islands abolished the death penalty in November 2007. Cook Islands has not ratified UNCAT.

Equality and non-discrimination

Cook Islands enacted the National Policy on Gender Equality and Women’s Empowerment to ensure the creation of measures to combat discrimination against women. The National Development Policy on Gender Equality and Women’s Empowerment and Strategic Plan of Action 2011 - 2016 was reviewed in 2017.³⁷³ Male homosexuality is a crime under Article 154 (Indecency between Males) and Article 155 (Sodomy) of the Crimes Act 1969, which penalises indecency between males by imprisonment for up to five years.³⁷⁴ In 2018, Cook Islands was reviewing a draft Crimes Bill 2017 which removes these sections, but the work was postponed due to elections.³⁷⁵

368 Ministry of Finance and Economic Management. <http://www.mfem.gov.ck/anti-corruption> (accessed 4 September 2019).

369 Government of the Cook Islands 2011. Cook Islands National Policy on Gender Equality and Women’s Empowerment and Strategic Plan of Action, 2011–2016. Available at: http://www.mfem.gov.ck/images/documents/DCD_Docs/Development-Resources/CKI_Gender_Equality_Strategic_Plan_of_Action_2011-2016.pdf

370 Ibid.

371 Ibid.

372 CRC/COK/2-5. Available at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2fCOK%2f2-5&Lang=en

373 CEDAW/C/COK/CO/2-3. Note 330.

374 Human Dignity Trust. <https://www.humandignitytrust.org/country-profile/cook-islands/> (accessed 2 September 2019).

375 Ibid.

Freedom of information (FOI)

Apart from the constitution, the Telecommunications Act of 1989 and its three amendments, as well as the Official Information Act (OIA) 2009, are the key laws regulating information in the country.³⁷⁶ Cook Islands was the first in the region to introduce FOI legislation. Since the passing of OIA in 2009, administration of the legislation has been undermined by inefficient record-keeping in government departments and inadequate resourcing. Assistance has been provided by the New Zealand Ombudsman's Office and Archives New Zealand.³⁷⁷

Freedom of expression, association and peaceful assembly

In the Cook Islands, freedom of expression, association and assembly are constitutionally guaranteed. The Broadcasting Act 1989 of New Zealand applies to Cook Islands and provides the framework for operation of broadcasting services. According to its report to the Committee on the Rights of the Child in 2018, the Cook Islands has 100% coverage of internet access (broadband) on all islands. The main islands, Rarotonga and Aitutaki, have 4G connection, which is the fastest available internet coverage, and all schools in Cook Islands, including small and remote ones, have internet connections with the *Te Kura Uira* (online school) programme.³⁷⁸

Economic rights

The Cook Islands economy relies heavily on the tourism industry, making it vulnerable to natural disasters and disruptions to global travel and tourist flows.³⁷⁹ The Asian Development Bank (ADB) predicted a positive outlook for the Cook Islands in its ADB Outlook 2017 report, noting that it must maintain prudent macroeconomic management against rising risks from economic and climatic shocks.³⁸⁰

The Labour and Employment Relations Office under the Ministry of Internal Affairs deals with matters pertaining to employment.³⁸¹ Its main role is to ensure that employers and employees know their rights and obligations in the workplace, including issues of work safety and the proper storage and management of hazardous and dangerous goods.³⁸² The minimum wage was first introduced through the Cook Islands Industrial and Labour Ordinance in 1964, with the last review conducted in 2017. A new wage was passed through the Employment Relations (Minimum Rate of Pay) Regulations 2017.³⁸³ The Employment Relations Amendment Act 2015–2016 is the main legislation for the protection of workers' rights.³⁸⁴

The Employment Relations Act 2012 was welcomed by the CEDAW Committee as it extended maternity benefits to women in de facto relationships and prohibited discrimination against women and sexual harassment in the workplace. The committee recommended that Cook Islands adopt and enforce the principle of equal pay for work of equal value in the public and private spheres, and ensure that women migrant workers enjoy equal protection in employment.³⁸⁵

Accidents in the workplace are taken seriously and follow a process within the Labour and Consumer Division of the Ministry of Internal Affairs in which the employer conducts an internal investigation on circumstances of the accident, including the worker's feedback, and provides a report of the accident to the Ministry. If the worker does not return to work for at least four days, the worker can apply for compensation.

³⁷⁶ ABC International Development. http://www.pacmas.org/wp-content/uploads/2013/10/13-PACMAS_Cook-Islands-Country-Report_FINAL.pdf (accessed 2 September 2019).

³⁷⁷ Radio New Zealand 2009. <https://www.rnz.co.nz/international/pacific-news/185694/cook-islands-ombudsman-says-oia-has-made-workload-manageable> (accessed 2 September 2019).

³⁷⁸ CRC/COK/2-5. Note 343.

³⁷⁹ Asian Development Bank Asian Development outlook 2017 – Transcending the middle-income Challenge 2017, Philippines ISBN 978-92-9257-787-2 (Print), 978-92-9257-788-9 (e-ISBN)

³⁸⁰ Ibid.

³⁸¹ Ministry of Internal Affairs. https://www.intaff.gov.ck/?page_id=72 (accessed 28 September 2019).

³⁸² Ibid.

³⁸³ Pacific Islands Legal Information Institute. http://www.paclii.org/cgi-bin/sinodisp/ck/legis/sub_leg/erropr2017545/index.html?stem=&synonyms=&query=employment%20relations%20act (accessed 28 September 2019).

³⁸⁴ Ibid.

³⁸⁵ CEDAW/C/CO/2-3. Note 330.

The Public Service Amendment Act 2015 - 2016 establishes employment standards for public servants and includes a complaints clause. The National Sustainable Development Plan (NSDP) 2016–2020 has 16 development goals and Goal 5, “Build resilient infrastructure and ICT to improve our standard of living”, aims to improve the lives of Cook Islanders by providing utilities and improving access to services as well as to facilitate economic growth and activity.

Right to health and education

Education in the Cook Islands is regulated mostly by the Education Act 2012 which requires the government to pay the cost of providing instruction, administration and facilities for education at a government school for all resident Cook Islanders. The CEDAW Committee in 2018 noted that there is a lack of comprehensive data collection for implementing the Education Act 2012. As well, it noted that there is a lack of a monitoring mechanism to address discriminatory gender stereotypes on the part of teachers of sexual and reproductive health education.³⁸⁶ The government is working with NGOs as implementing partners to address reproductive health.³⁸⁷ The Ministry of Education has an Equity, Access and Participation Policy 2016 which prioritises human rights for students with disabilities and states that the concepts of human rights and human dignity are borne in mind in all processes involving students with disabilities.³⁸⁸

Women's and children's rights

The Public Service Code of Conduct and Values has gender equality as one of its core values. The NSDP 2016–2020 includes gender as priority Goal 9, which aims to accelerate gender equality, empower all women and girls, and advance the rights of the vulnerable. Under this goal, increasing women's representation in politics is indicator 9.1: increase representation of women in politics. Currently, 25% of the Cook Islands Parliament are women.³⁸⁹ The Cook Islands Women Parliamentary Caucus supports women in politics and encourages local women to participate in political life.³⁹⁰

The Education Act 2012 provides for continuing education for young women and girls following pregnancy.³⁹¹ The Ministry of Education's 2016 strategic policy of equity, access and participation promotes access to education for women and girls.³⁹² The 2015–2020 National Youth Policy: Back to Basics for Youth 15–24 years, has six key priority areas focused on young men and women between the ages of 15–24 years. The policy aims to address the challenges of young men and women in the Cook Islands.³⁹³ According to the NPFC 2017–2021, progress has been made in implementing the CRC and, according to a survey of students, 85% feel safe in their community, 79% stated they have a secure home environment, 62% have never experienced abuse, neglect or mistreatment, 86% believe that their health is important, and a majority were satisfied with their education and considered their family's support towards their education positive.³⁹⁴

Rights of persons with disabilities (PWD)

The Cook Islands Policy on Disability Inclusive Development 2014–2019, which aligns with the CRPD,³⁹⁵ aims to improve the quality of life and realise the rights of PWD by empowering them and enabling inclusion and participation in all aspects of life. The CRPD Committee in 2015 commended the Cook Islands on the policy, translation of the CRPD into Cook Islands Māori, and for wide dissemination.³⁹⁶

³⁸⁶ Ibid.

³⁸⁷ Ibid.

³⁸⁸ Cook Islands Ministry of Education. Equity, access and participation. Available at: http://www.education.gov.ck/wp-content/uploads/2016/09/EAP-01-001_Equity-Access-and-Participation.pdf (accessed 28 September 2019).

³⁸⁹ Parliament of the Cook Islands. https://parliament.gov.ck/?page_id=139 (accessed 2 September 2019).

³⁹⁰ CEDAW/C/COK/CO/2-3. Note. 330.

³⁹¹ Ibid.

³⁹² Ibid.

³⁹³ Government of the Cook Islands. Cook Islands National Youth Policy, 2015–2020. Available at: <https://www.intaff.gov.ck/?p=1168>

³⁹⁴ CEDAW/C/COK/CO/2-3. Note. 330.

³⁹⁵ Ibid.

³⁹⁶ CRPD/C/COK/CO/1. Available at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRPD%2fC%2fCOK%2fCO%2f1&Lang=en

It also noted that the Cook Islands was the first PIC to report on the CRPD and is a leader in the area of disability.

The adoption of a strategic plan for women and girls with disabilities for 2018–22 promotes the advancement of women and girls with disabilities.³⁹⁷ However, the CEDAW Committee noted that there is a lack of information on education, employment and health care for women with disabilities.³⁹⁸ The Cook Islands Mental Health and Well-Being Strategy 2016–2021 is a five-year plan to implement mental health and well-being policy. There is currently one mental health NGO, Te Kainga O Pa Taunga (Mental Health and Well-being), in the Cook Islands. The Ministry of Health also has a mental health team comprised of a mental health doctor, mental health trainee, part-time clinical psychologist and a mental health nurse.³⁹⁹ There are various gaps identified in the implementation of the CRPD, according to the committee's concluding observations in 2017.

The committee recommended that the Cook Islands amend the Disability Act 2008 and the Welfare Act 1989, including its amendments, to incorporate language from the CRPD. In particular, the Disability Act does not provide for reasonable accommodation. The Employment Relations Act 2012 does not recognise discrimination for all groups and the committee noted that several laws permit disability-based discrimination. The committee also noted that legislation deprives freedom for persons with psychosocial disabilities and there is a lack of provision of reasonable accommodation for prisoners with disabilities.⁴⁰⁰

Climate justice

The NSDP was revised in 2016 to include climate change activities. The NSDP has 16 goals, and Goal 13 on climate change aims to strengthen resilience to climate change and natural disasters, understanding that the impacts of climate change in the Cook Islands affect all areas of life, including public infrastructure and food security. The government's five-year plan will allow the country to prepare for the current and future challenges of climate change and natural disasters.⁴⁰¹

The Cook Islands National Policy on Gender Equality and Women's Empowerment and Strategic Plan of Action 2011–2016 lists six key areas of concern, including the effects of climate change on the capacity of women to contribute to adaptation strategies.⁴⁰² Women living with disabilities on the outer islands lack access to public services and employment, and are thus more reliant on the natural environment, exposing them to greater climate-related risk.⁴⁰³ The CEDAW Committee in 2018 recommended addressing the gaps in gender aspects for climate change programmes and policies, noting that a gender perspective is to be incorporated to ensure the rights of women in the Cook Islands are fully realised and protected from climate impacts and disaster.⁴⁰⁴

³⁹⁷ Ibid.

³⁹⁸ CEDAW/C/COK/CO/2-3. Note 330.

³⁹⁹ Ministry of Health 2017. www.health.gov.ck/media-release/mental-health-media-release/

⁴⁰⁰ CRPD/C/COK/CO/1. Note 367.

⁴⁰¹ Government of the Cook Islands. National Sustainable Development Plan 2016–2020. Available at: <http://www.mfem.gov.ck/news1/121-finacial-secretary-office-news/663-press-release-national-sustainable-development-plan-nsdp-2016-2020> (accessed 30 October 2019).

⁴⁰² CEDAW/C/COK/CO/2-3. Note 330.

⁴⁰³ Ibid.

⁴⁰⁴ Ibid.



COUNTRY CHAPTERS

FIJI



Fiji

Key facts

Capital city	Suva	Total land area	18.27 (000 km ²) ⁴⁰⁵
Population (year)	884,887 (2017) ⁴⁰⁶	Population growth % (year)	0.6 % (2017) ⁴⁰⁷
GDP per capita (year)	USD 6202 (2018) ⁴⁰⁸	GNI per capita (Atlas method) (year)	USD 5860 (2018) ⁴⁰⁹
Type of government	Parliamentary republic with President as head of state and Prime Minister as head of government.		
Electoral system	Multi-member open list system of proportional representation, under which each voter has one vote, with each vote being equal in value, in a single national electoral roll comprising all registered voters. ⁴¹⁰		
Number of members of parliament (MPs): total/female (year)	51 (2018) ⁴¹¹ Total Female MPs: 11. ⁴¹² Ratio of females to males 21.6%.		
Religions: by % of population (year)	Christian: 64.5% (Methodist: 34.6%, Catholic: 9.1%, Assembly of God: 5.7%, Seventh-day Adventist: 3.9%, Anglican: 0.8%, other: 10.4%), Hindu: 27.9%, Muslim: 6.3%, Sikh: 0.3%, other or unspecified: 0.3%, (2007 census) ⁴¹³		
Ethnic groups: by % of population (year)	Fijian: 57.3%, Indian: 37.6%, Rotuman: 1.2%, other: 3.9% (European, other Pacific Islanders, Chinese) (2007 census) ⁴¹⁴		
Languages: by % of population (year)	English (official), Fijian (official), Hindi, Fiji Hindi		
Life expectancy: male/female (year)	67.1 for men/ 73.1 for women (2016) ⁴¹⁵	% youth aged 15-24 years: total male/female (year)	16.7 % (2017) ⁴¹⁶
% disability: total male/female (year)	13% (2018) ⁴¹⁷		

405 ADB Data Library. <https://data.adb.org/dashboard/fiji-numbers> (accessed 5 July 2019).

406 Fiji Bureau of Statistics website. Key Statistics, 2017 Population and housing census of Fiji. Available at: <https://www.statsfiji.gov.fj/index.php/census-2017> (accessed 5 July 2019).

407 Ibid.

408 World Bank Data. <https://data.worldbank.org/indicator/NY.GDP.PCAP.CD?locations=FJ> (accessed 5 July 2019).

409 World Bank Data. <https://data.worldbank.org/indicator/ny.gnp.pcap.cd> (accessed 5 July 2019).

410 Parliament of the Republic of Fiji. <http://www.parliament.gov.fj/elections/> (accessed 5 July 2019).

411 Parliament of the Republic of Fiji. <http://www.parliament.gov.fj/members-of-parliament/> (accessed 6 July 2019).

412 Ibid.

413 Fiji Bureau of Statistics. Key Statistics 2011, Population by religion and province of enumeration, Fiji: 2007 census. Available at: <http://www.statsfiji.gov.fj/Key%20Stats/Population/1.10Religion2007.pdf>. No data on ethnicity and religion was released in 2017. See ethnicity statement. Available at: <https://www.statsfiji.gov.fj/index.php/census-2017/census> (accessed 6 July 2019).

414 Ibid.

415 World Health Organisation. <https://www.who.int/countries/fji/en/> (accessed 7 July 2019).

416 Fiji Bureau of Statistics. Key Statistics, 2017 Population and Housing Census of Fiji, Release 1. Available at: <https://www.statsfiji.gov.fj/index.php/census-2017> (accessed 7 July 2019).

417 Fiji One News 2018. <https://www.fijione.tv/news-posts/13-percent-of-fijians-live-with-some-form-of-disability/> (accessed 7 July 2019).

International human rights treaty ratification and reporting obligations

Treaty	Date of signature (S) or ratification (R)	Reservations	Latest report submitted	Reporting status
ICESCR	16 Aug 2018 (R)			1 st report due Aug 2020
ICCPR	16 Aug 2018 (R)			1 st report due Aug 2020
ICERD	11 Jan 1973 (R)	Articles 2, 3, 4(a), (b), (c), 5(c), (d), (v), (e), 6, 15, 20	18 th to 22 nd report due 10 Feb 2016	21-22 nd reports overdue since 2016
CEDAW	28 Aug 1995 (R)		5 th report submitted 31 Jul 2014	6 th report due 31 Mar 2022
CAT	14 Mar 2016 (R)	Articles 1, 14, 20, 21, 22, 30	1 st report submitted 14 Apr 2017	On track
CRC	13 Aug 1993 (R)		2 nd to 4 th report submitted 4 Aug 2011	5 th report due 11 Sep 2020
CRPD	7 Jun 2017 (R)		1 st report due 7 Jul 2019	First report overdue since July 2019
CED	19 August 2019 (a)			First report due 2020
CRMW	19 August 2019 (a)			First report due 2020
OP-CRC-AC	16 Sep 2005 (S)			
OP-CRC-SC	16 Sep 2005 (S)			
OP-CRPD	2 June 2010 (S)			

Special Procedures:

Open Standing invitation on 17 March 2015.

10 requests have not received any responses from Fiji.⁴¹⁸ Requests for visits have been made by: Special Rapporteur on independence of judges and lawyers; Special Rapporteur on torture and other cruel, inhumane and degrading treatment; Special Rapporteur on the rights of peaceful assembly and association; Special Rapporteur on the situation of human rights defenders; Working Group on Arbitrary Detention; Independent Expert on the effects of foreign debt and other related financial obligations of states on the full enjoyment of all human rights.

Country visits:

Since 2015, three Special Rapporteurs and one Independent Expert have visited Fiji:

- Special Rapporteur on the right to education in December 2015⁴¹⁹
- Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance in December 2016⁴²⁰
- Independent Expert on the enjoyment of human rights of persons with albinism in 2017⁴²¹

⁴¹⁸ Office of the High Commissioner for Human Rights, Special Procedures. Available at: https://spinternet.ohchr.org/_layouts/15/SpecialProceduresInternet/ViewCountryVisits.aspx?Lang=en&country=FJI.

⁴¹⁹ A/HRC/32/37/Add.1 2016. Available at: https://spinternet.ohchr.org/_Layouts/15/SpecialProceduresInternet/Download.aspx?SymbolNo=A%2fHRC%2f32%2f37%2fAdd.1&Lang=en

⁴²⁰ A/HRC/35/41/Add.3 2017. Available at: https://spinternet.ohchr.org/_layouts/15/SpecialProceduresInternet/ViewCountryVisits.aspx?Lang=en&country=FJI

⁴²¹ A/HRC/40/ 62/ Add.1 2019. Available at: http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/40/62/Add.1

- Special Rapporteur on human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment in December 2018.

Universal Periodic Review: First Cycle: 11 February 2010; Second Cycle: 29 October 2014;⁴²² Third Cycle: July 2019

International Criminal Court: Fiji ratified the Rome Statute on 29 November 1999.

Fiji was elected to the UN Human Rights Council for the period 2019–2021 and held the Vice-Presidency in 2019.

System of government

The Republic of Fiji received its independence from Great Britain in 1970. Since then, Fiji has gone through four coups d'état and four constitutions which have determined the constitutional composition of its government.⁴²³ Fiji has a multiparty system with the Prime Minister as the head of government and President as the head of state and Commander-in-Chief of the armed forces.⁴²⁴ The President is elected for a three-year term by Fiji's Parliament after nomination by the Prime Minister or Leader of Opposition and voted in by Members of Parliament. Executive power is in the hands of the Cabinet, presided over by the Prime Minister. Under the 2013 Constitution,⁴²⁵ Fiji's Parliament members are elected for four-year terms by a multi-member open list proportional representation, under which each voter has one vote with each vote being of equal value, in a single national electoral roll comprising all the registered voters.⁴²⁶ To win election to Parliament, a political party (or an independent candidate) must win 5% of the total valid vote nationwide.⁴²⁷ The Fijian Elections Office, having been formally established by the Electoral Act, conducted the 2014 and 2018 General Elections. The 2014 election was of historic significance as it was held after a lapse of eight years and introduced a new electoral system, transitioning Fiji to a parliamentary democracy. Following the 2014 election, there was re-engagement with the international community, removal of international sanctions, re-establishment of diplomatic relations with Australia and New Zealand, a resurgence of investor confidence, and an increase in the volume of development assistance. In November 2018, Fiji had its next general election, with six political parties contesting. The 2014 government was returned with a reduced majority.⁴²⁸ The 2018 elections saw the number of elected women increase from 16% to 19%, with 10 out of 51 elected Parliament members being women.

Judicial system and administration of justice

Chapter 5 of the 2013 Constitution and the Administration of Justice Act establishes the structure and functions of the judiciary. The judicial system consists of the Supreme Court, Court of Appeal, High Court and Magistrates Court. Other courts, tribunals and commissions include the Juvenile Court, the Family Court, Tax Tribunal, Small Claims Tribunal, Public Service Disciplinary Tribunal and the Agricultural Tribunal. Other quasi-judicial bodies established under the 2013 Constitution include the Mercy Commission,⁴²⁹ Independent Legal Services

422 Office of the High Commissioner for Human Rights 2019. UPR Fiji. Available at: <https://www.ohchr.org/EN/HRBodies/UPR/Pages/FJindex.aspx> (accessed 7 July 2019).

423 Under the 1997 Constitution, Fiji had a bicameral house of representatives with a Lower House and an Upper House or Senate appointed by the Great Council of Chiefs, the Prime Minister and the Leader of the Opposition. Under the 2013 Constitution, there is now only one house, the House of Representatives. The Upper House and the Great Council of Chiefs are now abolished.

424 Section 81(3) of the 2013 Constitution of Fiji.

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

426 Section 53(1) of the 2013 Constitution of Fiji.

427 Section 53(3) of the 2013 Constitution of Fiji.

428 The Guardian 2018. <https://www.theguardian.com/world/2018/nov/18/fiji-election-bainimarama-returned-as-pm-in-slim-victory> (accessed 7 August 2019).

429 Established under Section 119 of the 2013 Constitution.

Commission,⁴³⁰ and the Accountability and Transparency Commission.⁴³¹ Section 98 of the Constitution is modelled on the UN Basic Principles on the Independence of the Judiciary. The constitution protects security of tenure, contains a declaration of the independence of the judiciary, and ensures that the training of judges is the responsibility of the Judicial Services Commission. It also sets up a tribunal process for removal from office and provides for administrative autonomy.

The UN compilation report to Fiji's UPR expressed concerns over the decision-making limitations placed on the judiciary by the Public Order (Amendment) Act (Article 21),⁴³² including the immunity provisions of the 2013 Constitution, which does not allow any legal challenge of these provisions. The 2013 Constitution prohibits the judiciary from considering cases related to the 2006 coup, acts of the military government from December 2006 to April 2009, the abrogation of the 1997 Constitution, and all government decrees from December 2006 onward.⁴³³ Concern was expressed about the constitutional process and the independence of the judiciary by national and international organisations at Fiji's UPR.⁴³⁴

For some years, OHCHR has worked with the judiciary with respect to training on economic, social and cultural rights, integrating human rights principles into judgements, and developing a programme on child-sensitive judicial proceedings, both for children in conflict and in contact with the law, including victims and witnesses.

The Committee on the Rights of the Child has urged Fiji to bring its juvenile justice system fully into line with the convention by raising the minimum age of criminal responsibility to an internationally accepted level; establishing additional specialised juvenile court facilities outside of Suva; designating specialised well-trained judges for children; ensuring no life sentences are imposed on children; promoting alternative measures to detention wherever possible; and ensuring that detention conditions are compliant with international standards, including with regard to access to education and health services.⁴³⁵

Access to justice and the right to remedy

The constitution allows for human rights violations to be brought directly to the High Court, which adjudicates on matters relating to the Bill of Rights. The Access to Justice Project is funded by the European Union and runs from 2016-20. The Legal Aid Commission (LAC) is a statutory body formed under the Legal Aid Act 1996 and the Legal Aid Amendment Act 2009 to provide legal services to those who cannot afford a private legal practitioner. The constitution gives the LAC constitutional recognition, guarantees its operational independence, and ensures adequate funding by Parliament. The LAC appears to have strong political backing⁴³⁶ and has recently expanded its geographic outreach by opening several offices across the country and increasing its workforce and the range of cases that it helps resolve. The LAC provides free legal services to members of the public by giving advice, providing legal representation in court, and undertaking other related services in the areas of family law, criminal law and in limited civil law matters. It received increased funding from the Fiji government in 2019 and is currently a key institution implementing the First Hour Procedure.⁴³⁷

The Judicial Department Strategic Plan 2019–2023 prioritises judicial reforms to improve the efficiency and the effectiveness of the administration of the courts for rural and remote areas to improve access to justice.⁴³⁸

430 Established under Section 114 of the 2013 Constitution.

431 Established under section 121 of the 2013 Constitution.

432 A/HRC/WG.6/20/FJI/2: Available at https://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session28/Documents/A_HRC_28_8_ENG.doc (accessed 5 July 2019).

433 Chapter 10, Sections 155 to 158 of the 2013 Constitution.

434 A/HRC/WG.6/34/FJI/3. Available at: <https://undocs.org/A/HRC/WG.6/34/FJI/3>

435 CRC/C/FJI/CO/2-4. Available at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC/C/FJI/CO/2-4&Lang=En

436 Fiji Sun. <https://fjisun.com.fj/2018/05/26/understanding-our-legal-aid-commission/>

437 Fiji Sun Newspaper 21 May 2019. Available at <https://fjisun.com.fj/2019/05/21/fiji-budget-2019-investing-in-access-to-justice/>

438 The Fiji Times 2019. <https://www.fijitimes.com/judicial-department-aims-to-improve-access-to-justice-to-rural-areas/> (accessed 7 July 2019).

National Human Rights Institution (NHRI)

The Fiji Human Rights and Anti-Discrimination Commission (FHRADC) is Fiji's NHRI established under the Human Rights and Anti-Discrimination Act 2009 and continued under the 2013 Constitution.⁴³⁹ FHRADC is responsible for promoting the protection and development of a culture of human rights in Fiji, educating the general public on rights and freedoms, and monitoring, investigating and reporting on observance of all human rights, amongst other functions.⁴⁴⁰ FHRADC has the authority to bring cases on behalf of individuals or groups to the High Court and is the "predominant enforcement body for the Bill of Rights guaranteed under the constitution."⁴⁴¹ FHRADC receives and investigates complaints regarding prison conditions, the treatment of prisoners and complaints alleging misconduct by police and military officials, amongst other types of violations. It has promoted human rights through advocacy and has implemented a human rights information board in police stations⁴⁴² so that detainees can access information regarding their rights, appropriate procedures and how to seek assistance. It continues to embark on an education and advocacy programme engaging the education sector, disciplinary forces, religious organisations and CSOs. The independence of FHRADC was questioned during Fiji's UPR process, and recommendations were made on this issue.⁴⁴³

Prior to 2006, the Fiji Human Rights Commission, as it was then, was internationally recognised and 'A' accredited under the Paris Principles. Following controversial reports by the commission's director⁴⁴⁴ supporting the military takeover that year, the commission resigned from APF and withdrew from the International Coordinating Committee of National Institutions for the Protection and Promotion of Human Rights (ICC). Fiji re-established the NHRI as FHRADC in May 2015 and expressed its intention to apply for accreditation to GANHRI, the body that has since replaced the ICC. Currently, FHRADC has yet to be reviewed by GANHRI.

OHCHR and partners worked with FHRADC on a capacity assessment with the view to strengthening FHRADC and ensuring further compliance with the Paris Principles.⁴⁴⁵ In 2017, the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance called on the government to strengthen FHRADC and provide it with the necessary resources to function properly and secure the confidence and legitimacy of relevant actors, saying this was an urgent priority for all stakeholders with whom the Special Rapporteur had met.⁴⁴⁶ In the 2019-2020 budget estimates, funding for the commission was decreased by 50%.⁴⁴⁷

Security sector

Fiji's security sector comprises the military, police force and corrections service. Fiji's military is the largest among Pacific Island nations, with 4000 personnel (2008 estimate),⁴⁴⁸ and has contributed many personnel to UN peacekeeping operations in conflict areas over the past 42 years, including Syria, Afghanistan, Somalia,

439 Section 45 (1) of the 2013 Constitution.

440 Section 45 (4) of the 2013 Constitution.

441 A/HRC/28/8. Available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G14/245/67/PDF/G1424567.pdf?OpenElement>

442 Fiji Sun 2016. <https://fjisun.com.fj/2016/11/11/raj-launches-human-rights-wall-in-totogo/> (accessed 8 July 2019).

443 See A/HRC/WG.6/20/FJI/3 <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G14/090/28/PDF/G1409028.pdf?OpenElement> and interventions by Russia in the Report of the Working Group of the HRC; A/HRC/28/8 <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G14/245/67/PDF/G1424567.pdf?OpenElement> Kenya, Australia, India, Morocco, Sierra Leone, Russia, Slovenia on the issue of resourcing and independence of the Commission.

444 Shameem S. 2007. The Assumption of Executive Authority on December 5th 2006 by Commodore J.V. Bainimarama, Commander of the Republic of Fiji Military Forces. Legal, Constitutional and Human Rights Issues, 4 January 2007 [hereinafter Shameem Report]. Available at: www.humanrights.org.fj/publications/2007/Investigations. See also Shameem's second report on the subject, The Assumption of Executive Authority on December 5th 2006 by Commodore J.V. Bainimarama, Commander of the Republic of the Fiji Military Forces: Legal, Constitutional and Human Rights Issues, Part II: Report to the UN High Commissioner for Human Rights on alleged breaches of international law and the 1997 Constitution of Fiji in the removal of the Prime Minister, Laisenia Qarase on December 5th 2006, 29 August 2007. Available at: www.humanrights.org.fj

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

446 A/HRC/35/41/Add.3. Available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G17/332/62/PDF/G1733262.pdf?OpenElement>

447 Fiji Women's Rights Movement 2019. Women and gender in the Fiji national budget. National Budget 2019-2020 Analysis. Available at: http://www.fwrm.org.fj/images/fwrm2017/publications/analysis/FWRM_National_Budget_Analysis_1.pdf

448 NationMaster. <http://www.nationmaster.com/country-info/profiles/Fiji/Military> (accessed 31July 2019)

Bougainville, East Timor, Sudan, Egypt, Sinai, Iraq, Lebanon and Jerusalem.⁴⁴⁹ Under the 2013 Constitution, the Republic of Fiji Military Forces (RFMF) is mandated to be the guardian of Fiji, ensuring at all times the security, defence and well-being of all Fijians.⁴⁵⁰

The Fiji Police Force is mandated to maintain law and order, enforce law, and prevent and detect crime.⁴⁵¹ Reforms have been underway for several years in both the Fiji Police Force and RFMF to reduce police and military brutality and the protection of officers from convictions for serious offences.⁴⁵² The reforms include training and capacity building on human rights, reviewing the in-service and pre-service curriculum using a human rights lens, adopting measures to ensure the protection of rights of persons encountering the law, and the establishment of a Human Rights Cell within the Fiji Police as well as a Senior Police Taskforce Team. Joint collaborative efforts are underway by the Fiji Police, the LAC, FHRADC, OHCHR, UNDP, the DPP and the Chief Justice, to reform police interrogation procedures, increase access to justice, apply the First Hour Procedure and improve video recording of interviews. The First Hour Procedure aims to ensure that anyone arrested on suspicion of committing a crime receives legal advice and assistance in the first hour after arrest.⁴⁵³

There are also reforms underway to protect inmates and eliminate torture and ill-treatment by law enforcement officers. Provisions governing the police force in national law and administrative regulations are not in compliance with international standards on the use of force and the use of firearms.⁴⁵⁴ With Fiji's ratification of ICCPR and UNCAT, there may be continued emphasis on improving legislation and behavioural practice.

Migration and Asylum

Fiji acceded to the 1951 Convention relating to the Status of Refugees and its 1967 Protocol on 12 June 1972. At the same time, Fiji acceded to the 1954 Convention relating to the Status of Stateless Persons, however, it is not yet a party to the 1961 Convention on the Reduction of Statelessness. The 2003 Immigration Act constitutes the statutory basis for refugee status determination in Fiji's domestic law. The Fiji Department of Immigration (DOI) is responsible for managing immigration to Fiji, including the provision of asylum.

Between 2017 and 2018, there were two occasions in which people were forcibly returned to countries where they may be at risk of serious human rights violations.⁴⁵⁵ In 2017, an Iranian refugee fled PNG for Fiji to seek asylum, but on his way to meet Fiji's Director of DOI, police intercepted his vehicle, arrested him and separated him from his lawyer. He was returned to PNG without due process. The United Nations High Commissioner for Refugees (UNHCR) office expressed grave concern about the forced return of the Iranian refugee.⁴⁵⁶ Other international human rights organisations also condemned the arrest and forced return.⁴⁵⁷ In August 2017, 77 Chinese nationals were returned to China in co-operation with the Chinese authorities. The Fijian authorities claimed that they had committed computer crimes and breached the terms of their visas, charges they were not given the opportunity to contest. They were not permitted to seek legal advice or appeal their forcible return. Subsequent reporting by the local and international media proposed that the 77 were mainly young women brought to Fiji as sex workers and questioned why Chinese police were allowed to operate in Fiji.⁴⁵⁸ UNHCR and other international agencies work closely with the government of Fiji to fulfil its obligations under the 1951 Refugee Convention.

⁴⁴⁹ Republic of Fiji Military Forces. <http://www.rfmf.mil.fj/history/> (accessed 20 July 2019).

⁴⁵⁰ Section 131 (2) of the 2013 Constitution.

⁴⁵¹ Pacific Islands Legal Information Institute. http://www.paclii.org/fj/legis/consol_act_OK/pa75/ (accessed 20/7/2019).

⁴⁵² Amnesty International 2016. <https://www.amnesty.org/en/latest/news/2016/12/fiji-a-darker-side-of-paradise/> (accessed 7 August 2019).

⁴⁵³ Fiji Sun 2018. <https://fijisun.com.fj/2018/05/27/analysis-2135-persons-helped-through-first-hour-procedure/> (accessed 7 July 2019).

⁴⁵⁴ The Law on Police Use of Force Worldwide. <https://www.policinglaw.info/country/fiji> (accessed 31 July 2019).

⁴⁵⁵ Amnesty International 2018. Amnesty International Report 2017/18 - Fiji, 22 February 2018. Available at: <https://www.refworld.org/docid/5a9939064.html> (accessed 16 July 2019).

⁴⁵⁶ UNHCR 2017. UNHCR Statement 3 February 2017. Available at: <https://www.refworld.org/country,,UNHCR,,FJI,,5915a7c94,0.html>

⁴⁵⁷ Guardian Australia 2017. <https://www.theguardian.com/australia-news/2017/feb/03/refugee-who-fled-png-for-fiji-arrested-and-facing-deportation-to-manus-island> (accessed 31 July 2019).

⁴⁵⁸ Australian Broadcasting Commission 2017. <https://www.abc.net.au/news/2017-10-06/chinese-nationals-deported-from-fiji-sex-workers-not-fraudsters/9019666> (accessed 31 July 2019).

The Immigration Act 2003 is the main law governing migration and regulates entry into Fijian territory and the deportation of individuals, as well as providing asylum procedures and defining the offences of trafficking and smuggling of persons. UNHCR has reviewed the Act and determined that part 6, which governs asylum seekers and refugees, should provide more specific statutory guidance on refugee status determination. Additionally, according to UNHCR, some of the provisions of the 1951 Convention relating to the Status of Refugees covering the expulsion of refugees and exclusion and cessation of refugee status are not correctly reflected in the Act.

A claim to seek asylum under Section 39 of the 2003 Immigration Act is made as soon as a person signifies his intention to seek to be protected or recognised as a refugee in the Fiji Islands to an immigration officer. The Permanent Secretary may determine a claim by an asylum seeker to be recognised as a refugee in the Fiji Islands.⁴⁵⁹ The asylum seeker is required to attend an interview and an officer must, in writing and as soon as possible, notify the applicant of the decision on the claim and the reasons for the decision and the right to appeal.⁴⁶⁰ If a foreigner is subject to deportation, a copy of a deportation order must be served on the deportee as soon as practicable after it is made and the deportee may be detained in the way the Minister directs and may be placed on a ship or aircraft that is scheduled to leave the Fiji Islands.⁴⁶¹

Fiji is among the eight PICs considered at high risk of experiencing the impact of climate change and is also confronted by the threat of climate-induced migration. Fiji has signalled the possibility of accepting Pacific climate refugees⁴⁶² in the event that their nations sink due to sea level rise.

Fiji's population growth is 0.6% due to a relatively low birth rate and increased out-migration.⁴⁶³ Up to 50 eligible Fijians temporarily out-migrate annually to New Zealand to undertake seasonal work,⁴⁶⁴ and twice as many go to Australia. Around 120 Fijian families are accepted into New Zealand annually under the Pacific Access Category of migration and other categories such as skilled migrant or investor are accessible to Fijians wanting to permanently emigrate.⁴⁶⁵ Fijians also migrate to Australia, USA, Canada, Europe and other Pacific countries. Every year a small number are deported back to Fiji for committing criminal offences or overstaying visas. Data is scarce but in 2011, New Zealand deported 72 Fijians and the US deported 16 in 2013.⁴⁶⁶ There are no apparent reintegration programmes for deportees, which results in social dislocation, difficulties in gaining work, community rejection and for women, increased vulnerability to gender-based violence and exploitation.⁴⁶⁷

Fiji is experiencing rapid internal migration from rural areas to urban centres. Around half of the population now lives in urban areas and this has led to the emergence of more than 200 overcrowded squatter settlements in and around the urban centres.⁴⁶⁸

459 Immigration Act 2003, Section 40.

460 Immigration Act 2003, Section 43.

461 Immigration Act 2003, Section 53.

462 Euronews 2017. <https://www.euronews.com/2017/11/17/fiji-prepares-for-climate-refugees> (accessed 31 July 2019).

463 Fiji Bureau of Statistics, Key Statistics, 2017 Population and Housing Census of Fiji. Available at <https://www.statsfiji.gov.fj/index.php/census-2017> (accessed 31 July 2019).

464 Fiji Sun 2019. Available at <https://fijisun.com.fj/2019/01/27/more-fijians-to-get-contract-under-new-zealand-seasonal-work-scheme/> (accessed 31 July 2019).

465 Ministry of Business, Innovation and Employment. <https://www.immigration.govt.nz/about-us/media-centre/news-notifications/2019-pacific-access-category-ballot-results> (accessed 31 July 2019).

466 Migration Policy Institute. <https://www.migrationpolicy.org/article/pacific-island-nations-criminal-deportees-and-reintegration-challenges> (accessed 31 July 2019).

467 Ibid.

468 United Nations in the Pacific 2017. United Nations Pacific Strategy 2018 – 2022. Available at: https://www.unicef.org/about/execboard/files/Final_UNPS_2018-2022_Pacific.pdf

Human Trafficking, Forced Labour, and Contemporary Forms of Slavery

Fiji is a source, destination and transit country for men, women and children subjected to sex trafficking and forced labour. Family members, taxi drivers, foreign tourists, businessmen and crew on foreign fishing vessels have allegedly exploited Fijian children and women in sex trafficking.⁴⁶⁹

The 2009 Crimes Act criminalised some forms of labour trafficking and all forms of sex trafficking. Sections 112-117 criminalises trafficking in persons but inconsistent with international law, requires either transnational or domestic movement in order to constitute a trafficking offence. These articles prescribe penalties of up to 20 years imprisonment for movement-based trafficking offences involving adult victims and up to 25 years for those involving child victims. These penalties are sufficiently stringent and, with respect to sex trafficking, commensurate with other serious crimes, such as kidnapping. Furthermore, the 2003 Immigration Act criminalises the act of trafficking in a person or a child knowing that the person's entry into the Fiji Islands or any other state was arranged by unlawful means. It furthermore criminalises the exploitation of persons not legally entitled to work and excludes the possibility of the victims' consent as a defence.⁴⁷⁰

Police initiated two suspected trafficking cases in 2020. In previous years, it provided anti-trafficking training to police recruits, and acceded to the 2000 UN Trafficking In Persons Protocol.⁴⁷¹ Fiji remained on the US Department of State Tier 2 Watch List as it did not convict any traffickers or dedicate sufficient resources to officials leading anti-trafficking efforts.⁴⁷² The 2020 report noted that Fiji increased efforts to prevent trafficking.

The police anti-trafficking unit has conducted public awareness campaigns and seminars aimed at children and parents, while immigration and labour officials have conducted awareness programmes targeted at Fijians who work overseas to prevent labour exploitation. However, immigration officials have not routinely taken steps to investigate or verify the legitimacy of employers of migrant workers. The police anti-trafficking unit has not had adequate dedicated resources to effectively conduct trafficking investigations and other anti-trafficking activities,⁴⁷³ and weak interagency collaboration between police and prosecutors has impaired the government's pursuit of trafficking cases.⁴⁷⁴

Drug trafficking through Fiji and other Pacific countries, especially cocaine and methamphetamine, is reported to have increased over the past five years. While the destinations for the drugs are known to be Australia and New Zealand, the use of small vessels, such as yachts, places Fiji as a convenient transit point. According to a police spokesperson in a media report, traffickers leave behind a few kilos of drugs as payment for assistance received from their networks in Fiji and the drugs end up in the local market, contributing to a marked increase in use amongst the population. Data is not available on drug use or addiction and there are no rehabilitation services.⁴⁷⁵

Civil society and human rights defenders

Fiji has a vibrant civil society including human rights groups, women's groups, faith-based groups and LGBTI rights advocates.⁴⁷⁶ The Pacific Islands Association of Non-Governmental Organisations (PIANGO) acts as a platform for other NGOs in the region through membership of national umbrella bodies in member countries. PIANGO's purpose is to strengthen the CSO sector and provide a platform for a collective voice on issues of concern in the region.⁴⁷⁷

⁴⁶⁹ United States Department of State 2020. Trafficking in Persons Report. Available at: <https://www.state.gov/wp-content/uploads/2020/06/2020-TIP-Report-Complete-062420-FINAL.pdf>

⁴⁷⁰ Immigration Act 2003, Section 19 et seq.

⁴⁷¹ Ibid.

⁴⁷² Ibid.

⁴⁷³ Ibid.

⁴⁷⁴ Ibid.

⁴⁷⁵ The Guardian 2019. <https://www.theguardian.com/world/2019/jun/24/the-new-drug-highway-pacific-islands-at-centre-of-cocaine-trafficking-boom> (accessed 6 August 2019).

⁴⁷⁶ Some LGBTI groups active in Fiji include: Rainbow Pride Foundation, DIVA for Equality, Haus of Khameleon, Survival Advocacy Network and Oceania Pride.

⁴⁷⁷ PIANGO. <http://www.piango.org/> (accessed 31 July 2019).

The NGO Coalition on Human Rights (NGOCHR)⁴⁷⁸ in Fiji has been vocal on Fiji's democratisation processes and procedures. NGOCHR members are public advocates for community education on the rule of law, access to justice, gender-based violence and gender equality. A human rights defenders network has been active, with the support of OHCHR. Environmental conservation NGOs include Coral Cay Conservation, Nature Fiji and the World Wide Fund for Nature and Birdlife.

Fiji is also home to several unions, including Fiji Islands Council of Trade Unions, the Fiji Trade Union Congress, and the Public Employees Union. Currently, there is no specific legislative provision for NGOs or CSOs carrying out advocacy work. There has been ongoing consultation within Fijian civil society, in some instances including with the Fijian government, to draft legislation that recognises the role of civil society. The operations of NGOs are outlined, though not specifically, in a number of laws, such as: Charitable Trust Act (Cap 67); Business Licensing Act (Cap 204); Friendly Societies Act (Cap 253); Registration of Clubs Act (Cap 194); Co-operative Societies Act (Cap 250); and Social Justice Act 2001.⁴⁷⁹ Most LGBTI groups in the Pacific are concentrated in Fiji. Since the last UPR reporting cycle, no formal proceedings have been instituted against the State for harassment, intimidation or arbitrary arrest of human rights defenders. While non-state actors continue to enjoy media access and remain vocal, there have been instances where, for example, union leaders have been detained for speaking out, which is perceived as a form of intimidation.⁴⁸⁰ CSOs are often regarded by government leaders as politicised and biased.

Domestic law and human rights

Some notable human rights related legislation that has been recently enacted in Fiji include: the Online Safety Act 2018; the Employment Relations (Budget) Amendment Act 2018, which introduced five days of paternity leave and increased maternity leave from 84 to 98 days; the Rights of Persons with Disabilities Act 2018, which domesticates the CRPD; and the Information Act 2018, which recognises the right to access information held by a public agency and request corrections and deletions to that information. Fiji also passed the Community Based Corrections Act 2018, which fosters community-based sentencing options and the rehabilitation and re-integration of offenders. Climate-related legislation was passed in 2019, including the Climate Relocation of Communities Trust Fund Act 2019, Climate Action Trust Fund Act 2019, Environment Management Act 2019, and the Environment and Climate Adaptation Levy Act 2019. The Succession, Probate and Administration (Amendment) Act 2018 recognises the right of those in a de facto relationship to claim for a deceased partner's estate.

Human rights policies

Fiji continues to review and create policies relating to the advancement of human rights. Since 2016, these include the Fiji National Employment Policy 2017 and the National Youth Policy 2018. The majority of recent policies relate to climate justice, such as the introduction of the Environment and Climate Adaptation Levy (ECAL), which requires a 10% levy to be applied on the importation of certain items that use high amounts of electricity and emit chlorofluorocarbons. To better address the growing need for community relocation, a proportion of ECAL proceeds will be placed annually into a newly formed Climate Relocation of Communities Trust Fund to help finance the relocation of vulnerable communities affected by climate change. The National Disaster Risk Reduction (DRR) Policy 2018-2030, the Ministry of Agriculture Strategic Development Plan 2019-2023 and the National Agriculture Statistics Strategy were also developed. Additionally, a review of water, sanitation and hygiene (WASH), climate change adaptation and DRR policy was undertaken, resulting in policy briefs on WASH resilience.

⁴⁷⁸ The NGOCHR is made up of FWRM, Fiji Women's Crisis Centre, Citizens' Constitutional Forum, FemLink Pacific, and Ecumenical Centre for Research, Education and Advocacy. Observer associations are Pacific Network on Globalisation, Social Empowerment and Education Program, Haus of Khameleon and Diverse Voices and Action for Equality Fiji. <http://www.fwrn.org.fj/about/partnerships/ngochr> (accessed 31 July 2019).

⁴⁷⁹ Commonwealth Network. http://www.commonwealthofnations.org/sectors-fiji/civil_society/ (accessed 5 July 2017).

⁴⁸⁰ See for example: Radio New Zealand 29 June 2019. <https://www.rnz.co.nz/international/pacific-news/393189/fiji-unionists-enraged-by-felix-anthony-arrest>; FijiVillage 1 May 2019. <https://www.fijivillage.com/news/Felix-Anthony-taken-in-for-questioning--s5rk92/>

Right to life, liberty and security of person

The 2013 Constitution provides an extensive Bill of Rights that includes the right to life, liberty and security of person. During its 2009 UPR, in response to concerns about the culture of impunity for military and police personnel involved in brutality and deaths in custody, Fiji accepted recommendations to take active measures to investigate and prosecute those responsible for acts of torture and ill-treatment, and to put an end to impunity. In 2016, the Prime Minister admitted Fiji's long culture of people resorting to violence, whether it is against women in the home, instilling discipline in children, or the police attempting to extract confessions from criminal suspects.⁴⁸¹ The culture of buturaki – the beating – has been found to be deeply ingrained in parts of the Fijian culture.⁴⁸²

Fiji Corrections Services (FCS) has embarked on a modernisation programme to make corrections facilities functional and progressively compliant with UN minimum standards for the treatment of inmates under the Geneva Convention, including providing one officer for every four inmates and meeting its human rights obligations for the treatment of inmates. FCS will continue with rehabilitation, including therapeutic, upskilling and training programmes, and the flagship Yellow Ribbon Programme, which creates public awareness about how communities can help successfully reintegrate inmates into society. Fiji Police is set to continue with its restructure and reform programme, which includes the regularisation of 995 Special Constables into the regular force to adapt to new policing challenges and best practices.

The death penalty has been abolished in Fiji and in February 2015, Parliament passed a bill to remove the remaining death penalty clause from the RFMF Act.

Equality and non-discrimination

The constitution has equality provisions, which include protection from direct and indirect discrimination on a list of prohibited grounds. Under the constitution, all citizens of Fiji are referred to as 'Fijians' and have equal status and identity, which means that they are equally entitled to all rights, privileges, duties, benefits and responsibilities of citizenship. However, there are provisions for limitations on these rights and the constitution does not contain specific provisions on the rights of women. Fiji has very high rates of violence against women, despite policies and legislation instituted to address the problem. It launched consultations on a National Action Plan on violence against women in November 2020.

Fiji was one of the first PICs to adopt a National Aging Policy that recognises the right of older persons to live lives of dignity and have all their human rights realised. The policy expired in 2015 and a study in 2017 reported that the policy had not been evaluated and there was no indication that it would be updated.⁴⁸³ Moreover, the National Council of Older People, established in 2013, was limited in the activities in which it could engage due to budget constraints (FJD 200,000 in 2016).⁴⁸⁴

In relation to non-discrimination, Fiji was last reviewed by the CERD Committee in August 2012. The committee recommended comprehensive legislation on racial discrimination, including a review of the definition of racial discrimination in line with Article 1, and the amendment of existing legislation to comply with Article 4 of the Convention,⁴⁸⁵ but this has yet to be actioned. Double discrimination may be experienced by members of ethnic minorities belonging to specific religious groups which needed to be addressed along with the committee's concern over the publication by some newspapers of advertisements seeking tenants or housemaids of a particular ethnicity or religion.⁴⁸⁶

⁴⁸¹ Radio New Zealand 2016. <https://www.rnz.co.nz/international/pacific-news/316669/bainimarama-admits-torture-is-a-problem-in-fiji> (accessed 10 July 2019).

⁴⁸² Sun Daily 2016. <https://www.thesundaily.my/archive/2085387-KTARCH413068> (10 July 2019).

⁴⁸³ Anderson I. and Irava W. 2017. The Implications of aging on the health systems of the Pacific Islands: Challenges and opportunities. *Health Systems & Reform* 3:191-202, DOI: 10.1080/23288604.2017.1342179

⁴⁸⁴ Op cit.

⁴⁸⁵ CERD/C/FJI/CO/18-20. Available at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CERD/C/FJI/CO/18-20%20&Lang=En.

⁴⁸⁶ Ibid.

Although Fiji has decriminalised homosexuality, LGBTI people do not enjoy equal rights to marriage, family or the right to donate blood.⁴⁸⁷ A joint CSO submission to the 2014 UPR commented that LGBTI people experience high levels of state and societal violence, and marginalisation and discrimination on the basis of their sexual orientation, gender identity and expression, which also intersects with all other identities, including people with disabilities, women, young people, the aged and people living in remote and rural areas.⁴⁸⁸ In April 2019, the Prime Minister drew criticism from NGOHRC for publicly stating that he would not allow same-sex marriage as long as his party was in power. NGOHRC expressed concern that the statement would lead to an increase in discrimination against the LGBTI community.⁴⁸⁹

Freedom of information

Section 17(1) of the Constitution provides for freedom of speech, expression, opinion and publication, among other related rights to information and free academia. The Media Industry Development Act 2010 ensures that media operating in Fiji adhere to international norms and standards of ethical and responsible journalism. MIDA which is established under Section 3 of the Act as a Media Tribunal, is chaired by a sitting High Court judge who adjudicates on complaints regarding the media industry.

In May 2018, four staff members of the Fiji Times newspaper were acquitted of sedition charges over the publication of a letter⁴⁹⁰ and in March 2018, two employees of Islands Business Magazine were detained and questioned by police over an article they published. One of the two arrested journalists said the incident would have a chilling effect on other reporters in Fiji,⁴⁹¹ and critics suggested that the detentions were a government attempt to restrain Fiji's media outlets in the lead-up to the national general election.⁴⁹² In April 2019, three New Zealand journalists were detained after trying to interview a controversial resort developer accused of environmental desecration of an island in the Mamanuca Group.⁴⁹³ After being held in custody overnight without charges, the journalists were released the next day and received a public apology from the Prime Minister, who condemned the police action saying it was "an isolated incident undertaken by a small group of rogue officers."⁴⁹⁴

Fiji introduced its comprehensive Information Act in 2018 which gives effect to Sections 25 and 150 of the 2013 Constitution, giving the right to access information and correct personal information as well as setting up an Accountability and Transparency Commission.

In 2016, the UN Special Rapporteur on contemporary forms of racism and racial discrimination noted that despite the government's stance against any form of hate speech and racial vilification, such messages remain strong on the internet and social media.⁴⁹⁵ The Public Order Act and the 2018 Online Safety Act are the main laws dealing with online safety and security. CSOs in particular have raised concerns over the opportunity to use these laws to control social media.⁴⁹⁶

487 Radio New Zealand. <https://www.radionz.co.nz/international/pacific-news/328587/fiji-confirms-ban-on-homosexual-blood-donors> (accessed 1 August 2019).

488 Fiji National Civil Society - Joint Submission 2014. Available at: <https://ilga.org/wp-content/uploads/2016/02/Shadow-report-12.pdf> (accessed 1 August 2019).

489 Fiji Sun 2019. <https://fijisun.com.fj/2019/04/09/fiji-coalition-disturbed-by-pm-no-to-same-sex-marriage-comment/> (accessed 1 August 2019).

490 The Lowy Institute 2018. <https://www.lowyinstitute.org/the-interpreter/sedition-and-pacific-media-freedom> (1 August 2019).

491 Australian Broadcasting Commission 2018. <https://www.abc.net.au/news/2018-03-07/pacific-governments-curtail-free-press/9507006> (accessed 1 August 2019).

492 The Lowy Institute website 25 May 2018. Note 459.

493 Stuff 2019. <https://www.stuff.co.nz/world/south-pacific/111778822/newsroom-journalists-jailed-in-fiji> (accessed 1 August 2019).

494 Radio New Zealand 2019. Available at <https://www.rnz.co.nz/news/national/386287/fiji-pm-apologises-to-nz-journalists-detained-in-fiji> (accessed 1 August 2019).

495 A/HRC/35/41/Add.3. Available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G17/332/62/PDF/G1733262.pdf?OpenElement>

496 Pacific Media Centre 2019. <https://pmc.aut.ac.nz/pacific-media-watch/fiji-critics-see-online-safety-act-trojan-horse-online-censors-10278>

Freedom of expression, association and peaceful assembly

By ratifying ICCPR and ICESCR in 2018, Fiji reaffirmed the constitutional protection of freedom of opinion and expression. However, while the constitution grants the freedoms of speech, expression, thought, opinion and publication, laws may limit these freedoms for the protection or maintenance of the reputation, privacy, dignity, rights or freedoms of other persons. These include the right to be free from hate speech and to prevent attacks on the dignity of individuals, groups of individuals or respected offices or institutions, in a manner likely to promote ill will between ethnic or religious groups, or the oppression of or discrimination against, any person or group of persons.

Section 17 of the Public Order Act (POA) criminalises spreading any report or making any statement, whether spoken or intended, or by signs or visible representation, that are likely to incite racial dislike or hatred of any race or community; promote feelings of enmity or ill will between different races or communities; or prejudice the public peace. The Public Order Amendment Act of 2012 prohibits the grant of permits to any person or organisation that on previous occasions has engaged in racial or religious vilification. Furthermore, the Media Industry Development Act of 2010 prohibits media content that: is against the public interest or order; is against national interest; or creates communal discord. The cumulative effect is to reduce the opportunities to constructively discuss issues of ethnicity and race within society at large. The law of sedition imposes restrictions on freedom of expression and Fiji witnessed a series of sedition cases between 2017 and 2019.⁴⁹⁷

The 2013 Constitution provides for freedom of assembly⁴⁹⁸ but authorises restrictions “in the interest of national security, public safety, public order, public morality, public health or the orderly conduct of elections.”⁴⁹⁹ It has been alleged that the POA together with the Media Industry Development Act have stifled human rights defenders by criminalising free expression, assembly and association.⁵⁰⁰ The POA authorises police officers to arrest without a warrant any person for incitement of violence and disobedience to the law,⁵⁰¹ malicious acts through spreading false news, false reports tending to create or foster public alarm, public anxiety or disaffection or to result in the detriment of the public⁵⁰² and causing disturbances in public places, amongst other grounds.⁵⁰³ Several UPR Working Group members recommended reforming the Public Order Amendment Act and the Media Industry Development Act in a way that fully ensures the rights to freedoms of association, assembly, press and expression, in line with international standards.⁵⁰⁴ In 2017, broader powers were given to the police to arrest people in gatherings if “the appropriate authority is satisfied for good reason that such a meeting or procession is likely to prejudice the maintenance of peace or good order.”⁵⁰⁵

Fiji's first Pride Parade was held on 17 May 2018 and again on 17 May 2019, making history as the first country in the Pacific to host an LGBTI pride parade and was said to showcase changing attitudes toward LGBTI on the part of the police force.⁵⁰⁶

Economic rights

Fiji is a party to the following International Labour Organization (ILO) conventions: the Forced Labour Convention, 1930 (No. 29), the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), the Equal Remuneration Convention,

⁴⁹⁷ State v Epeli Niudamu & Ors [2017] FJHC 691; State v Tasere & Ors – Sentence [2017] FJHC 918; State v Josaia Waqabaca, Anare Ravula, Fred Wesley, Hank Arts and the Fiji Times [2018] FJHC 400; State v Karunaratne & Bulitavu, [2018] CC 1618/2011.

⁴⁹⁸ Section 18 (1) of the 2013 Constitution of Fiji.

⁴⁹⁹ Section 18 (2) of the 2013 Constitution of Fiji.

⁵⁰⁰ Notable incidents of police arrests were on 12 September 2016, 26 June 2017, 1 May 2019 of politicians from opposition parties and trade unionists.

⁵⁰¹ Section 18 of the Public Order Act 1978: Any police officer may arrest without a warrant any person committing or who, in the opinion of such police officer, is about to commit, or who he has reason to suspect has committed, an offence against the provisions of this Act.

⁵⁰² Section 15 of the Public Order Act 1978.

⁵⁰³ Section 14 of the Public Order Act 1978.

⁵⁰⁴ A/HRC/28/8. Available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G14/245/67/PDF/G1424567.pdf?OpenElement>

⁵⁰⁵ Public Order (Amendment) Act 2017.

⁵⁰⁶ International Day Against Homophobia, Transphobia and Biphobia 2018. <https://dayagainsthomophobia.org/15877/> (accessed 30 July 2019).

1951 (No. 100), the Abolition of Forced Labour Convention, 1957 (No. 105), the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), the Minimum Age Convention, 1973 (No. 138) and the Worst Forms of Child Labour Convention, 1999 (No. 182).

The Ministry of Employment, Productivity and Industrial Relations promotes and advances the rights of workers and employers, and administers and enforces the Employment Relations Promulgation 2007, Health and Safety at Work Act 1997, National Employment Centre Act 2009 and the Workers Compensation Act (Cap. 94). The Ministry is implementing labour reforms, including introducing the Pacific Labour Scheme, which will increase labour mobility opportunities in Australia and assist the Fiji government's target of reducing the unemployment rate to below 4% by 2021, and the Apprenticeship Scheme, which funds four-year apprenticeships with technical skills to help further apprentices' careers.

A National Financial Inclusion Strategy was adopted by Fiji to enable innovations in areas such as pro-poor policies and regulations, access to market information, digital innovation and consumer empowerment. Support was also being provided on the National Occupational Health Strategy in 2018-2019. Training was conducted for the Fiji Bureau of Statistics in preparation for the Household Income and Expenditure Survey (HIES) in 2019. Multidimensional poverty estimates expected in 2020 will be used to support the country in identification of policies and programmes to address child poverty.

A National Budget 2019-2020 analysis, undertaken by the Fiji Women's Rights Movement, reported that Fiji ranks 112 out of 149 countries for economic empowerment in the Global Gender Gap Index Report 2018. Twice as many males participate in the labour force as females, unemployment for males is 2.9% while for females it is 7.8%, and twice as many males are engaged in paid and unpaid work than females.

In 2018, the International Finance Corporation conducted a survey to identify the business cost of domestic and sexual violence on the Fijian business sector.⁵⁰⁷ The survey found that one in three employees (both female and male) had experience of domestic or sexual violence which impacted on their work, either through absenteeism, or mental or physical health impacts, affecting functioning.⁵⁰⁸ The equivalent of ten workdays were being lost by each affected employee annually as a result, causing a significant cost to businesses⁵⁰⁹ and, by extension, to the Fijian economy. Recommendations were provided for supporting affected employees, removing barriers to help employees achieve their full potential, mitigating productivity losses and reducing turnover costs – measures proposed as simply making good business sense.⁵¹⁰

Right to health and education

Under Section 38 of the 2013 Constitution, the State must take reasonable measures within available resources to achieve the progressive realisation of the right of every Fijian to health, to the conditions and facilities necessary to good health, and to health services, including reproductive health. The CEDAW Committee in 2018 commented that a considerable number of women believe they require their partner's permission to seek access to health services and that health staff often seek the husband's consent before providing treatment to a married woman, thereby breaching her confidentiality.⁵¹¹

Fiji is committed to advancing the 2030 Agenda for Sustainable Development. Public education in Fiji is coeducational and open to all students regardless of their socioeconomic status or background. It is also integrated and inclusive, accepting students of all religions and backgrounds, and makes special primary schooling provisions to accommodate children with disabilities. The government has undertaken comprehensive reform of its education system including providing free tuition, free textbooks and bus fare concessions from

⁵⁰⁷ IFC 2019. The business case for workplace responses to domestic and sexual violence in Fiji. Available at: https://www.ifc.org/wps/wcm/connect/de991ebc-a7f0-4118-9d13-daa8fcfead9d/IFC_Fiji_DSV_Report.pdf?MOD=AJPERES&CVID=mMY8KA

⁵⁰⁸ Op cit.

⁵⁰⁹ Ibid.

⁵¹⁰ Ibid.

⁵¹¹ CEDAW/C/FJI/CO/5. Available at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CEDAW/C/FJI/CO/5&Lang=En

2015.⁵¹² A loans scheme was introduced to improve tertiary education uptake and Fiji has consistently dedicated more than 20% of its national budget to education in the past four years. However, although the Ministry of Education has integrated human rights principles in most of its national policies, it lags behind in legislation. The Education Act 1978 does not adequately reflect the responsibilities of the State and international legal obligations as laid down in human rights conventions. The government is in the process of drafting legislation to replace the Education Act.

While welcoming the high rates of enrolment, the CEDAW Committee expressed concern over the limited access to secondary and tertiary education for many rural girls, owing to poverty. Another concern was the lack of inclusion in the curriculum of comprehensive, age-appropriate sex education and education on harmful practices and gender-based violence against women and girls, which further exacerbates the high rates of sexual violence and early pregnancy. Concern was also expressed over bullying, especially of lesbian, bisexual and transgender students.⁵¹³ The Committee on the Rights of the Child expressed additional concern that pregnant girls are forced to drop out of school and that children with disabilities do not have access to secondary education.⁵¹⁴

Women's and children's rights

Women have the same rights and status as men under family law and in the judicial system, and women have full rights of inheritance and property ownership by law, although local authorities often exclude them from the decision-making process on disposition of indigenous communal land.⁵¹⁵ As mentioned earlier, women are underrepresented in the paid workforce, while overrepresented in family carer roles.⁵¹⁶ In the 2018 national elections, 10 women were elected to parliament, a ratio of 19.6%. This was a slight increase from the 2014 election when eight women were successful. Three of the newly elected women were appointed ministers out of 12 positions and two women were appointed assistant ministers out of 10 positions.

The Ministry of Women, Children and Poverty Alleviation is the agency advising government on women and gender issues. The Ministry's budget estimate for 2019-2020 was FJD 127.7 million (USD 58 million), a decrease of 4% on the previous financial year.⁵¹⁷ The allocation represents roughly 3% of the national budget estimate.⁵¹⁸ Funding to implement the Women's Plan of Action was reduced by 23% and the domestic violence support programme was reduced by 70% to only FJD 30,000 (USD 13,600).⁵¹⁹ Child protection and disability allowances were amongst many social welfare areas where budgets were cut in what was described by the Fiji Women's Rights Movement as "a sharp shift from a welfare-based approach."⁵²⁰ Many social service entities experienced budget cuts, including the education ministry.

The endorsement and implementation of CEDAW and the Fiji National Gender Policy requires that women must be treated as equal partners in policy, decision-making and its implementation. Implementation of the policy has in part been guided by the Women's Action Plan 2010-2019. In 2018, the CEDAW Committee expressed concern that coordination within the national machinery and with external partners, in particular NGOs working on women's rights, was under resourced, and as a result, was weakening the already insufficient gender mainstreaming efforts.⁵²¹

512 Ministry of Education. <http://www.education.gov.fj/>

513 Ibid.

514 CRC/C/FJI/CO/2-4. Note 406.

515 United States Department of State. Note 493.

516 Ibid.

517 Fiji Women's Rights Movement 2019. Women and gender in the Fiji national budget. National Budget 2019-2020 Analysis. Available at: http://www.fwrm.org.fj/images//fwrn2017/publications/analysis/FWRM_National_Budget_Analysis_1.pdf

518 Parliament of the Republic of Fiji. <http://www.parliament.gov.fj/wp-content/uploads/2019/06/2019-2020-budget-estimates.pdf> (accessed 1 August 2019). The total budget expenditure estimate is FJD 3.8 billion.

519 Ibid.

520 Fiji Women's Rights Movement 2019. Note 484

521 CEDAW/C/FJI/CO/5. Note 480.

A Fiji Women's Crisis Centre (FWCC) study in 2010-2011 found that 64% of ever-partnered women have experienced intimate partner physical or sexual violence.⁵²² Rape, including spousal rape, domestic abuse, incest and sexual harassment were significant problems.

FWCC reported a large increase in reports of rape during 2018, which skyrocketed even further in the first half of 2019.⁵²³ The increase in reporting is believed to be due in part to greater awareness that spousal rape is a crime. Reporting of child sexual abuse has also increased dramatically.⁵²⁴ Police practice a 'no-drop' policy, whereby they are required to pursue investigations of domestic violence cases even if a victim later withdraws the accusation. Nonetheless, women's organisations reported that police did not consistently follow this policy.⁵²⁵ In some instances, courts have dismissed cases of domestic abuse and incest, or given perpetrators light sentences.⁵²⁶ Traditional and religious practices of reconciliation between aggrieved parties, in both indigenous and Indo-Fijian communities, were sometimes utilised to mitigate sentences for domestic violence.⁵²⁷ There exists two national helplines to respond to cases of gender-based violence and child abuse, the Domestic Violence Helpline #1560 and Child Helpline #1325, both of which are government-resourced.

At the community level, ongoing work to address violence against women and girls continues with House of Sarah, Fiji Women's Fund and Raising Voices through SASA! Faith,⁵²⁸ as well as a pilot programme with Oceania Rugby, Get Into Rugby PLUS. The UN worked with the Ministry of Youth and Sports to launch the Adolescent Youth and Sexual and Reproductive Health and Rights programme for Fiji. Women market vendors association members have increased their capacity to advocate for improved working conditions in marketplaces as a result of UN-led training.

The Committee on the Rights of the Child expressed regret that the recommendations from the concluding observations on Fiji's initial report under the convention had not been sufficiently implemented, particularly those related to allocation of resources, data collection, birth registration, corporal punishment, sexual abuse and children with disabilities. The committee recommended that the National Coordinating Committee on Children be provided with the necessary human, technical and financial resources for its effective operation to address these and other issues.⁵²⁹

Rights of persons with disabilities (PWD)

The 2017 census revealed that there are 113,595 PWD in Fiji, which is 13.7% of the population. The government provides monthly social welfare assistance to those living with disabilities, and also provides public transportation subsidies and concessions. PWD face barriers to employment due to inaccessible infrastructure and transportation.⁵³⁰

Fiji's Parliament passed the Rights of Persons with Disabilities Act (the Act) in 2018 which established a National Council for Persons with Disabilities⁵³¹ and provides for the right to work and employment, non-discrimination, equal recognition before the law, freedom from exploitation, access to justice, health, participation in political life, an adequate standard of living, and social protection for PWD. The council is made up of nine permanent secretaries of government departments and five representatives appointed by the minister, from any

522 Fiji Women's Crisis Centre 2013. Somebody's life, everybody's business! National research on women's health and life experiences in Fiji (2010-2011). Available at: <http://www.fijiwomen.com/wp-content/uploads/2017/11/National-Survey-Summary.pdf>

523 Fiji Women's Crisis Centre. <http://www.fijiwomen.com/publications/statistics/fwcc-branches-total-statistics/>

524 Op cit.

525 United States Department of State. 2018 Country Reports on Human Rights Practices: Fiji. Available at: <https://www.state.gov/reports/2018-country-reports-on-human-rights-practices/fiji/>

526 Ibid.

527 Fiji Women's Rights Movement 2017. Balancing the Scales Report: Improving Fijian Women's Access to Justice 2017. Available at: http://www.fwrm.org.fj/images/fwrm2017/publications/analysis/Balancing-the-Scales-Report_FINAL-Digital.pdf

528 Raising Voices. <http://raisingvoices.org/sasa/> (accessed 7 August 2019).

529 CRC/C/FJI/CO/2-4. Note 406.

530 Fiji Women's Rights Movement 2019. Women and gender in the Fiji national budget. National Budget 2019-2020 Analysis. Available at: http://www.fwrm.org.fj/images/fwrm2017/publications/analysis/FWRM_National_Budget_Analysis_1.pdf

531 Note that Act No 21 of 1994 established a Fiji National Council for Disabled Persons. The status of the Council is unclear, but it seems that the new Act and Council replaces the earlier Act and Council.

organisation advocating for the rights of PWD and gender equality.⁵³² Fiji ratified the CRPD in 2017 and domesticated the treaty under the Act. The Act was welcomed by the Fiji Disabled Peoples Federation (FDPF) which is the recognised overarching DPO with 30,000 members. FDPF is an umbrella body to four major affiliates serving specific disability sectors and 16 community-based branches around the country.⁵³³

In 2016, Fiji had 17 special education schools which catered exclusively to students with disabilities. As recognised in Article 24 of the CRPD, although such students were receiving an inclusive education within the mainstream education system, there is a need to go further toward an inclusive education programme for all regular schools.⁵³⁴ Disability-friendly facilities have been added or improved in certain schools. The Ministry of Health works in collaboration with the Ministry of Education in making health services accessible to children, and health screenings are facilitated periodically for all primary schools to ensure immunisation and dental care for school children.

The Mental Health Act 2010 aims to provide for the administration of mental health and a framework for the prevention, treatment, care and management of mental disorders that focuses on: the rights of patients; treatment in the least restrictive environment; community-based care and rehabilitation; and adherence to international laws and conventions.⁵³⁵ Mental health facilities can be established within general public hospitals as well as the psychiatric hospital, prisons, health centres, nursing stations, and in the private sector. According to a 2016 report, in cases where mental health facilities were established in the general and divisional hospitals, the infrastructure and staffing had been inadequate, with minimal discussion or awareness of what was expected.⁵³⁶ Recent statistics on mental health prevalence could not be found, but in 2010, 199 people had attempted or committed suicide, 469 people had been treated as inpatients and 1409 as outpatients.⁵³⁷ Anecdotal reports state that numbers have increased over the years, partly due to improved awareness and diagnosis.

Reported increases in drug use are impacting mental health in some cases. No data exists on rates of addiction; however, it has been reported that nearly 20% of patients admitted to the psychiatric hospital in Suva between May 2017 and April 2018 were for substance abuse issues, mostly addiction to methamphetamines.⁵³⁸ Since December 2017, there have been no rehabilitation centres or clinics in Fiji, or addiction health specialists.⁵³⁹

Climate justice

Fiji remains at the frontline in advocating international policies to counter climate change and is strengthening its climate resilience efforts in combatting climate change. Fiji has shown global leadership over the past few years, including: being the first PIC to be elected to the UN Human Rights Council; Presidency of the UN General Assembly in 2016-2017; Presidency at COP 23 and Co-leadership in the World Ocean Conference in 2018, co-host of the first ever UN Conference on Oceans; Chair of the Group of 77 Plus China; and Chair of the World Bank Small States Forum. The Safety and Protection Cluster which coordinates the work of key service agencies and international partners in terms of disaster response and the provision of services and advice to support the most vulnerable and those in need of protection. The cluster includes sectors as: psychosocial, protection, counselling, gender-based violence support, disabilities, older persons and child protection.

Fiji is also the first signatory from the Pacific to the Paris Treaty on climate change and the first signatory to the Law of the Sea. Fiji was awarded the 2019 Sustainable Development Leadership Award for its advocacy on climate change, and is continuing to call for more ambitious global action in limiting global warming to

⁵³² Rights of Persons with Disabilities Act 2018 (ACT NO. 4 OF 2018). Available at <https://www.fiji.gov.fj/getattachment/99fa9072-67f7-4532-9c32-f5a2f20c4f72/Act-4---Rights-of-Persons-with-Disabilities.aspx> (accessed 30 July 2018).

⁵³³ Fiji Sun 2018. <https://fijisun.com.fj/2018/03/14/disability-bill-applauded-by-federation/>

⁵³⁴ UN Human Rights Council 2016. Report of the Special Rapporteur on the Right to Education, 13 June 2016. Available at: <https://www.refworld.org/docid/57d908184.html>

⁵³⁵ Chang O. 2016. Fiji's Mental Health Decree 2010. *BJPsych International* 2:41–43. Available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5619621/>

⁵³⁶ Op cit.

⁵³⁷ Singh S., et al 2013. WHO Profile on mental health in development (WHO proMIND). Available at: https://apps.who.int/iris/bitstream/handle/10665/85325/9789241505659_eng.pdf;jsessionid=D50B28757249E47CC8EB925C83FB895D?sequence=1

⁵³⁸ The Guardian 2019. <https://www.theguardian.com/global-development/2019/jun/24/ive-seen-terrible-terrible-violence-cocaine-and-meth-fuel-and-chaos-in-fiji> (accessed 6 August 2019).

⁵³⁹ Op cit.

1.5 degrees Celsius above pre-industrial levels. A series of climate justice-related legislation was passed in 2019, such as Climate Relocation of Communities Trust Fund Act 2019, Climate Action Trust Fund Act 2019, Environment Management Act 2019, and Environment and Climate Adaptation Levy Act 2019.

The Fiji government's Blue Economy initiatives include the establishment of a Marine Managed Area and the exploration of new Blue Bonds to finance oceans-related programmes. As part of its efforts to implement measures on the ground to adapt to climate change, a plastic bag ban was to be imposed on all single use plastic bags from 1 January 2020 and the plastic bag levy of 20 cents increased to 50 cents.

Rising sea levels continues to erode shorelines and encroach on coastal communities. Tropical Cyclone Winston tore through Fiji with unprecedented strength in 2016, killing more than 44 people, destroying thousands of homes and impacting 30% of Fiji's GDP.⁵⁴⁰ Fiji provides extensive humanitarian assistance in the context of natural disasters.

Fiji has recognised that some communities, structures and infrastructures will have to be permanently relocated as the only way to avoid tragedy, save lives, protect livelihoods and prevent social disruption. The government has developed the Planned Relocation Guidelines to assist and guide relocation efforts at the local level.⁵⁴¹ By doing so, Fiji is one of the first PICs to develop a national framework to guide the relocation process. Since around 2014, the government has been relocating villages affected by the impacts of climate change and at least 80 more villages have been identified for potential relocation in the near future.⁵⁴²

540 The Fiji Times 2018. <https://www.fijitimes.com/pacific-leaders-address-climate-induced-migration/> (accessed 8 July 2019).

541 Statistics for Development Division, Pacific Community. <http://sdd.spc.int/fm> (accessed 10 August 2019).

542 Statistics for Development Division, Pacific Community. <http://sdd.spc.int/fm> (accessed 10 August 2019).



COUNTRY CHAPTERS

**FEDERATED STATES
OF MICRONESIA
(FSM)**



Federated States of Micronesia (FSM)

Key facts

Capital city	Palikir (Pohnpei Island)	Total land area	701 km ² ⁵⁴³
Population (year)	105,300 (2018) ⁵⁴⁴	Population growth % (year)	+0.3% (2018) ⁵⁴⁵
GDP per capita (year)	USD 2432 (2017) ⁵⁴⁶	GNI per capita (Atlas method) (year)	USD 3580 (2018) ⁵⁴⁷
Type of government	Constitutional federal republic in free association with the United States, with the President as the head of state and government ⁵⁴⁸		
Electoral system	First past the post		
Number of members of parliament (MPs): total/female (year)	14 Senators. One from each state elected for a four-year term and ten who serve two-year terms, whose seats are apportioned by population. ⁵⁴⁹ No women have ever been elected to the national legislature. ⁵⁵⁰		
Religions: by % of population (year)	Roman Catholic 54.7%, Protestant 41.1% (includes Congregational 38.5%, Baptist 1.1%, SDA 0.8%, Assembly of God 0.7%), Mormon 1.5%, other 1.9%, none 0.7%, unspecified 0.1% (2010 est.) ⁵⁵¹		
Ethnic groups: by % of population (year)	Chuukese/Mortlockese 49.3%, Pohnpeian 29.8%, Kosraean 6.3%, Yapese 5.7%, Yap outer islanders 5.1%, Polynesian 1.6%, Asian 1.4%, other 0.8% (2010 est.) ⁵⁵²		
Languages: by % of population (year)	English (official and common language), Chuukese, Kosrean, Pohnpeian, Yapese, Ulithian, Woleaian, Nukuoro, Kapingamarangi ⁵⁵³		
Life expectancy: male/female (year)	71.3 male 75.6 female (2018 est.) ⁵⁵⁴	% youth aged 15-24 years: total male/female (year)	19.38% male 10,068 /female 10,020 (2018 est.) ⁵⁵⁵
% disability: total male/female (year)	11% (2010) ⁵⁵⁶ not disaggregated		

543 Statistics for Development Division, Pacific Community. <http://sdd.spc.int/fm> (accessed 10 August 2019).

544 Op cit.

545 Op cit

546 FSM Statistics. http://www.fsmstatistics.fm/?page_id=144 (accessed 10 August 2019).

547 World Bank Data. <https://data.worldbank.org/indicator/NY.GNP.PCAP.CD?locations=FM> (accessed 25 August 2019).

548 CIA The World Factbook. <https://www.cia.gov/library/publications/the-world-factbook/geos/fm.html>

549 Federated States of Micronesia. Legal information of the FSM. <http://fsmlaw.org/fsm/> (accessed 10 August 2019).

550 Pacific Women in Politics. <https://www.pacwip.org/women-mps/national-women-mps/> (accessed 10 August 2019).

551 CIA Factbook. Note. 517.

552 Ibid.

553 Ibid.

554 Ibid.

555 Ibid.

556 Statistics for Development Division, Pacific Community. Summary Analysis of Key Indicators 2010. Available at: http://prism.spc.int/images/census_reports/FSM_2010_Census_Indicators_Final.pdf (accessed 10 August 2019).

International human rights treaty ratification and reporting obligations

Treaty	Date of signature (S) ratification (R) accession (a)	Reservations	Latest report submitted	Reporting status
CEDAW	1 September 2004 (a)	Articles 2 (f), 5, 11 (1) (d), 11 (2) (b), 16 and 29 (1)	01 st to 3 rd reports 4 August 2015	4 th report due March 2021
CAT	15 Sept. 2005 (S)			N/A
CRC	5 May 1993 (a)		2 nd report 12 Jan 2018	To be reviewed in 2020
CRPD	07 December 2016 (R)			1 st report overdue since 6 January 2019
OP-CRC-AC	26 October 2015 (R)			1 st report overdue 25 November 2017
OP-CRC-SC	23 April 2012 (R)			1 st report overdue 23 May 2014

Special Procedures: No invitations extended.

Working Group on the issue of discrimination against women in law and in practice – visit requested for 2016.⁵⁵⁷

Country visits: Nil

Universal Periodic Review: 1st cycle: November 2010; 2nd cycle: November 2015; next cycle: 2020.

International Criminal Court: Not a state party to the Rome Statute.

System of government

The Federated States of Micronesia is an independent country in a Compact of Free Association with the US and comprises four states, Chuuk, Kosrae, Pohnpei and Yap, each with their own government and laws. FSM has an American-style constitution that came into effect in 1979 and provides for a government composed of an executive branch, a legislative branch and a judicial branch.⁵⁵⁸ The Compact provides for FSM's defence, financial assistance and access to US domestic services and labour markets, in exchange for the US having exclusive rights to establish and operate military bases in FSM.⁵⁵⁹

The National Congress is unicameral and consists of 14 members. One senator from each state serves a four-year term. The remaining 10 members represent single member districts based on population and serve two-year terms. Both the President and the Vice-President are elected by the Congress from among its four-year members and serve a four-year term.⁵⁶⁰ There are no formal political parties.⁵⁶¹ In recent times, Chuuk State politicians have advocated for independence from the Federation and during the 2017 election for the two-year seats, the issue continued to be a topic of public discussion.⁵⁶² Elections were last held in March 2019. The constitution was last amended in 1990.⁵⁶³

⁵⁵⁷ OHCHR. http://spinternet.ohchr.org/_Layouts/SpecialProceduresInternet/ViewCountryVisits.aspx?Lang=en&country=PLW (accessed 26/8/2019).

⁵⁵⁸ Department of Foreign Affairs and Trade. <https://dfat.gov.au/geo/federated-states-of-micronesia/Pages/federated-states-of-micronesia-country-brief.aspx> (accessed 20 August 2019).

⁵⁵⁹ Op cit.

⁵⁶⁰ Op cit.

⁵⁶¹ CIA World Factbook. <https://www.cia.gov/library/publications/the-world-factbook/geos/fm.html>

⁵⁶² Freedom House, Freedom of the World 2018. <https://freedomhouse.org/report/freedom-world/2018/micronesia> (accessed 20 August 2019).

⁵⁶³ Federated States of Micronesia. <http://fsmlaw.org/fsm/constitution/index.htm> (accessed 20 August 2019).

Noting the absence of women in the national legislature, in 2017 the CEDAW Committee recommended that FSM raise awareness and implement temporary special measures, such as gender quotas.⁵⁶⁴ In 2018, the Congress introduced a bill to guarantee representation for one woman from each state as a non-voting member.⁵⁶⁵ No progress on the bill is apparent.

Judicial system and administration of justice

The judicial branch is created by Article XI of the Constitution.⁵⁶⁶ FSM has a two-tier system with two divisions: a trial division and an appellate division. The Supreme Court consists of the Chief Justice and not more than five associate justices, who are appointed for life.⁵⁶⁷ The trial division is a court of limited jurisdiction that hears matters affecting foreign relations, admiralty or maritime cases, matters arising under the constitution regarding national law or treaties, and disputes between citizens and their states or other states. The appellate division is the highest and the court of last resort. It may consider cases litigated in the trial division and local courts. It is also responsible for interpretation of the constitution, national laws and treaties. The Supreme Court of FSM is the final appeal court. Each of the four states in FSM have their own separate court system.

FSM's 2017 CRC report noted that there is no specialised juvenile court, although trial proceedings for young offenders are conducted separately from adult court proceedings.⁵⁶⁸ Young persons are legally represented and parents or guardians are involved throughout the whole legal process.⁵⁶⁹

Customary law operates alongside common law.⁵⁷⁰ Customary law and dispute resolution came to the attention of an assessment on violence against women in 2018, though not in a positive light. Most of those consulted for the assessment found the practice of customary dispute resolution disturbing because it did not result in remedying the violence and was more a case of tradition being exploited to cover up a crime.⁵⁷¹

Access to justice and the right to remedy

Article IV, Section 6 of the Constitution guarantees defendants the right to legal counsel.⁵⁷² All four states have free access to legal representation from the Public Defender's Office, the Micronesian Legal Services Corporation (MLSC) and state trial counsellors.⁵⁷³ MLSC provides low-income persons with free legal assistance in civil matters.⁵⁷⁴ MLSC's Annual Report for 2017 provides information resulting from an annual community needs assessment. Amongst the main recurring and persistent representation needs were domestic violence, human trafficking, and land and civil rights.⁵⁷⁵ In MLSC's experience of women accessing justice for domestic abuse, the process for protection and restraining orders is not streamlined and victims can be reluctant to take action.

564 CEDAW/C/FSM/CO/1-3. Available at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CEDAW/C/FSM/CO/1-3&Lang=En

565 The Kaselehlie Press 2018. http://www.kpress.info/index.php?option=com_content&view=article&id=929:bill-asks-fsm-to-consider-new-non-voting-seats-for-women-in-congress&catid=8&Itemid=103 (accessed 20 August 2019).

566 Federated States of Micronesia. Legal information of the FSM. <http://fsmlaw.org/fsm/> (accessed 10 August 2019).

567 CIA World Factbook. Note 530.

568 CRC_FSM_2_6991_E. Available at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2fFSM%2f2&Lang=en (accessed 10 August 2019).

569 Op Cit.

570 CIA World Factbook. Note 530.

571 DFAT and Pacific Women Shaping Pacific Development 2017. Assessment of EVAW Services and Gaps in Services. Section 1 – FSM National Report, December 2017. Available at: <https://pacificwomen.org/wp-content/uploads/2018/09/Section-1-FSM-EVAW-Final-Report-July2018.pdf> (accessed 9 September 2019).

572 Child Rights International Network 2015. Access to Justice for Children: Federated States of Micronesia. Available at: https://archive.crin.org/sites/default/files/fsm_access_to_justice-updatedoct2015_0.pdf (accessed 26 August 2019).

573 A/HRC/WG.6/23/FSM/1. Available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G15/175/03/PDF/G1517503.pdf?OpenElement> (accessed 20 August 2019).

574 Micronesian Legal Services Corporation. <https://micronesianlegal.org/> (accessed 20 August 2019).

575 Micronesian Legal Services Corporation 2017. Annual Report of Review of Priorities 2017. Available at: <https://drive.google.com/file/d/0B2IE7YCrFwiWUpoMFpvbUR3YVU/view> (accessed 9 October 2017).



Reasons for this include the fact that court sessions are open to the public and victims have to face perpetrators in the court room.⁵⁷⁶

In 2017, UNICEF found that there are barriers to child victims accessing justice and to the effective prosecution of perpetrators. It appeared that few justice representatives had specific training in handling cases of violence, abuse and exploitation of children.⁵⁷⁷

National Human Rights Institutions (NHRI)

FSM has multiple human rights monitoring mechanisms within its government departments. There is a gender development and human rights officer within the Department of Health and Social Affairs and a national UPR and Human Rights Taskforce. FSM recognises the need to establish an independent NHRI.⁵⁷⁸ In September 2017, SPC HRSD and APF submitted to the government a scoping report on the feasibility of establishing an NHRI, which was informed by national consultations.⁵⁷⁹ A decision has not yet been announced.

Security sector

The Compact of Free Association accords the security and defence of FSM to the US. The national police is in charge of law enforcement nationally, while each state has its own police force.⁵⁸⁰ The conduct of the national police is regulated by Article IV of the Declaration of Rights in the Constitution.⁵⁸¹ The Attorney-General (AG) is the chief law enforcement officer.⁵⁸² Police accountability is the jurisdiction of each state, and some departments, such as the Chuuk Department of Public Safety, have an internal affairs division. Otherwise, complaints may be made to an offending officer's supervisor or to the AG. Civil remedies are available to victims of unlawful police conduct.⁵⁸³

Most participants in a 2014 Family Health and Safety Study (FHSS) on the prevalence of sexual and gender-based violence felt that involving formal services or authorities, such as police, did not lead to support due to their failure to act. Difficulties with keeping information confidential was another constraint to reporting violence to authorities.⁵⁸⁴ In 2017, the CEDAW Committee recommended the strengthening of women's access to justice in order to encourage reporting of cases of violence to authorities and ensuring that victims have access to immediate means of redress and protection.⁵⁸⁵ A 'no-drop' provision⁵⁸⁶ is in place, however, police are mostly untrained in how to apply it.⁵⁸⁷ An assessment conducted in 2017 by Pacific Women reported that the police force is generally under-resourced and struggles with recruitment and retention issues. Some of those consulted for the assessment commented that potential candidates who meet force recruitment criteria tend to have more opportunities in the private sector or overseas, where salaries are higher.

576 DFAT and Pacific Women Shaping Pacific Development 2017. Assessment of EVAW Services and Gaps in Services. Section 1 – FSM National Report, December 2017. Available at: <https://pacificwomen.org/wp-content/uploads/2018/09/Section-1-FSM-EVAW-Final-Report-July2018.pdf> (accessed 9 September 2018).

577 UNICEF Pacific 2017. Situation analysis of children in the Federated States of Micronesia. Available at: https://www.unicef.org/pacificislands/06_Situation_Analysis_of_Children_Micronesia.pdf

578 CRC_FSM_2_6991_E. Note. 537

579 Asia Pacific Forum for National Human Rights Institution 2017. <https://www.asiapacificforum.net/news/apf-visits-federated-states-micronesia/> (accessed 20 August 2019).

580 Hall D. undated. World Factbook of Criminal Justice Systems, Federated States of Micronesia, Available at: <http://www.bjs.gov/content/pub/ascii/WFBCJFSM.TXT> (accessed 25 August 2019).

581 Ibid.

582 Ibid.

583 Ibid.

584 FSM Department of Health and Social Affairs 2014. Federated States of Micronesia Family Health and Safety Study: A prevalence study on violence against women. Available at: <http://countryoffice.unfpa.org/pacific/drive/FSMFHSSReportweb.pdf>

585 CEDAW/C/FSM/CO/1-3. Note. 533

586 A 'no-drop' provision places an obligation on the law and justice sector to prosecute a case, even if the victim withdraws the complaint. Victims have been known to be pressured by abusers or relatives to drop charges. The 'no-drop' approach relieves the victim of this additional pressure so that justice can be pursued.

587 DFAT and Pacific Women Shaping Pacific Development 2017. Assessment of EVAW Services and Gaps in Services. Section 1 – FSM National Report, December 2017. Available at: <https://pacificwomen.org/wp-content/uploads/2018/09/Section-1-FSM-EVAW-Final-Report-July2018.pdf> (accessed 9 September 2018).

As a result, police recruits tend to have lower education levels and are more difficult to train to the professional standard required for a respected police force.⁵⁸⁸ Academy training was not prioritised for funding. Training of 33 recruits in July 2017 had been shortened from 90 days to 30 days due to lack of funding. Low numbers of women in the force was also noted.⁵⁸⁹ In 2018, the FSM National Police Chief attended human rights training in Fiji and commented that a human rights understanding was critical because of the close connection to the rule of law.⁵⁹⁰ There were no reports of physical abuse or inhuman treatment by police or prison officials in 2017,⁵⁹¹ but there is no independent civilian police oversight body.⁵⁹² The Law on Police Use of Force Worldwide recommended that FSM's national law governing police use of force should be amended to comply with international law.⁵⁹³

Refugees and asylum seekers

The constitution provides for freedom of movement and other laws allow for freedom of travel, emigration and repatriation. FSM's 2015 UPR report noted that discussions were ongoing to ratify the Migrant Workers Convention (CRMW) and the 1951 Convention relating to the Status of Refugees and the 1967 Protocol thereto.⁵⁹⁴ In 2017, the CEDAW Committee repeated its recommendation to ratify these and other outstanding commitments. FSM's second UPR report noted that it cooperated with UNHCR and other humanitarian organisations in providing protection and assistance to internally displaced persons, refugees, returning refugees, asylum seekers, stateless persons, and other persons of concern.⁵⁹⁵

In 2017, the FSM court ordered the government to free four Nepalese refugees who had been detained in Pohnpei for nearly two years under 24-hour security with limited visitation rights and without legal or consular representation.⁵⁹⁶ The government argued that no laws were in place governing the treatment of refugees, nor was FSM party to international treaties on the issue; however, the judge found that FSM was bound by international law to protect all individuals' inherent dignity and inalienable rights.⁵⁹⁷

Migration

FSM citizens have had a long history of migrating to the US in search of better life opportunities, particularly education and employment, using FSM's status as a Freely Associated State under the Compact of Association for visa-free entry.⁵⁹⁸ It is estimated that a third of FSM's total population lives in the US.⁵⁹⁹

FSM citizens have limited economic opportunities, such as employment in the private sector. The outer islands and the outlying areas of the main islands are particularly deprived in this regard, so many Micronesians move from these areas to urban centres, hoping for better job prospects. With Compact funding being reduced,⁶⁰⁰ many more Micronesians are using the opportunity provided by the Compact to move to Guam, Hawaii or the US mainland.⁶⁰¹

⁵⁸⁸ Op cit.

⁵⁸⁹ Op cit.

⁵⁹⁰ Ibid.

⁵⁹¹ Freedom House. Note 531.

⁵⁹² The Law on Police Use of Force Worldwide 2019. <https://www.policinglaw.info/country/micronesia> (accessed 25 August 2019).

⁵⁹³ Op cit.

⁵⁹⁴ A/HRC/WG.6/23/FSM/1. Note 543.

⁵⁹⁵ A/HRC/WG.6/23/FSM/1. Note 543.

⁵⁹⁶ Radio New Zealand 2017. <https://www.rnz.co.nz/international/pacific-news/335698/fsm-court-orders-refugees-to-be-freed> (accessed 25 August 2019).

⁵⁹⁷ Op cit.

⁵⁹⁸ A/HRC/WG.6/23/FSM/1. Note 543.

⁵⁹⁹ International Organization for Migration 2015. Migration in the Federated States of Micronesia: A country profile 2015. Available at: https://publications.iom.int/system/files/pdf/mp_micronesia.pdf

⁶⁰⁰ The Compact of Free Association comes to an end in 2023. As reported by Freedom House, the US will provide more than \$130 million in annual aid through 2023, in addition to funding from applicable US federal programs. There is a level of insecurity being felt for the economic future after 2023.

⁶⁰¹ International Organization for Migration 2015. Migration in the FSM: A country profile 2015. Geneva: International Organization for Migration. Available at: https://publications.iom.int/system/files/pdf/mp_micronesia.pdf

Vulnerability to the impacts of climate change could result in an increase in internal migration along with external migration, given the ease of movement to the US.⁶⁰² While FSM citizens have visa-free entry into the US, they are subject to deportation if they commit a crime, even a misdemeanour.⁶⁰³ In 2017, 108 people were deported for criminal activity.⁶⁰⁴

FSM's social protection system is open to all foreign and domestic residents so migrants and their families should not face difficulties in accessing education and social protection services.⁶⁰⁵ In 2010, an estimated 3000 foreigners, largely from the US and the Philippines, were working in FSM in both public and private sectors.⁶⁰⁶

Human Trafficking, Forced Labour, and Contemporary Forms of Slavery

In November 2011, FSM ratified the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the UN Convention against Transnational Organised Crime (Palermo Protocol), with a view to providing effective protection for victims of human trafficking and punishing the perpetrators of this crime. It was signed into law in March 2012, and as a result, a Transnational Crime Unit was established under the Department of Justice. All four FSM states have their own anti-human trafficking laws.⁶⁰⁷

FSM enacted Public Law 17-38 which creates a new subchapter II under chapter 6 of the FSM Code defining crimes relating to trafficking in persons and related offences, and prescribing appropriate penalties for their violation, and for other purposes.⁶⁰⁸ These penalties were sufficiently stringent, but by allowing for a fine in lieu of imprisonment for sex trafficking crimes, the penalties were not commensurate with penalties for other serious crimes, such as rape. While the four states have their own laws criminalising trafficking offences, Pohnpei and Chuuk States do not explicitly prohibit adult sex trafficking. Cases prosecuted at the state level may be heard subsequently at the national level under national anti-trafficking law, depending on which court hears a case.⁶⁰⁹

The national government's anti-trafficking office and the Supreme Court reported collaboration with state task forces and an international organisation on the development of awareness campaigns targeting law enforcement, immigration and customs officers, political leaders, churches, women's and youth groups, and students, which reached over 500 participants.⁶¹⁰ In 2018, the government budgeted USD 270,000 for anti-trafficking efforts, opened a shelter for victims in Chuuk, and designated a full-time assistant attorney general to prosecute cases, with support from four investigators.⁶¹¹

FSM remains at Tier 2 on the US State Department assessment as it does not meet the minimum standards in several key areas, such as standard operating procedures for proactive victim identification and referral to protection services. Understanding of trafficking remained low amongst law enforcement and the judiciary, and overall protection services were insufficient.⁶¹² Nine alleged trafficking cases were investigated in 2018, one more than in 2017, and seven cases were prosecuted, compared with two in 2017. Courts convicted six traffickers, compared with two convictions in 2017. In Chuuk State, three traffickers were sentenced for child sex trafficking to nine years' imprisonment and ordered to pay USD 1000 each in restitution to the victim, which is below the minimum mandated amount of USD 5000.⁶¹³

⁶⁰² Ibid.

⁶⁰³ Ibid.

⁶⁰⁴ Homeland Security 2019. <https://www.dhs.gov/immigration-statistics/yearbook/2017/table41> (accessed 28 August 2019).

⁶⁰⁵ Ibid.

⁶⁰⁶ Ibid.

⁶⁰⁷ A/HRC/WG.6/23/FSM/1. Note. 543.

⁶⁰⁸ Ibid.

⁶⁰⁹ United States Department of State 2018. Trafficking in persons report - Micronesia, Federated States of, 28 June 2018. Available at <https://www.refworld.org/docid/5b3e0ad14.html>

⁶¹⁰ Ibid.

⁶¹¹ US Department of State 2019. Trafficking in persons report June 2019. Available at <https://www.state.gov/wp-content/uploads/2019/06/2019-Trafficking-in-Persons-Report.pdf> (accessed 20 August 2019).

⁶¹² Ibid.

⁶¹³ Ibid.

In March 2019, a Supreme Court judge sentenced the parents of a child sex trafficking victim to seven years and eight months' imprisonment and ordered each to pay the victim USD 40,000 in restitution. The combined USD 80,000 imposed on the offenders was one of the largest restitution judgments in the history of the court.⁶¹⁴ Authorities did not report any investigations, prosecutions, or convictions of government officials complicit in trafficking offences.⁶¹⁵

Forced labour is prohibited and the government effectively enforces basic standards for working conditions in the formal sector. Foreign migrant workers nevertheless remain vulnerable to exploitative labour practices, including on foreign fishing vessels in FSM waters.⁶¹⁶

Civil society and human rights defenders

CSOs play a valuable role as independent advocates and activists, providing training and advocacy. These include national youth councils and national women's advisory councils in the four states, faith-based organisations and the FSM Alliance of Non-governmental Organisations (FANGO).⁶¹⁷ National youth and women's councils are made up of state councils that comprise hundreds of similar village councils, providing considerable outreach networks. No local groups work exclusively on human rights, although groups address the rights of women and children, including by lobbying for legislation. The Pohnpei Consumer Organisation, FSM's national disability organisation, played an active role in lobbying for the ratification of CRPD. The government generally cooperates with these groups.⁶¹⁸

There are currently around 113 NGOs registered with FANGO.⁶¹⁹ A 2015 UNDP study which undertook a capacity assessment of CSOs in the Pacific found that most CSOs in FSM work largely on environmental issues.⁶²⁰ The majority of CSOs are incorporated as non-profit organisations. Registration as non-profits and the reporting requirements to maintain this status are not particularly difficult.⁶²¹ However, CSOs in FSM face many challenges, including a lack of funding, financial literacy, capacity building and guidance from external partners.⁶²² A report in 2017 proposed that state governments could provide annual grants to a selection of key CSOs because these organisations contribute to fulfilling governments' civic obligations and achieving the objectives of the Strategic Development Plan 2004-2023.⁶²³

Domestic law and human rights

Nine years after it was introduced, the Pohnpei State Legislature in 2017 unanimously passed the Domestic Issues Act, providing mechanisms and procedures to deal with incidents of domestic violence.⁶²⁴ Yap also recently developed its draft Domestic Violence Bill, which is currently being reviewed. An implementation plan has been developed for the Kosrae Family Protection Act 2014 and has been submitted to the Kosrae AG's office for review.

⁶¹⁴ Ibid.

⁶¹⁵ US Department of State 2019. Note. 583.

⁶¹⁶ Freedom House. Note 531.

⁶¹⁷ Secretariat of the Pacific Community 2012. Stocktake of the gender mainstreaming capacity of Pacific island governments: Federated States of Micronesia. Available at:https://www.spc.int/sites/default/files/wordpresscontent/wp-content/uploads/2017/03/web_2-FSM_gender_stocktake.pdf

⁶¹⁸ United States Department of State 2018. Country reports on human rights practices - Micronesia, Federated States. Available at: <https://www.state.gov/wp-content/uploads/2019/03/MICRONESIA-2018.pdf> (accessed 28 August 2019).

⁶¹⁹ Pacific Islands Associations of Non-Governmental Organisations. http://piango.org/our_members/member-countries/fsm/ (accessed 29 August 2019).

⁶²⁰ UNDP, undated. A capacity assessment of CSOs in the Pacific: Six country profiles. Available at: https://www.undp.org/content/dam/rbap/docs/Research%20&%20Publications/democratic_governance/UNDP_PC_DG_A_Capacity_Assessment_of_CSOs_in_the_Pacific_Six_Country_Profiles.pdf

⁶²¹ Ibid.

⁶²² Ibid.

⁶²³ DFAT and Pacific Women Shaping Pacific Development 2017. Assessment of EVAW Services and Gaps in Services. Section 1 – FSM National Report, December 2017. . Available at: <https://pacificwomen.org/wp-content/uploads/2018/09/Section-1-FSM-EVAW-Final-Report-July2018.pdf> (accessed 9 September 2018).

⁶²⁴ The Kasehleie Press 2017. http://www.kpress.info/index.php?option=com_content&view=article&id=797:pohnpei-legislature-passes-domestic-issues-relating-to-domestic-violence-act&catid=8&Itemid=103 (accessed 20 August 2019)

Chuuk State enacted legislation to raise the age of sexual consent from 13 to 18 years, and in 2019, Pohnpei State legislature also raised the age of consent to 18 years. The CEDAW Committee recommended that this change should be adopted throughout FSM's territory.⁶²⁵

In November 2018, Congress amended section 107 of Title 1 of the FSM Code to prohibit discrimination based on sexual orientation, amongst other purposes.⁶²⁶ There are no labour laws providing for a minimum age or conditions for employment. FSM is not a member of ILO.⁶²⁷ The CEDAW Committee in 2017 recommended that FSM expedite the law reform process and adopt a clear time frame and deadlines for its completion in order to amend or repeal all legislation that is incompatible with the principle of equality and non-discrimination, and also harmonise laws, including statutory and customary laws, with international human rights standards.⁶²⁸

Human rights policies

In 2017, the national government finalised a draft National Gender Policy, effective to 2023. The policy's main goals are: better representation of women in decision-making; elimination of gender-based violence; equitable education outcomes; to address barriers facing women in the workforce; that women have better health care and improved choices over their fertility; and that FSM and state governments mainstream gender to consider the impacts of policies and programmes on women and men, girls and boys.⁶²⁹ The CEDAW Committee recommended that FSM set a timeframe to adopt the draft policy and a national plan of action for the advancement of women that addresses intersecting forms of discrimination.⁶³⁰ The FSM President endorsed the National Youth Policy 2017-2023.

Right to life, liberty and security of person

The right to life, liberty and security of person are constitutionally protected rights.⁶³¹ Several UN agencies and other organisations have highlighted the lack of national legislation to protect victims of violence, especially domestic violence. The UN Country Team report submission to the UPR process (2015) urged FSM to introduce federal legislation criminalising violence against women.⁶³² Three states now have legislation in place but there is no federal legislation, there are no government women's refuges and only Yap State has safe houses organised by CSOs. Women and their children tend to seek temporary shelter with either supportive friends or a church, before returning back to the abusive situation.⁶³³ There is a tendency for police to treat domestic violence as a family matter, regardless of laws.

Equality and non-discrimination

Section 5, Article IV of the Constitution includes provisions for non-discrimination on the grounds of sex, race, ancestry, national origin, language and social norms. A 2018 amendment provides protection against discrimination on the basis of gender, sexual orientation or disability.⁶³⁴ In 2015, the UPR Working Group noted that legal and social discrimination persisted, particularly in the area of sexual orientation, and encouraged

625 CEDAW/C/FSM/CO/1-3. Note 533.

626 Act No. 20-150. Available at: https://www.cfsm.gov.fm/ifile/20%20congress/ACTS/ACT_20-150_JACK.pdf (accessed 28 August 2019).

627 United Nations General Assembly Human Rights Council Working Group on the Universal Periodic Review Twenty-third session 2-13 November 2015 available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G15/188/83/PDF/G1518883.pdf?OpenElement>

628 CEDAW/C/FSM/CO/1-3. Note. 533.

629 DFAT and Pacific Women Shaping Pacific Development 2017. Assessment of EVAW Services and Gaps in Services. Section 1 – FSM National Report, December 2017. Available at: <https://pacificwomen.org/wp-content/uploads/2018/09/Section-1-FSM-EVAW-Final-Report-July2018.pdf> (accessed 9 September 2018).

630 CEDAW/C/FSM/CO/1-3. Note. 533.

631 FSM Constitution, Article IV. Available at: <http://fsmlaw.org/fsm/constitution/article4.htm> (accessed 29 August 2019).

632 A/HRC/WG.6/23/FSM/2. Available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G15/188/83/PDF/G1518883.pdf?OpenElement>

633 DFAT and Pacific Women Shaping Pacific Development 2017. Assessment of EVAW Services and Gaps in Services. Section 1 – FSM National Report, December 2017. Available at: <https://pacificwomen.org/wp-content/uploads/2018/09/Section-1-FSM-EVAW-Final-Report-July2018.pdf> (accessed 9 September 2018).

634 Gay Star News 2018. <https://www.gaystarnews.com/article/micronesia-senator-wants-to-ban-trans-people-working-for-government/#gs.08ppqv> (accessed 29 August 2019).

FSM to adopt measures to address remaining gaps.⁶³⁵ The CEDAW Committee in 2017 recommended that FSM give central importance to the convention as the basis for the elimination of all forms of discrimination against women and the achievement of gender equality, and fully incorporate non-discrimination into the national legal system.⁶³⁶

Freedom of information (FOI)

FSM does not have an FOI law.⁶³⁷ Reportedly, as of 2017, government operations and legislative processes are generally transparent, although there is no comprehensive law guaranteeing public access to government information.⁶³⁸

The Constitution of FSM provides for freedoms of expression, peaceful assembly, association, petition, non-establishment of religion and its free exercise.⁶³⁹ FSM has government-published newsletters and privately owned weekly and monthly newspapers.⁶⁴⁰ Each state runs its own radio station and television stations run in certain states. According to the same report, internet use is growing – currently around a third of the population – but low income and small populations make it difficult for service providers to expand coverage.⁶⁴¹ Reportedly, the government does not improperly monitor personal communications or social media activity.⁶⁴² In 2016, the Crime Unit of the FSM police filed for a warrant to search the FSM Telecommunications Corporation and seize its electronic records, stating that a criminal offence had probably been committed in violation of Title 32, Chapter II of the FSM Code (Business Regulations, Foreign Investment). The warrant sought to enable search and seizure of all email records and phone records, without limitation on time or content. The court refused the police application due to its sweeping nature across time and content, amongst other reasons.⁶⁴³

There were no reports of restrictions on academic freedom in 2017.⁶⁴⁴ Freedom of assembly is constitutionally protected. Freedom of association in general is reportedly respected, and there are no laws to prevent workers from forming unions, engaging in collective bargaining or striking; however, such activities are not specifically protected or regulated by law, and few employers are large enough to support unionisation in practice.⁶⁴⁵

Religious freedom is generally respected and religious groups are not required to register. Around 99% of the population is Christian. A small Ahmadi Muslim community has reported some instances of discrimination and vandalism.⁶⁴⁶ Although legislation was passed in November 2018 banning discrimination on the grounds of race, sex, sexual orientation, language or religion and prohibiting the enactment of laws that discriminate on these grounds,⁶⁴⁷ in the same month a senator introduced a bill to prevent transgender people working for the national government.⁶⁴⁸ The bill has not progressed and reinforces various UN Committee recommendations on the need to educate each branch of government on human rights obligations. Homosexual acts are not criminalised, and same sex marriage is not legalised.⁶⁴⁹

635 A/HRC/31/4. Available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G15/290/78/PDF/G1529078.pdf?OpenElement>

636 CEDAW/C/FSM/CO/1-3. Note 533.

637 A/HRC/WG.6/23/FSM/2. Note. 604.

638 Freedom House. Note 531.

639 UN Human Rights Council. Report of the Working Group on the Universal Periodic Review - Federated States of Micronesia. Available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G15/290/78/PDF/G1529078.pdf?OpenElement> (accessed 7 December 2020).

640 Ibid.

641 Ibid.

642 Ibid.

643 Regional Rights Resource Team, Pacific Community 2019. Pacific human rights law digest: volume 6. Available at: <https://rrrt.spc.int/resources/publications/pacific-human-rights-law-digest-vol6>

644 Freedom House. Note 531.

645 Ibid.

646 Ibid.

647 Gay Star News 2018. <https://www.gaystarnews.com/article/micronesia-senator-wants-to-ban-trans-people-working-for-government/#gs.08ppqv> (accessed 29 August 2019).

648 Op cit.

649 Freedom House. Note 531.



Economic rights

The Protection of Resident Workers Act regulates all labour rights. Forced labour is prohibited and the government enforces basic standards for working conditions in the formal sector; however, foreign migrant workers are vulnerable to exploitative labour practices.⁶⁵⁰ In 2017, the government's CRC report noted that overall, 16% of the labour force is unemployed but the figure varies dramatically by gender and location. Women in Chuuk have the highest unemployment rate (36%). Subsistence agriculture supports many families and one in three households receives remittances from family members living abroad.⁶⁵¹ A range of social security programmes are in place, although they only benefit the low number of people who have worked in the formal economy.⁶⁵²

The CEDAW Committee in 2017 made several recommendations, including: increasing employment opportunities for women and reducing structural inequalities in employment, occupational segregation and the gender pay gap; criminalising sexual harassment in the workplace; creating income-generating opportunities and continuing proactive measures, such as giving priority to women in public sector recruitment and extending the coverage of economic empowerment programmes to women in rural areas and on outlying islands; ensuring that women in the informal sector, including domestic workers, are covered by social protection schemes; and conducting labour inspections to ensure decent working conditions.⁶⁵³ Seven female police officers, assigned to work on patrol boats, faced sexual harassment in their roles and the male officers involved in the harassment were dismissed from their posts.⁶⁵⁴

According to the UN, FSM does not have labour laws that specify a minimum age or conditions of employment.⁶⁵⁵ Recommendations made during the 2015 UPR process include putting in place labour laws that comply with CRC, especially to protect children from economic exploitation, setting the minimum age for admission to employment, and regulating work conditions. The Working Group also recommended that FSM enact legislative reforms with a view to addressing the issue of children in hazardous work environments.⁶⁵⁶

Right to health and education

The constitution recognises the right of people to health care and inclusive education.⁶⁵⁷ The Department of Health and Social Affairs has one of the most advanced disease surveillance systems in the region, EpiNet, for raising the alarm about diseases, viruses and other health dangers.⁶⁵⁸ According to the 2015 national UPR report, all four FSM states have comprehensive cancer and immunisation programmes in their health departments.⁶⁵⁹ The UN Country Team report noted that maternal mortality remained a concern and that malnutrition was a common problem among young children due to the consumption of unhealthy or inappropriate food.⁶⁶⁰ A key constraint in monitoring the health and nutritional status of children and women in FSM is the lack of a national representative household survey, such as the Demographic and Health Survey that has been undertaken in several other Pacific Island countries.⁶⁶¹

⁶⁵⁰ Ibid.

⁶⁵¹ CRC/FSM/2. Available at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2fFSM%2f2&Lang=en

⁶⁵² Op cit.

⁶⁵³ CEDAW/C/FSM/CO/1-3. Note 533.

⁶⁵⁴ Fiji Women's Crisis Centre 2018. <http://www.fijiwomen.com/news/media-release/johnny-santos-chief-fsm-national-police-fsm-training-critical-police/> (accessed 25 August 2019).

⁶⁵⁵ A/HRC/WG.6/23/FSM/2. Available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G15/188/83/PDF/G1518883.pdf?OpenElement>

⁶⁵⁶ Ibid.

⁶⁵⁷ A/HRC/WG.6/23/FSM/1. Available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G15/175/03/PDF/G1517503.pdf?OpenElement>

⁶⁵⁸ A/HRC/WG.6/23/FSM/2. Note. 627

⁶⁵⁹ A/HRC/WG.6/23/FSM/1. Note. 629.

⁶⁶⁰ A/HRC/WG.6/23/FSM/2. Note. 627.

⁶⁶¹ CRC/FSM/2. Note. 623.

FSM was one of the first countries in the Pacific to introduce a maternity leave law, Public Law 16-15, which grants paid leave of up to six weeks to women post-partum.⁶⁶² FSM has a dedicated Maternal and Child Health Programme that provides clinical and outreach activities within communities and schools. The programme has made significant progress in reducing infant and under-five mortality, demonstrating a fundamental commitment to child health.⁶⁶³

FSM Code Title 40 on Compulsory Education ensures that all children attend school. Gender parity has been achieved in primary education, and a national special education programme is dedicated to supporting children with disabilities.⁶⁶⁴ Progress toward universal primary education was described in the government's 2017 CRC report as having stalled at 85% of children completing primary school, while secondary school participation declined to 55% of eligible young people over the 2000-2010 period.⁶⁶⁵ Without more recent census data available, it is difficult to assess the current situation. In the CRC review, the quality of educational services was a key concern.⁶⁶⁶

The FSM government's Strategic Development Plan 2004-2023 sets four goals for the education sector, including: improving the quality of education and teaching; consolidating performance monitoring and data-based decision-making; strengthening participation and accountability of the education system to the communities; and ensuring education is relevant to the lives and aspirations of the FSM people.⁶⁶⁷ Some states, especially Yap and Kosrae, require children aged 6-14 years to attend school, be immunised and birth registered.⁶⁶⁸ Chuuk State Department of Education raised its educational standards for all teachers who are now required to hold an Associate of Arts degree. A 2017 UNICEF report found that migration away from the outer islands to state capitals is resulting in schools in urban areas becoming overcrowded and facing textbook and resource shortages.⁶⁶⁹ Heavy reliance on donor funding and difficulties associated with providing educational services on remote islands represented key challenges. A 2014 UNICEF Child Protection Baseline Study concluded that all schools still practiced corporal punishment, but the practice was not supported by most adults and children. Instead, it is either accepted as part of the educational experience, or children and parents do not feel empowered to report the abuse.⁶⁷⁰

In 2017, the CEDAW Committee recommended that FSM: eliminate sex stereotyping in educational programmes, curricula and textbooks, especially those that reinforce negative cultural norms; ensure that girls are not expelled from school due to pregnancy and implement initiatives for their re-entry into schools; develop a broader approach to age-appropriate education on reproductive health and rights as part of school curricula; and ensure girls with disabilities are able to access quality education on the same basis as other children.⁶⁷¹

Women's and children's rights

In December 2017, the FSM Congress discussed a resolution to rescind all reservations to CEDAW.⁶⁷² To date, the resolution has not been adopted. There has never been a woman elected to the National Congress, although in 2017 one woman was elected to State Congress⁶⁷³ in Chuuk and one in Pohnpei. A report in 2017 found that women have consistently been absent or grossly under-represented at the legislative and executive levels of government. In 2017, one of three associate justices was a woman and there was one female assistant Attorney-General out of five positions.

662 A/HRC/WG.6/23/FSM/2. Note. 625.

663 Ibid.

664 CRC/FSM/2. Note 623.

665 Ibid.

666 Ibid.

667 A/HRC/WG.6/23/FSM/1. Note. 629.

668 Ibid.

669 UNICEF 2017. Situation analysis of children in the Federated States of Micronesia. Note 547.

670 Ibid.

671 CEDAW/C/FSM/CO/1-3. Note. 533.

672 CR 19-344. Available at: https://www.c fsm.gov.fm/ ifile/19th%20Congress/RESOLUTIONS/CR_19-344.pdf (accessed 29 August 2019).

673 Pacific Women in Politics. <https://www.pacwip.org/resources/news/women-stirring-the-political-current-in-chuuk/> (accessed 28 August 2019).



The public defender was also a woman. In 2017, two out of seven department heads in the national government were women. Of five overseas diplomatic missions, one was headed by a woman.⁶⁷⁴ The 2010 Census found that males outnumber females by almost two to one in waged employment, with 63% males and 37% females.⁶⁷⁵ Women have the primary burden of household labour, even when they are employed.

FSM continues to implement measures in its ongoing efforts to eliminate discrimination and all forms of violence against women and children. Such efforts include completing a Gender Stocktake in 2012 and a Family Health and Safety Study (FHSS) in 2014. The findings of the FHSS show the prevalence of violence against women (VAW) in FSM, and that most violence is inflicted by people women know very well. Unfortunately, the women often remain silent because they either cannot get out of the situation or they believe that such violence is normal. The FHSS highlights the significant need for raising awareness and education on VAW and gender roles, and provides important strategies and recommendations on how to improve the welfare of women and children.⁶⁷⁶

The CEDAW Committee in 2017 made a number of recommendations to FSM including: addressing the factors impeding women's political participation and adopting proactive policy measures, such as gender-sensitive training, capacity-building and targeted recruitment of women, and temporary special measures to increase the number of women in elected positions and their appointment to senior and management positions in the judiciary, the executive branch of government, and the public and foreign service; putting in place a comprehensive national policy to eliminate VAW with adequate resources for its implementation; removing barriers to women's access to finance and providing financial subsidies and social protection for single women heading households, women living in poverty, older women and women with disabilities; increasing rural women's access to health care, education, employment and justice, amongst other areas; legislation for equal rights in marriage, divorce, property relations, child custody and inheritance; and the collection, analysis and dissemination of comprehensive data disaggregated by sex, age and vulnerability.⁶⁷⁷

Children's right to due process is guaranteed in the national and state constitutions. Discrimination against children is prohibited in law but persists in practice. Although there are slight differences in each of the state legal regimes and practices, efforts have been made to harmonise protection across jurisdictions.⁶⁷⁸ FSM conducted educational and awareness campaigns at both the national and state levels, through community dialogue and sharing of printed materials, which has led to the states becoming more aware of CRC obligations. Kosrae's Family Protection Act addresses child abuse, both Chuuk and Pohnpei passed laws raising the age of consent to 18 years in conformity with CRC standards, and recently Pohnpei enacted a family protection law.⁶⁷⁹

Rights of peoples with disabilities (PWD)

FSM ratified CRPD in 2016 but has yet to submit its initial report, which was due in January 2019. FSM laws require the government to provide educational services to all children. Additionally, children with disabilities are given special protection by establishing procedures designed to provide access to a reasonable, appropriate and free elementary and secondary education through to graduation from Grade 12, or to age 21.⁶⁸⁰ The Special Education Programme is entirely funded by grants from the USA under the Individuals with Disabilities Education Act and supported by FSM public law.⁶⁸¹

According to the Pohnpei Consumer Organisation in 2017, support gaps exist in areas of availability, affordability and accessibility for PWD. There are no sign language services available at hospitals, police stations or courts, no

⁶⁷⁴ DFAT and Pacific Women Shaping Pacific Development 2017. Assessment of EVAW Services and Gaps in Services. Section 1 – FSM National Report, December 2017. Available at: <https://pacificwomen.org/wp-content/uploads/2018/09/Section-1-FSM-EVAW-Final-Report-July2018.pdf> (accessed 9 September 2019).

⁶⁷⁵ FSM Office of Statistics, Budget, Overseas Development Assistance and Compact Management 2012. Summary analysis of key indicators from the FSM 2010 census of population and housing. Available at: http://prism.spc.int/images/census_reports/FSM_2010_Census_Indicators_Final.pdf (accessed 20 August, 2019).

⁶⁷⁶ Ibid.

⁶⁷⁷ CEDAW/C/FSM/CO/1-3. Note 533.

⁶⁷⁸ Ibid.

⁶⁷⁹ CRC/FSM/2. Note 623.

⁶⁸⁰ DFAT and Pacific Women Shaping Pacific Development 2017. Assessment of EVAW Services and Gaps in Services. Section 1 – FSM National Report, December 2017. Available at: <https://pacificwomen.org/wp-content/uploads/2018/09/Section-1-FSM-EVAW-Final-Report-July2018.pdf> (accessed 9 September 2019).

⁶⁸¹ CRC/FSM/2. Note 623.

appropriate transportation services, and many PWD feel they are not treated as human beings when engaging with police, including as credible witnesses. The education system does not offer support with sign language interpretation or braille. There is also concern over workplace sexual assault of women with disabilities.⁶⁸²

An assessment in 2017 noted that mental health activities and services to address the issues of violence against women are essential.⁶⁸³ Both Pohnpei and Chuuk hospitals provide limited mental health services, and the funding focus has been on reducing substance abuse and other risky behaviour. There is no separate safe space for mental health patients at hospitals, although in 2017 a new mental health wing was under construction at Pohnpei Hospital, funded by Australia. Those with mental health impairments are known to be jailed, allegedly for their own protection.⁶⁸⁴ An emerging issue is that of trafficked people and how to provide mental health support while the victims await justice. Assistance with developing protocols and systems for trafficked victims is required.⁶⁸⁵ On 29 August 2019, Pohnpei State Legislature passed a Disability Act, the first state to do so.

The CEDAW Committee in 2017 expressed concern over the lack of measures to address the physical and psychological trauma of women who are victims of gender-based violence, which results in high suicide rates among survivors. The committee recommended a monitoring mechanism on the mental health situation of women and girls in order to inform programmes and services.⁶⁸⁶ The committee also expressed concern about the lack of equal opportunities for girls with disabilities, who are often denied access to quality education owing to fear of stigma or prejudice, and the lack of accessible school buildings and transportation.⁶⁸⁷ The committee requested more comprehensive information on the situation of vulnerable groups of women in the next report.⁶⁸⁸

Climate justice

FSM's Climate Change Law, Public Law 18-35, was passed in December 2013. FSM's Nationwide Integrated Disaster Risk Management and Climate Change Policy (June 2013) complements FSM's National Strategic Development Plan 2004-2023 (NSDP) and was developed in recognition of the need to safeguard the development of FSM's people, resources and economy, now and in the future, against the risks posed by climate change. The policy was created as a guiding tool for meetings on regional and international treaty obligations and objectives that FSM has agreed to, such as those pursuant to the UNFCCC.⁶⁸⁹ FSM hosts an annual State and National Leadership Conference wherein national priorities relating to the NSDP and SDGs are discussed by leaders, including climate change, agriculture, economy and tourism among many others.⁶⁹⁰

The Micronesian Chief Executives Summit takes place once a year to discuss sub-regional issues such as trade, transportation, climate change and health, among others.⁶⁹¹ The communiqué from their July 2015 meeting notes that "The Presidents called on all nations of the world to take necessary action to limit global warming to below 1.5 degrees, as called for by the Alliance of Small Islands States and other vulnerable countries." FSM ratified the Doha Amendment to the Kyoto Protocol in January 2014. All four states and the FSM National government have emergency operations centres that serve as central meeting and communication points during an environmental emergency. In March 2013, FSM completed upgrades to its communications systems for early warning. A Climate Change Toolkit was developed by the Micronesian Conservation Trust, and the Nature Conservancy offers a standardised methodology for addressing vulnerability and adaptation, and participatory assessment research and planning.

682 DFAT and Pacific Women Shaping Pacific Development 2017. Assessment of EVAW Services and Gaps in Services. Section 1 – FSM National Report, December 2017. Available at: <https://pacificwomen.org/wp-content/uploads/2018/09/Section-1-FSM-EVAW-Final-Report-July2018.pdf> (accessed 9 September 2019).

683 Ibid.

684 Ibid.

685 Ibid.

686 CEDAW/C/FSM/CO/1-3. Note. 533.

687 Ibid.

688 Ibid.

689 A/HRC/WG.6/23/FSM/1. Note. 629.

690 Ibid.

691 The Guam Daily Post 2016. https://www.postguam.com/news/local/micronesian-chief-executives-summit-opens/article_2ae8ae22-da0a-11e5-8956-7f9d8e7f40e8.html

FSM received funding from the International Organization for Migration (IOM) to address climate change, disaster risk reduction and mitigation steps for climate change response in its school system. Kosrae State incorporated climate change information into its school curricula in 2013. As part of its recycling initiatives, Yap State completely banned the use of plastic bags.

The FSM Agriculture Policy 2012-2016 provides the basis for action for everyone in the public and private sectors to enliven sustainable agricultural growth. FSM faces multiple challenges in achieving national food security and sustaining livelihoods due to its dependence on US aid and Compact funding. There is developmental potential in fisheries and agriculture, and the policy recognises the important role played by traditional farming and its impact on social and cultural livelihoods.⁶⁹²

692 A/HRC/WG.6/23/FSM/2. Note. 647.



COUNTRY CHAPTERS

**REPUBLIC OF
KIRIBATI**

Republic of Kiribati

Key facts

Capital city	Tarawa	Total land area	811 sq.km ⁶⁹³
Population (year)	119,449 (2020) ⁶⁹⁴	Population growth % (year)	1.12% (2018 est.) ⁶⁹⁵
GDP per capita (year)	USD 1625 (2018) ⁶⁹⁶	GNI per capita (Atlas method) (year)	USD 3140 (2018) ⁶⁹⁷
Type of government	Presidential Republic. The President is the head of government and head of state as well as chief of the Cabinet. ⁶⁹⁸		
Electoral system	44 members directly elected in single- and multi-seat constituencies by absolute majority vote in two rounds if needed; 1 seat reserved for a Banaba Island representative. ⁶⁹⁹ The ex-officio position for the AG was abolished in 2017.		
Number of members of parliament (MPs): total/female (year)	45 members including 3 females (2019) ⁷⁰⁰ Ratio of female MPs 6.7%.		
Religions: by % of population (year)	Roman Catholic 57.3%, Kiribati Uniting Church 31.3%, Mormon 5.3%, Baha'i 2.1%, Seventh Day Adventist 1.9%, other 2.1% (2015 est.) ⁷⁰¹		
Ethnic groups: by % of population (year)	I-Kiribati: 96.2% 1.8% Kiribati mix, 0.2% Tuvaluan, 1.8% others (2015) ⁷⁰²		
Languages: by % of population (year)	I-Kiribati spoken by 90%; English spoken by 80% (2017) ⁷⁰³ both official		
Life expectancy: male/female (year)	69.5 females 64.3 males (2018 est.) ⁷⁰⁴	% youth aged 15-24 years: total male/female (year)	20.74%: 11,213 males/11,466 females (2018 est.) ⁷⁰⁵
% disability: total male/female (year)	12.4% ⁷⁰⁶ : not disaggregated at the moderate level but approximately equal at the severe and higher levels – wide age variations (2015) ⁷⁰⁷		

693 CIA Factbook. <https://www.cia.gov/library/publications/the-world-factbook/geos/kr.html> (accessed 20 August 2019).

694 <https://nso.gov.ki> (accessed 14/04/21)

695 Ibid.

696 World Bank Data. Available at: <https://data.worldbank.org/indicator/NY.GDP.PCAP.CD?locations=KI> (accessed 20 August 2019).

697 Ibid.

698 CIA Factbook. Note. 665.

699 Ibid.

700 Maneaba ni Maungatabu. <https://www.parliament.gov.ki/members/current-members/> (accessed 20/8/2019).

701 CIA Factbook. Note. 665.

702 National Statistics Office 2016. Republic of Kiribati 2015 population and housing census. Volume 1: Management report and basic tables. Available at: <http://www.mfed.gov.ki/sites/default/files/2015%20Population%20Census%20Report%20Volume%201%28final%202011016%29.pdf>

703 World Atlas. <https://www.worldatlas.com/articles/what-languages-are-spoken-in-kiribati.html>

704 CIA Factbook. Note. 665.

705 Ibid.

706 Percentage of people aged 5 years and above found to have at least a moderate disability.

707 UNICEF Pacific, Kiribati National Statistics Office and Pacific Community 2017. Disability monograph: From the 2015 population and housing census. Suva. Available at: https://www.unicef.org/pacificislands/Kiribati_Disability_Report_Final_E-Version.pdf

International human rights treaty ratification and reporting obligations

Treaty	Date of signature (S) ratification (R) accession (a)	Reservation	Latest report submitted	Reporting status
CEDAW	17 March 2004 (a)		1 st to 3 rd report published 25 March 2019	Due to appear 2020
UN CAT	22 July 2019 (a)			1 st report due 21 July 2020
CRC	11 December 1995 (a)		2 nd to 4 th report submitted 13 February 2019	Due to appear 2020
CRPD	27 September 2013 (a)		1 st report submitted 12 February 2019	Due to appear 2020
OP-CRC-AC	16 September 2015 (a)			N/A
OP-CRC-SC	16 September 2015 (a)			N/A

Special Procedures: No invitation extended.

Country visits: There have not been any visits by the UN special procedures since the last visit in 2012 on the issue of water and sanitation.

Universal Periodic Review: 1st cycle: November 2010; 2nd cycle: November 2015; next cycle: 2021

International Criminal Court: Acceded to the Rome Statute in 2019.

System of government⁷⁰⁸

The Republic of Kiribati has a democratic parliamentary system of government with a unicameral parliament, the House of Assembly (Maneaba ni Maungatabu). The executive branch consists of the President (Te Beretitenti), Vice-President and Cabinet. The President is the head of government and head of state as well as chief of the Cabinet. The Speaker is elected from outside the House of Assembly. In 2017, the Ministry of Justice was established, resulting in the removal of the Attorney-General as an ex-officio member of the legislative branch. The President, who is nominated from among the elected legislators, is limited to three consecutive four-year terms. The President can be removed through a no-confidence vote, which triggers a general election.⁷⁰⁹ The House of Assembly has 45 seats: 44 elected by popular vote, with one nominated to represent Banaba.⁷¹⁰ There are currently only three elected women (6.7%). There are no formal restrictions on women's political participation; however, traditional social norms are an inhibiting factor.⁷¹¹ Members serve four-year terms, and the most recent election took place in 2020.

Judicial system and administration of justice

Kiribati has a three-tier court process. The Magistrates Court deals with less-serious civil, criminal and land cases on a district basis. The High Court hears more serious civil and criminal cases referred by the Magistrates Courts and also hears appeals from the lower court. Appeals relating to land, divorce and inheritance are dealt with by the High Court's Land Division. The Chief Justice is the head of the judiciary and is appointed by the President acting on the advice of Cabinet after consultation with the Public Service Commission (s.81). High Court judges are appointed by the President in accordance with the advice of the Chief Justice sitting with the

⁷⁰⁸ The information under this heading is drawn from the Constitution of Kiribati which can be found at http://www.ilo.org/wcmsp5/groups/public/@ed_protect/@protrav/@ilo_aids/documents/legaldocument/wcms_117331.pdf

⁷⁰⁹ Freedom House. Freedom in the World 2018. <https://freedomhouse.org/report/freedom-world/2018/kiribati> (accessed 30 August 2019).

⁷¹⁰ The people originally from the island of Banaba (Ocean Island) who now live on Fiji's Rabi Island, having been displaced by phosphate mining during the 20th century.

⁷¹¹ Freedom House. Note 681.



Public Service Commission (s.81[2]). Appeals from the High Court are heard by the Court of Appeal. In 2015 there were five non-resident judges appointed to the Court of Appeal.

Section 88 of the Constitution states that the judiciary “interprets and applies the Maneaba’s laws, creates and interprets case law, settles disputes of fact and law between individuals, and between individuals and the State”. The Court of Appeal comprises the Chief Justice, other judges of the High Court and those who are appointed by the Beretitenti, acting in accordance with the advice of the Chief Justice sitting with the Public Service Commission (section 91 of the Constitution). The High Court has unlimited original jurisdiction in civil and criminal cases, as well as appellate jurisdiction in civil, criminal and land cases coming from the Magistrates Court (Section 89 of the Constitution). The Magistrates Court deals with the majority of all civil and criminal matters, although the most serious crimes and civil suits are addressed in the High Court.

Access to justice and the right to remedy

Legal assistance is provided by the Office of Public Legal Service,⁷¹² however, increases in civil and criminal cases is affecting its capacity to handle the multitude of cases at one time. The office provides legal assistance to those who are disadvantaged or unable to access representation. It is an independent public office established to provide legal services including representation and advice on land, civil and criminal issues at the Magistrates Courts, High Court and the Court of Appeal.

Legal assistance is not readily available on the outer islands unless a formal request is received. It is often difficult for those residing in outer islands to request support due to communication, transport and accessibility barriers. Magistrates on the outer islands have been undergoing capacity training around their roles, with the aim of providing appropriate tools to handle cases and deal with the population more effectively. In 2019, the judiciary established the Chief Magistrate’s Office to deal with issues and services of magistrates at the national level, with a focus on magistrates in the outer islands.

The Juvenile Justice Act 2015 protects children and young people who come into contact with the justice system, whether as victims, witnesses or perpetrators.⁷¹³ There are standard operating procedures for use by all relevant government agencies for handling young people presenting as victims, perpetrators and witnesses.⁷¹⁴ The Eliminating Sexual and Gender Based Violence Taskforce is tasked with improving justice sector responses to sexual and gender-based violence.⁷¹⁵

Women and children with disabilities who have been subjected to crime can receive assistance from a social welfare officer to access the legal system. There is no comparable support for men with disabilities requiring this assistance. Training has been developed to help ensure the rights of people with psychosocial disabilities are protected within the justice and prison systems.⁷¹⁶

National Human Rights Institutions (NHRI)

Kiribati has yet to establish an NHRI.⁷¹⁷ At the request of the government, a national consultation on the feasibility of establishing an NHRI in Kiribati was conducted by SPC HRSD, OHCHR and APF in September-October 2019. The Human Rights Division, which sits within the Ministry of Justice, focuses on the implementation of Kiribati’s human rights commitments at the domestic level. The Kiribati National Human Rights Taskforce oversees all human rights treaties ratified by Kiribati and provides advice on Kiribati’s human rights commitments.

712 Office of Public Legal Service. <http://www.opl.org.ki/> (accessed 10 August 2019).

713 CRC/C/KIR/2-4. Available at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fKIR%2f2-4&Lang=en

714 Ibid.

715 CEDAW/C/KIR/1-3. Available at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fKIR%2f1-3&Lang=en

716 CRPD/Kiribati/2017/8. Available at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2fCRPD%2fINR%2fKIR%2f2f7327&Lang=en

717 According to the National Report submitted during the UPR process (2015), the Government stated that: “Human Rights are being mainstreamed into the government ministries and departments administering and implementing national laws that address human rights, and all are bound by the Constitution which is the supreme law in Kiribati.” A/HRC/WG.6/21/KIR/1. Available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G14/197/21/PDF/G1419721.pdf?OpenElement> (accessed 10 August 2019).

The taskforce comprises members from the Ministry of Women, Youth, Sport and Social Affairs (MWYSSA) and representatives from other relevant government ministries and departments, civil society and development partners.

The taskforce has been a key factor in Kiribati completing its overdue human rights treaty reports and is currently considering legislative steps to establish human rights law.

Security sector

The Police and Prisons Service, under the Ministry of Justice, maintains internal security.⁷¹⁸ In partnership with the Pacific Regional Policing Initiative and SPC HRSD, the Kiribati police service conducts ongoing training on domestic violence, human rights and gender issues, as well as on other matters.

New initiatives undertaken by the Ministry of Justice through the Prisons Department include separate custody facilities for men and women, family and juvenile justice courts, and new policies for prison services like rehabilitation programmes and an emphasis on changing the attitudes of inmates. The Prison Ordinance provides that male and female prisoners shall be confined in separate parts of the prison, and as far as the prison accommodation renders it practicable, juveniles, young persons and adults will be separated from one another. Prison conditions are not considered harsh or inhumane.⁷¹⁹

Refugees and asylum seekers

There are no laws which specifically provide for the granting of asylum or refugee status, and the government has not established a formal system for providing protection to refugees. However, the Principal Immigration Officer has wide discretionary authority to permit foreigners to stay in the country. During the recent past there have been no records of applications for asylum or refugee status. Kiribati has not taken part in any international refugee forums, international asylum seeker programmes, become a party to any convention in force, or reacted or made countermeasures to relevant cases.⁷²⁰

Migration

The constitution provides for freedom of internal movement, foreign travel, emigration and repatriation, and the government generally respects these rights. The exception is that the constitution provides for the forced expulsion from the country of a convicted person "in the interests of defence, public safety, order, morality, health, or environmental conservation." The government has not used this provision to date. Although the law prohibits government restrictions on citizens' freedom of movement, it does not restrict such actions by traditional village councils.⁷²¹ The village councils have in the past used banishment as a punishment for wrongdoing.⁷²²

Kiribati has experienced an urban drift of population to South Tarawa, particularly of young men. Internal migration has led to growing numbers living in squatter-type settlements. The high rates of urbanisation in South Tarawa have led to it being characterised as one of the most overcrowded places on earth, with infrastructure, facilities and natural resources overburdened.⁷²³ On the other hand, the migrant population of I-Kiribati diaspora is estimated at less than 5000, or about 4% of the resident population, which is modest

⁷¹⁸ US Embassy <https://fj.usembassy.gov/wp-content/uploads/sites/180/KIRIBATI-2019-HUMAN-RIGHTS-REPORT.pdf>

⁷¹⁹ Freedom House. Note. 681.

⁷²⁰ For example, the Kiribati government did not react to the deportation to Kiribati of a Kiribati national who failed in an attempt to claim climate refugee status in New Zealand. BBC News website 2015. <https://www.bbc.com/news/world-asia-34674374> (accessed 20 August 2019).

⁷²¹ United States Department of State, 2016 Country Reports on Human Rights Practices - Kiribati, 3 March 2017. Available at: <https://www.refworld.org/docid/58ec8a194.html> (accessed 24 September 2019).

⁷²² Freedom House. Note. 681.

⁷²³ UNICEF 2017. Situation analysis of children in Kiribati. Suva: UNICEF Pacific Office. Available at: https://www.unicef.org/pacificislands/04_Situation_Analysis_of_Children_Kiribati.pdf

compared to other PICs.⁷²⁴ In 2016, 170 seasonal workers took up temporary residence in New Zealand and 20 seasonal workers went to Australia.⁷²⁵ Seasonal workers return to Kiribati at the end of the season but often take up the opportunity again the following year. Some I-Kiribati qualify for migration to Australia, New Zealand and other parts of the Pacific, although opportunities are limited. Through a ballot system, New Zealand offers 75 places each year for individuals and their immediate families to take up residency and eventually apply for citizenship.⁷²⁶ Australia and New Zealand have skilled migration pathways that are sometimes accessed by I-Kiribati but few have the necessary qualifications or opportunities to gain work experience.⁷²⁷ Migration seems desirable for those escaping overcrowding, food insecurity or climate impacts, but it can have negative outcomes for the country, including the emigration of qualified doctors, nurses and medical assistants to larger neighbouring countries.⁷²⁸

Kiribati is not a state party to the Migrant Workers Convention. Migration has come to be perceived within the climate change context as a mitigating element to any possible severe and unavoidable negative impacts of climate change. Over a decade ago, the government acquired a 5460-acre piece of land in Fiji, purchased as part of its climate change mitigation strategy.⁷²⁹

Human Trafficking, Forced Labour, and Contemporary Forms of Slavery

A local NGO has reported that many I-Kiribati girls, some as young as 15 years old, may be subject to child sex trafficking in local bars and hotels.⁷³⁰ Some I-Kiribati, including family members of potential victims, older women, and hotel and bar workers, may facilitate child sex trafficking by providing a venue for commercial sex with minors. Others fail to assist trafficked victims or alert authorities to situations of child sex trafficking. These girls generally receive financial support, food, alcohol or goods in exchange for sexual services.⁷³¹

According to the US State Department, while Kiribati may have made significant efforts to address human trafficking, the government has not fully met the minimum standards for the elimination of trafficking and is on their Tier 2 Watch List.⁷³² The government has conducted anti-trafficking training for police and welfare officials, conducted outreach programs on sexual violence and exploitation, and developed counselling guidelines for schools to enhance the protection of minors.⁷³³ The 2015 UPR report recommended Kiribati efficiently combat international trafficking in young women, prosecute the authors of such crimes, and establish formal procedures to proactively identify trafficking victims among vulnerable populations and refer them to protective services.⁷³⁴

The Employment and Industrial Relations Code 2015 criminalises the trafficking of children and the Measures to Combat Terrorism and Transnational Organised Crime Act criminalises certain forms of human trafficking, prescribing penalties of up to 15 and 20 years imprisonment respectively for the trafficking of adults and children. The government did not prosecute cases against potential traffickers or punish those who exploited or facilitated the commercial sexual exploitation of children.⁷³⁵ The government also did not employ procedures to proactively identify child sex trafficking victims, particularly among individuals in prostitution.⁷³⁶

724 DevPolicy Blog 15 February 2019. <https://devpolicy.org/climate-change-migration-kiribati-tuvalu-nauru-20190215/> (accessed 30 August 2019).

725 Government of Kiribati. Kiribati 20-Year Vision 2016–2036. Available at: http://www.president.gov.ki/wp-content/uploads/2019/04/kiribati-20-year-vision-2016-2036%2E2%80%A2sept.final_.pdf (accessed 10 August 2019).

726 DevPolicy Blog 15 February 2019. <https://devpolicy.org/climate-change-migration-kiribati-tuvalu-nauru-20190215/> (accessed 30 August 2019).

727 Op cit.

728 UNICEF 2017. Situation analysis of children in Kiribati. Note 695.

729 Republic of Kiribati 2014. <http://www.climate.gov.ki/2014/05/30/kiribati-buys-a-piece-of-fiji/> (accessed 20 August 2019).

730 United States Department of State 2016. Trafficking in Persons Report - Kiribati, 30 June 2016. Available at: <https://www.refworld.org/docid/577f95ed6.html> (accessed 10 August 2019).

731 Ibid.

732 Ibid.

733 Ibid.

734 A/HRC/29/5.

735 Ibid.

736 Ibid.

Civil society and human rights defenders

NGOs in Kiribati work in several areas, including climate change, cervical and breast cancer, women in maritime, health and community services, gender-based violence, peaceful relationships and community support, alcohol awareness and recovery, women and children's crisis centres and counselling, in addition to the provision of other social and development services. The Kiribati Association of Non-Governmental Organisations (KANGO) serves as an umbrella group for some 39 local NGOs, including church-based groups.⁷³⁷ NGOs and CSOs are able to apply to a government small-grants scheme for project funding, and many development partners also offer small grants for projects. The Pacific Women programme provides funding to the Women and Children's Support Centre and the Catholic Church Crisis Centre.⁷³⁸

Domestic law and human rights

Chapter II of the Constitution⁷³⁹ guarantees protection of fundamental rights and freedoms, including the right to life and personal liberty, the right to freedom from slavery and inhuman and degrading treatment, the right to property ownership, and the freedoms of conscience, expression and association, and freedom of movement. The constitution also recognises that every person in Kiribati is entitled to these rights and freedoms without discrimination on the grounds of race, place of origin, political opinion, colour, creed or sex.

The *Te Rau N Te Mwenga* Act (Family Peace Act) now criminalises domestic violence (see Section 1 and objectives of Act) recognising obligations under CEDAW, among others. The government, in partnership with SPC HRSD, provides training on the Act for police, public prosecutors, health, social welfare, education, elected officials and NGO workers. Part VI Section 33(1-6) of the Family Peace Act provides for penalties of up to six months in prison, a fine, or both, for the first offence of domestic violence, to three years in prison for the third offence. Moreover, the prosecutor may choose to file a charge under the Penal Code and relevant written law (Section 34).⁷⁴⁰ In 2018, Kiribati became the first Pacific State to develop a comprehensive implementation plan for its domestic violence law.

The Juvenile Justice Act 2015 provides for a juvenile justice system, and the Children, Young People and Family Welfare Act 2013 provides for the protection of children and young people against any form of abuse and other violations, in alignment with the CRC.

Labour laws and regulations prohibit discrimination on the basis of ethnic origin, race, colour, sex, religion, political opinion, national origin, social origin, disability, sexual orientation, age, HIV or other communicable disease status, social class or economic status, pregnancy, marital status, family responsibilities, state of health, or resulting from an investigation or legal proceedings affecting an employer.⁷⁴¹ There were no formal reports of discrimination in employment and wages, however, cultural barriers sometimes impeded women from playing a more active role in the economy.⁷⁴²

A scoping study on CRPD domestication was underway in 2019, and key partners, including the DPO Te Toa Matoa, were working closely on developing relevant strategies.⁷⁴³ The government has committed to a National Disability Inclusion Act by 2021. The Penal Code has been amended, enlarging the definition of rape and criminalising incest. A feasibility study and exploration on drafting a stand-alone Family Act had been given approval for progression, and the government has committed to develop a National Disability Inclusion Act by 2021.

⁷³⁷ Freedom House. Note. 681.

⁷³⁸ Pacific Women Shaping pacific Development 2019. Kiribati Country Plan Summary. Available at: <https://pacificwomen.org/wp-content/uploads/2019/01/Kiribati-Pacific-Women-country-plan-summary-Jan-2019.pdf> (accessed 20 August 2019).

⁷³⁹ Constitution of Kiribati. Available at: <https://www.wipo.int/edocs/lexdocs/laws/en/ki/ki001en.pdf> (accessed 10 August 2019).

⁷⁴⁰ ILO. Available at: <https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/102529/124002/F-830436630/KIR102529.pdf>

⁷⁴¹ Employment and Industrial Code 2015. http://www.paclii.org/ki/legis/num_act/eairc2015388.pdf (accessed 20 August 2019).

⁷⁴² United States Department of State 2016. Note 693.

⁷⁴³ Information provided by SPC HRSD Country Focal Officer for Kiribati.

Human rights policies

Human rights policy development rests with the Human Rights Unit within the Ministry of Justice. Kiribati's Policy and National Action Plan on Gender Based Violence 2011-2021 guides the country's response to gender-based violence. The Children, Young People and Family Welfare Policy guides the protection of children against abuse, violence, neglect and exploitation, and seeks to ensure the best interest of the child is safeguarded.

The Kiribati National Disability Policy and Action Plan 2018-2021 guides work in progressing the rights of persons with disabilities.⁷⁴⁴

Right to life, liberty and security of person

Due process guarantees are typically respected during arrests, initial detentions and trials. Detainees have access to a lawyer and defendants are usually granted bail while awaiting trial.⁷⁴⁵ Domestic violence is criminalised but remains a serious and widespread problem despite government efforts to combat it as cultural norms deter formal complaints and police interventions.⁷⁴⁶ Kiribati acceded to UNCAT in 2019 and is seeking to prepare its first report.

Equality and non-discrimination

The constitution recognises the fundamental rights and freedoms of individuals without discrimination on the grounds of race, place of origin, political opinion, colour, creed or sex. The recognition of these individual rights is subject to respect for the rights of others, for the public interest, and others as provided for in Section 3 (a-c) of the Constitution and subsequent limitations within each of the rights contained in Section 3 to Section 15. These constitutional guarantees often conflict with cultural norms and practices based on the strong belief in the role of the male as the head of the family and decision-maker. The National Gender Policy aims to address these norms and practices by encouraging shared values among family members.

Women still face barriers in accessing education and employment due to societal bias and other factors. Same-sex sexual activity is a criminal offence, although the law is rarely enforced.⁷⁴⁷ Property ownership rights are generally the same for men and women, but land inheritance laws are patrilineal and sons often inherit more, or better, land than daughters. The citizenship law contains some discriminatory provisions, for example, a foreign wife of a male citizen acquires citizenship automatically through marriage, but the foreign husband of a female citizen does not.⁷⁴⁸ Fathers, and not mothers, confer citizenship on their children.⁷⁴⁹ Extensive educational and public advocacy initiatives are being implemented to address deep-rooted practices and beliefs, including community outreach activities on the Education Act of 2013 and Te Rau N Te Mwenga Act.

During a special visit by the UN Special Rapporteur on water and sanitation in 2012, it was noted that the definition of discrimination in the constitution is narrower than the definition contained in the UDHR or core international human rights treaties, and the Special Rapporteur encouraged Kiribati to broaden the definition so as to bring it into alignment with international norms.⁷⁵⁰ There was no evidence of such action by 2019.

Freedom of information (FOI)

Kiribati lacks comprehensive regulations on public asset disclosure for officials, access to government information, and other transparency matters. In October 2017, the President signed the Kiribati Audit Act which strengthens the autonomy of the Audit Office to scrutinise government performance and establishes an

⁷⁴⁴ CRPD/KIRIBATI/2017/8. Note. 688.

⁷⁴⁵ Freedom House. Note. 681.

⁷⁴⁶ Ibid.

⁷⁴⁷ Freedom House. Note. 681.

⁷⁴⁸ United States Department of State 2016. Note. 693.

⁷⁴⁹ Freedom House. Note. 681.

⁷⁵⁰ A/HRC/24/44/Add.1. Available at: https://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/24/44/Add.1

independent board to oversee its work.⁷⁵¹ There is no legislation to protect the privacy of personal information held by authorities, or allow the public to access, correct or make changes to the personal information being held.

The constitution provides for freedom of speech and of the press, and the government generally respects these rights. The Broadcasting and Publications Authority Act dictates the manner in which the Authority conducts its services.

The Act states that “the Minister may at any time by notice in writing require the Authority to refrain from broadcasting any matter or classes of matter specified in the notice, and it shall be the duty of the Authority to comply with the notice” (section 10 [3]). Although there are no government restrictions on media, concerns have been raised about the lack of transparency with respect to the registration of media organisations as well as the lack of local independent media.⁷⁵²

The Act requires registration of newspapers and also permits the government to cancel registrations or fine newspapers for certain offences.⁷⁵³ Kiribati operates two main newspapers on a weekly basis: one run by a private agency owned by a member of parliament, and the other a state-owned corporation, the government-owned Broadcasting and Publications Authority. Together, they provide most local news content, while the regional SKY Pacific paid-television channel provides regional news coverage.⁷⁵⁴ The National Broadcasting Authority is the only major radio station, broadcasting three times daily, while two shortwave band FM stations concentrate mainly on the urban capital vicinity.

There is no evidence of the government restricting or disrupting access to the internet or censoring online content, and there were no credible reports of it monitoring private online communications without appropriate legal authority.⁷⁵⁵ While generally available on South Tarawa, public access to the internet elsewhere in the country is limited by lack of infrastructure. According to the World Bank, approximately 15% of the population had access to the internet in 2017.⁷⁵⁶

Freedom of expression, association and peaceful assembly

The constitution provides for freedom of assembly and association, and the government generally respects these rights.⁷⁵⁷ Chapter II, Sections 12 and 13 provide for freedom of expression, assembly and association. The government does not impose constraints on freedom of speech or the expression of personal views.⁷⁵⁸ During the UPR process in January 2015, the government was encouraged to decriminalise defamation and include it under the Civil Code in accordance with international standards, develop self-regulatory mechanisms of the media, and strengthen the professional standards of journalism in the country.⁷⁵⁹ At the time of this analysis, no action has been taken in this respect.

Larger religious organisations are required to register with the government, although there are no penalties for failing to do so. On two islands in the southern part of the archipelago which have large Protestant communities, members of religious minorities are discouraged from engaging in public worship or proselytising.⁷⁶⁰

751 Freedom House. Note 681

752 PACMAS 2013. Kiribati state of media and communication report 2013. Available at: <https://www.abc.net.au/cm/lb/9268132/data/kiribati%3A-state-of-the-media-report-data.pdf>. See also Radio New Zealand 2018. <https://www.rnz.co.nz/international/pacific-news/355173/kiribati-govt-s-media-control-stifling-transparency-says-mp>

753 United States Department of State 2016. Country Reports on Human Rights Practices – Kiribati. Note 693.

754 Ibid.

755 Freedom House. Note. 681.

756 World Bank Data. https://data.worldbank.org/indicator/IT.NET.USER.ZS?most_recent_value_desc=true (accessed 30 August 2019).

757 Freedom House. Note. 681.

758 Ibid.

759 A/HRC/29/5. Available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G15/076/12/PDF/G1507612.pdf?OpenElement> (accessed 10 August 2019).

760 Freedom House. Note. 681.



Workers have the right to organise unions, strike and bargain collectively. The Kiribati Trade Union Congress, an affiliate of the International Trade Union Confederation, is reported to have 3000 members and includes unions and associations for nurses, teachers, fishermen and seafarers.⁷⁶¹

Economic rights

Most of the population of Kiribati lives a subsistence lifestyle. Lack of land, droughts and infertile soil on the coral islands prohibit large-scale agriculture.⁷⁶² Women and youth lack economic opportunities in the paid work force. The 2015 Census recorded 60.7% of the population aged 15 years and over as not employed; 39.3% of this population was recorded as actively seeking work.⁷⁶³ Of the employed population, 57.5% were male and 42.5% female. Four times more males than females worked in agriculture, forestry and mining, while female workers dominated the health sector.⁷⁶⁴ In 2015, females made up half of the national public service,⁷⁶⁵ mostly as nurses and teachers.

The National Youth Policy 2011-2015 reported that only 400-600 paid jobs are available to the 2000 or more students leaving school each year.⁷⁶⁶ A significant number of people are considered to be vulnerable to slipping into poverty when faced by shocks, such as unemployment, natural disasters or fluctuations in food and fuel prices.⁷⁶⁷ A poverty assessment in 2009 found that 89% of children in rural areas and 68% of children in the urban area are deprived of at least one basic need.⁷⁶⁸ Female-headed households were disproportionately represented in the lowest wealth quintiles, and it has been reported that single women are becoming more vulnerable to living in poverty, resulting from decreasing traditional extended family support for women abandoned by their husbands. The absence of effective legislation makes it difficult for women to collect child maintenance so children in female-headed households are particularly disadvantaged.⁷⁶⁹

Kiribati is still regarded as a least developed country due to its economic vulnerability. Several consecutive years of positive economic growth have been driven by donor projects, increased activity in the private sector, major increases in revenue from fishing licenses, and wealth in its Revenue Equalisation Reserve Fund reaching the AUD 1 billion mark in 2019.⁷⁷⁰ A 37% increase in the salary bands of the civil service has stimulated the economy, along with a sustained seasonal workers scheme between Kiribati and Australia and New Zealand. Nonetheless, the country still faces many challenges typical of small island economies. A high increase in subsidy to the domestic copra price in 2016 resulted in people in the outer islands seeing a slight improvement in their social and economic dependencies but distorted the market⁷⁷¹ and, according to one commentator, resulted in less time for fishing and more reliance on the purchase of imported tinned fish.⁷⁷²

Some progressive developments include an increase to the existing benefit for older persons and a 100% school fee subsidy to all secondary school students in Forms 4-7. The Employment and Industrial Relations Code 2015 limits the workweek to 40 hours. The Code provides for the possibility of paid annual holidays for all employees, except casual workers, and 12 weeks maternity leave, but it leaves the determination up to

761 Ibid.

762 UNICEF Pacific. Situation Analysis on Kiribati. Note. 700.

763 Ibid.

764 Ibid.

765 CEDAW/C/KIR/1-3. Note 687.

766 UNICEF Pacific. Situation Analysis on Kiribati. Note. 700.

767 Ibid.

768 Ibid.

769 Ibid.

770 Radio New Zealand 2018. <https://www.rnz.co.nz/international/pacific-news/365022/kiribati-govt-says-trust-fund-set-to-reach-a-billion-dollars> (accessed 20 September 2019).

771 IMF Country Report No. 19/26 2019. Available at: <https://www.imf.org/~/media/Files/Publications/CR/2019/cr1926-kiribati.ashx> (accessed 30 August 2019).

772 Radio New Zealand. <https://www.rnz.co.nz/international/pacific-news/336878/kiribati-opposition-warns-of-excessive-copra-subsidy> (accessed 20 September 2019).

individual employment contracts, which are then submitted to the Ministry of Labour and Human Resources Development for documentation. Workers in the public sector work 36.25 hours per week, with required overtime pay for additional hours. There is no law or regulation governing working hours in the private sector, though private sector employers usually follow public sector practice. The Occupational Health and Safety Act 2015 sets the country's framework for safety and health standards for the workplace.

The Ministry of Labour and Human Resources Development is responsible for enforcing the standards. In cases of violation of the occupational health and safety standards, the Act prescribes fines of AUD 5000 for corporate organisations and AUD 2000 or one-year's imprisonment, or both, for individuals. Employers are liable for the expenses of workers injured on the job.

Right to health and education

Access to health and medical services are free but not all people have equal access due to limitations on service provision. Healthcare services in the Line and Phoenix groups are mostly provided by the Kiritimati Island hospital, while the Southern Kiribati hospital caters for the islands in the southern part of Kiribati. Based on its Strategic Plan 2016-2019, the Ministry of Health and Medical Services (MHMS) has commenced a programme of building more health clinics within closer proximity to the urban area of Tarawa, with renovation plans for the Nawerewere Central hospital and an entire overhaul of the hospital in Betio.

Non-communicable diseases (NCDs) remain a big issue, and a large proportion of the population live with risk factors.⁷⁷³ The incidence of NCDs is expected to rise as the occurrence of people with more than three risk factors has increased from 79% in 2006 to 83.6% in 2015.⁷⁷⁴ An increasing reliance on imported rice, noodles and other food items are contributing factors.

MHMS has a Sexual and Gender-based Violence Unit as well as a Family Health Clinic to provide counselling and medical services for domestic violence survivors.⁷⁷⁵ The Kiribati Family Health Association's Youth Work Plan has reproductive health awareness-raising programmes with the Ainen Matawa (young sex workers associated with fishing fleet crews); however, a challenge is church and faith-based organisations which oppose the use of contraceptives and sexual and reproductive health programmes.⁷⁷⁶

The government's 2019 CRPD report acknowledged limited outreach services for people with disabilities. MHMS operates a centre for rehabilitation called the Tungaru Rehabilitation Services, which is committed to providing accessible, quality and sustainable rehabilitation, with a focus on prevention, and provides support such as walking aids and artificial limbs, and physical therapy to amputees. The rehabilitation team visits clients who are unable to travel to the hospital, however, there are only two staff members visiting the 23 island councils at a rate of two per year. The wait periods can be up to 12 years for people living with disabilities on the outer islands.⁷⁷⁷ The report went on to say that there is currently no independent review mechanism to monitor the provision of mental health treatment or the use of protective and restrictive practices, such as seclusion and restraint at Te Meeria (the national mental health clinic), or in schools and hospitals. Current and planned strategies to improve the protection of the human rights of people with mental illness include: a revision of the mental health legislation, which was due for completion by 2019; nursing staff taking placements in Australia to build capacity, including in peer support, community treatment options and restraint minimisation; and a community recovery house to provide alternative treatment and living options.⁷⁷⁸

The government provides compulsory and free primary and junior secondary schooling for children aged 6-14 years.⁷⁷⁹ Only primary and junior secondary schools are found throughout the 24 islands of the country, with the

⁷⁷³ CEDAWC/KIR/1-3. Note. 687.

⁷⁷⁴ Ibid.

⁷⁷⁵ Ibid.

⁷⁷⁶ Ibid.

⁷⁷⁷ CRPD/Kiribati/2017-8. Note. 688.

⁷⁷⁸ Ibid.

⁷⁷⁹ UNICEF Pacific. Situation Analysis. Note. 700.



majority of senior secondary schools and specialised or technical education facilities located in South Tarawa.⁷⁸⁰ A 2017 UNICEF situation analysis reported that the survival rate for pupils reaching Class 5 of primary school declined from 90.7% in 2010 to 72.6% in 2013, with survival rates for girls being greater than for boys. In 2015, the combined gross enrolment rate for secondary education was 72.3% – an increase from 69.5% in 2014. Again, more girls than boys remained in school.⁷⁸¹ It was reported that teachers have suggested that boys shun formal education, preferring instead to collect coconuts for money. The drivers of the gender disparity require further research.⁷⁸²

The Education Act 2013 prohibits corporal punishment as well as discrimination against children with disabilities. The Act also prohibits discrimination against girls and allows for pregnant girls to continue to attend their choice of school.⁷⁸³ The Student Fee Support Scheme provides financial support to access education for children who are extremely underprivileged, those with no parents or whose parents have disabilities.⁷⁸⁴ The Ministry of Education is currently implementing a Social Citizenship Education programme to integrate human rights and gender equality into the Years 6-9 curricula.

Women's and children's rights

The government's 2019 CEDAW report stated that the number of women in decision-making positions in the public service has increased over the past ten years, including in foreign missions.⁷⁸⁵ Gender parity was said to have increasingly become the norm in the composition of decision-making bodies, such as boards of public companies, appointment of commissioners to the Public Service Commission and interview panels for civil service recruitment. In the private sector, more women have become successful owners of private companies and own some of the most successful businesses.⁷⁸⁶

The report further stated that the findings of the Kiribati Family Health and Support Study (2008), which shocked the nation, resulted in a strong political call and a whole-of-government and national commitment to eliminate violence against women and girls. The study found that 68% of ever-partnered women aged 15-49 years had experienced physical or sexual violence, or both, by an intimate partner at some time in their life.⁷⁸⁷ Amongst major steps to counter the high level of violence against women, a dedicated Ministry for Women (MWYSSA) was established in 2013, which in 2018 was headed by the Vice President, reflecting the changing cultural views about the role of women in development and nation-building.⁷⁸⁸ Since the study, reported cases of violence against women and children continue to rise, which may reflect better record keeping and better advocacy; however, it was also acknowledged that the increasing number of reported cases may reflect a more serious gender-based violence situation within the community.⁷⁸⁹ In 2018, a draft Gender Equality and Women's Development Policy focussed on creating an enabling environment for gender mainstreaming, economic empowerment, building stronger informed families, improving women's leadership and political participation and eliminating sexual and gender-based violence.⁷⁹⁰

Alcohol abuse is frequently cited as a factor in attacks on women. Rape, including spousal rape, is a crime, with a maximum penalty of life in prison, although sentences are typically much shorter. The Family Peace Act criminalises domestic violence and the government, in partnership with SPC HRSD, continues training for police, public prosecutors, health, social welfare and education staff, elected officials and NGO workers to

780 Ibid.

781 Ibid.

782 Ibid.

783 CRC/C/KIR/2-4. Note. 685.

784 Ibid.

785 CEDAW/C/KIR/1-3. Note 687.

786 Op cit.

787 Ibid.

788 Ibid.

789 Ibid.

790 CEDAW/C/KIR/1-3 Note. 687.

implement this legislation effectively. The Act provides for penalties of up to six months in prison for common assault and up to five years in prison for assault involving bodily harm.⁷⁹¹ The Act resulted from the prevalence study conducted in 2008 on sexual and gender-based violence.⁷⁹²

MWYSSA is taking the lead in all of Kiribati's commitments to address any form of abuse and discrimination through initiatives such as Peaceful Villages and Relationships as well as economic empowerment programmes. Physical and sexual abuse of children continues to be a serious problem, often exacerbated by chronic alcohol abuse. The Te Rau N Te Mwenga Act covers the care and protection of minors and mandates MWYSSA with implementation. In 2015, head teachers from South and North Tarawa received training on a code of ethics on child protection.⁷⁹³

The government took a major step toward the incorporation of the CRC into local legislation by enacting the Children, Young Persons and Family Welfare Act 2013. This legislation provides the legal foundation for a comprehensive child protection system in Kiribati by establishing structures, processes and systems through which protection can be undertaken.⁷⁹⁴ Furthermore, the newly enacted Education Act prohibits corporal punishment in all schools and complements the Te Rau N Te Mwenga Act in strengthening child protection. Section 7 (a-b) of the Education Act provides that a child of compulsory school age with a disability, or a child above the school compulsory age, cannot be excluded from access to free primary and junior secondary education on the basis of disability or age.

Rights of persons with disabilities (PWD)

Kiribati ratified the CRPD in September of 2013. Disability is identified as a priority issue in the 2016-2019 Kiribati National Development Plan, however, with only a single officer, the Focal Disability Office located at MWYSSA is under-resourced. Women with disabilities are more likely to experience violence, and children with disabilities are less likely to benefit from education. Data from the last census shows that PWD are less likely to live in households connected to public utilities, including water and sanitation systems.⁷⁹⁵ Public infrastructure, buildings, essential services, communications, information and accommodation in Kiribati do not sufficiently take into account the needs of PWD.⁷⁹⁶ Currently, only two NGOs specifically provide support and advocacy for PWDs, *Te Toa Matoa* and the Kiribati School and Center for Children with Special Needs, which receive funding support from the government for their work. The school offers special elementary education classes and programs for children with disabilities from ages six to 14.

Climate justice

Kiribati is one of the most vulnerable countries in the world with respect to the effects of climate change. Low-lying atolls, isolated locations, small land areas separated by vast oceans, high population concentration and the costs of providing basic services make Kiribati especially vulnerable to external shocks, including the adverse impacts of climate change.⁷⁹⁷ The Kiribati 20-Year Vision 2016-2036 (KV20) includes plans to reclaim and raise land up to 2 metres above sea level. The targeted areas for land reclamation are mainly on South Tarawa and Kiritimati, where an additional 767 acres of land will be developed by 2036.⁷⁹⁸ For most islands, coastal erosion and inundation are leading to the loss of already limited land and resources, such as fresh

791 United States Department of State 2016. Note. 693.

792 CEDAW/C/KIR/1-3. Note. 687.

793 United States Department of State 2016. Note. 693

794 UNICEF 2014. Child poverty and hardship in Kiribati. Available at https://www.unicef.org/pacificislands/Child_Poverty_Hardship_in_Kiribati.pdf

795 National Statistics Office 2016. Republic of Kiribati 2015 population and housing census. Volume 1. Available at: <http://www.mfed.gov.ki/sites/default/files/2015%20Population%20Census%20Report%20Volume%201%28final%202011016%29.pdf>

796 Pacific Disability Forum. SDG-CRPD Monitoring Report 2018. Available at: http://www.pacificdisability.org/What-We-Do/Research/FINAL_SDG-Report_Exec-Summary_2018.aspx (accessed 10 August 2019).

797 Government of Kiribati. Kiribati 20-Year Vision 2016–2036. Available at: <http://www.president.gov.ki/wp-content/uploads/2019/04/kiribati-20-year-vision-2016-2036%20%20%A2sept.final.pdf> (accessed 10 August 2019).

798 Ibid.

water. If left unabated, future competition for limited resources could result in tensions and insecurity among I-Kiribati.⁷⁹⁹

The Kiribati Joint Implementation Plan for Climate Change and Disaster Risk Management 2014-2023 (KJIP) sets out a holistic approach to integrate climate change and disaster risks into all sectors, including through: increasing crop production; diversifying and increasing livestock; a new Food and Nutrition Security Policy; developing crop production technologies, including hydroponics; maintaining fisheries stock; and an Urban Development Policy. The KJIP requires PWD to be included in all aspects of its implementation. Special considerations are planned for the effectiveness and efficiency of early warning systems and disaster and emergency management.⁸⁰⁰ Gender has also been integrated in the KJIP, acknowledging that women (along with PWD and older persons) are most at risk during natural disasters.⁸⁰¹

799 Ibid.

800 CRPD/Kiribati/2017/8. Note 688.

801 CEDAW/C/KIR/1-3. Note 687.



COUNTRY CHAPTERS

**REPUBLIC OF THE
MARSHALL ISLANDS
(RMI)**

Republic of the Marshall Islands (RMI)

Key facts

Capital city	Majuro	Total land area	181 km ²
Population (year)	75,684 (July 2018 est.) ⁸⁰²	Population growth % (year)	1.5% (2018 est.) ⁸⁰³
GDP per capita (year)	USD 3600 (2017) ⁸⁰⁴	GNI per capita (Atlas method)	USD 4740 (2018) ⁸⁰⁵
Type of government	Constitutional government in free association with the United States. The President is head of state and head of government.		
Electoral system	First past the post		
Number of members of parliament (MPs): total/female (year)	33: 30 male/ 3 female (2019). Ratio of females 9%		
Religions: by % of population (year)	Protestant 80.5% (United Church of Christ 47%, Assembly of God 16.2%, Bukot Nan Jesus 5.4%, Full Gospel 3.3%, Reformed Congressional Church 3%, Salvation Army 1.9%, Seventh Day Adventist 1.4%, Meram in Jesus 1.2%, other Protestant 1.1%), Roman Catholic 8.5%, Mormon 7%, Jehovah's Witness 1.7%, other 1.2%, none 1.1% (2011 est.) ⁸⁰⁶		
Ethnic groups: by % of population (year)	Marshallese 92.1%, mixed Marshallese 5.9%, other 2% (2006) ⁸⁰⁷		
Languages: by % of population (year)	Marshallese (official) 98.2%, other languages 1.8% (1999 census) English (official) widely spoken as a second language ⁸⁰⁸		
Life expectancy: male/female (year)	71.4 males 76 females (2018 est.) ⁸⁰⁹	% youth aged 15–24 years: total male/female (year)	18.49%: male 7,117 / female 6,875 (2018 est.) ⁸¹⁰
% disability: total male/female (year)	11.7% (2011) ⁸¹¹ 11.3% males 12% females		

802 CIA World Factbook. <https://www.cia.gov/library/publications/the-world-factbook/geos/rm.html>

803 Op cit.

804 Ibid.

805 World Bank Data. <https://data.worldbank.org/country/marshall-islands?view=chart> (accessed 5 August 2019).

806 CIA World Factbook. Note 773.

807 Op cit.

808 Op cit.

809 Op cit.

810 Op cit.

811 Economic Policy, Planning and Statistics Office, RMI and the SPC Statistics for Development Programme. Republic of the Marshall Islands 2011 census report. Available at: http://prism.spc.int/images/census_reports/Marshall_Islands_Census_2011-Full.pdf

International human rights treaty ratification and reporting obligations

Treaty	Date of signature (S) ratification (R) accession (a)	Reservations	Latest report submitted	Reporting status
ICESCR	12 March 2018 (a)			Initial report overdue since June 2019
ICCPR	12 March 2018 (a)			Initial report overdue 12 June 2019
ICERD	11 April 2019 (a)			Initial report due May 2020
CEDAW	2 March 2006 (a)		1 st to 3 rd report 13 September 2016	4 th report due 31 March 2022
CAT	12 March 2018 (a)			Initial report overdue 11 April 2019
CRC	4 October 1993 (R)		3 rd and 4 th report submitted 7 July 2016	5 th to 7 th reports due 2 May 2024
CRPD	17 March 2015 (a)		Initial report 22 August 2019	Appearance before Committee to be scheduled
OP-CEDAW	29 January 2019			N/A
OP-CRC-IC	29 January 2019			N/A
OP-CRC-SC	29 January 2019			N/A

Special Procedures: Standing invitation extended 4 March 2011.

Country visits: Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes 2012.

Universal Periodic Review: 1st cycle: November 2012; 2nd Cycle: May 2015; next cycle: May 2020.

International Criminal Court and UN Human Rights Council:

Ratified the Rome Statute on 7 December 2000.

Elected to the Human Rights Council in 2019.

System of government

Marshall Islands (RMI) is a self-governing constitutional republic in a Compact of Free Association with the United States of America. Formerly a US-administered UN trusteeship, RMI achieved independence in 1986. The RMI government operates under a mixed parliamentary presidential system and elections are held every four years for all citizens above 18 years of age.

The unicameral parliament, known as the *Ni ijelā*, consists of 33 members (senators) from the 24 constituencies,⁸¹² with 19 directly elected in single-member districts and five in multimember districts with between two and five seats.⁸¹³ Each elector has votes equivalent to the number of seats to be filled in the constituency.⁸¹⁴

⁸¹² Ailinglaplap, Ailuk, Arno, Aur, Bikini & Kili, Ebon, Enewetak & Ujelang, Jabat, Jaluit, Kwajalein, Lae, Lib, Likiep, Majuro, Maloelap, Mejit, Mili, Namorik, Namu, Rongelap, Ujae, Utirik, Wotho, Wotje.

⁸¹³ Freedom House. Freedom in the World 2018. Available at: <https://freedomhouse.org/report/freedom-world/2018/marshall-islands> (accessed 10 August 2019).

⁸¹⁴ Inter-Parliamentary Union. http://archive.ipu.org/parline-e/reports/2205_B.htm (accessed 10 August 2019).

The President, who is head of state as well as head of government, is elected by the 33 senators of the *Ni ijelā*. Legislative power lies with the *Ni ijelā*. The Council of *Iroij* is an advisory body comprising 12 chiefs who review legislation affecting customary law or any traditional practice.⁸¹⁵ The executive branch consists of the president and the presidential Cabinet, which comprises nine ministers appointed by the president with the approval of the Nitijelā. In 2016, Dr Hilda C Heine was elected president, the first woman to hold the position in RMI, until 2020⁸¹⁶ and the first female head of state for any independent PIC.⁸¹⁷

In 2017, a proposal for the adoption of electoral quotas for women in parliament was defeated.⁸¹⁸ The Marshall Islands Supreme Court ruled a three-year-old law banning the use of postal absentee ballots for national elections unconstitutional, however as the ruling were filed close to the national election, the Supreme Court's ruling would apply only for later elections.⁸¹⁹ Proponents of eliminating absentee voting were concerned about the large populations living in the US whose votes were influencing the election results.⁸²⁰

Judicial system and administration of justice

RMI has a mixed legal system of US and English common law, customary law and local statutes.⁸²¹ The constitution guarantees judicial independence, and the judiciary includes a supreme court, high court, traditional rights court (which hears matters of traditional land rights and customary law), district court and community courts. The judiciary officially commenced operation on 3 March 1982, assuming judicial functions in RMI previously discharged by the Trust Territory of the Pacific Islands courts. RMI has made some progress in harmonising domestic legislation with international treaties and protocols, despite the many obstacles and impediments to implementing those treaties. Most notably: the review of and amendments to existing legislation on the rights of PWD in compliance with the CRPD; amendments to the Domestic Violence Prevention and Protection Act penalties to fit within the jurisdiction limit of the community courts, be increased for second or subsequent offences and be within the jurisdiction of the district court; and passage of the 2019 Gender Equality Act to comply with and domesticate CEDAW obligations. In 2018, the CEDAW Committee requested that the government ensure the timely dissemination of concluding observations to the relevant institutions at all levels (national, regional and local), especially to ministries, the Nitijelā, the Council of Iroij and the judiciary, to enable their full implementation.⁸²² The Committee on the Rights of the Child recommended in 2018 that RMI strengthen its efforts to ensure that the rights of the child are integrated and applied in all legislative, administrative and judicial proceedings, and decisions that have an impact on children.⁸²³

Access to justice and the right to remedy

Section 14 (Article II) of the Constitution provides every person the right to invoke the judicial process as a means of vindicating any interest preserved or created by law, subject only to regulations that limit access to courts on a non-discriminatory basis. Section 4 of Article II (Bill of Rights) provides for the right to a fair trial. Women are generally treated equally under the law but discrimination in employment is not explicitly banned and women are known to face disadvantages in the workplace in practice.⁸²⁴ In 2019, the Department of Labour, in consultation with ILO, reviewed all labour laws with a view to increasing protection of workers.⁸²⁵

⁸¹⁵ CIA World Factbook. <https://www.cia.gov/library/publications/the-world-factbook/geos/rm.html> (accessed 5 August 2019).

⁸¹⁶ Freedom House. Freedom in the World. Note 783.

⁸¹⁷ Pacific Women in Politics. <https://www.pacwip.org/country-profiles/marshall-islands/> (accessed 10 August 2019).

⁸¹⁸ UN Women 2019. Republic of the Marshall Islands National Review BPfA +25. Available at: https://www.unwomen.org/-/media/headquarters/attachments/sections/csw/64/national-reviews/marshall_islands.pdf?la=en&vs=4100 (accessed 10 August 2019).

⁸¹⁹ Radio New Zealand 2019 <https://www.rnz.co.nz/international/pacific-news/400742/marshalls-supreme-court-rules-voting-law-unconstitutional>

⁸²⁰ Op cit.

⁸²¹ CIA World Factbook. Note 773.

⁸²² CEDAW/C/MHL/CO/1-3. Available at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fMHL%2fCO%2f1-3&Lang=en

⁸²³ CRC/C/MHL/CO/3-4. Available at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fMHL%2fCO%2f3-4&Lang=en

⁸²⁴ Freedom House. Freedom in the World 2018. Note 783.

⁸²⁵ Information provided by the Attorney-General's Office.

Same-sex sexual activity was decriminalised in 2005; however, discrimination based on sexual orientation and gender identity is not prohibited by law.⁸²⁶

The Public Defender's Office and the Micronesian Legal Services Corporation (MLSC) offer free legal services. MLSC is a non-profit corporation that supports low-income persons with free legal assistance in civil matters, including family law and domestic violence cases.⁸²⁷ Women United Together Marshall Islands (WUTMI) is an NGO that supports women and girls who experience violence to access to and navigate the justice system. A new judicial process introduced in 2017 resulted in a slight increase in reported domestic violence cases and applications for temporary protection orders. Applicants no longer require a lawyer as they are assisted by High Court staff to fill out an affidavit form, which is then submitted to the judge for action, normally on the same day as it is filed.⁸²⁸

In 2018, the CEDAW Committee acknowledged RMI's efforts to improve access to justice for women and girls through the use of mobile courts in the outer islands but expressed concern that women outside of the capital Majuro continue to face physical barriers in accessing the courts. The committee was also concerned about the low awareness among women and girls of their rights, partly attributable to the physical barriers that make the dissemination of information and educational materials to certain atolls difficult, and recommended the intensification of efforts to address these barriers by making more use of radio programmes, text messaging and other technologies. Further, the committee recommended that economically disadvantaged women be provided with enhanced access to legal aid.⁸²⁹ The Committee on the Rights of the Child recommended in 2018 that RMI ensure the provision of free and independent legal aid to children in conflict with the law throughout the legal proceedings.⁸³⁰ Free legal services remain available to the population through MLSC and the Public Defender, on both Majuro and Ebeye.

National Human Rights Institutions (NHRI)

RMI has yet to establish a Paris Principles-compliant NHRI; however, human rights are dealt with by the Human Rights Committee, established under the Human Rights Committee Act, and a range of government departments. The Human Rights Committee comprises many stakeholders and has a broad mandate to promote human rights, provide advice to government, support the development of human rights policy and legislation, monitor human rights implementation, prepare reports to the UPR and UN Treaty Bodies, and investigate complaints of human rights violations.⁸³¹

RMI received recommendations on the establishment of an NHRI at its UPR in 2015,⁸³² while a Constitutional Convention⁸³³ resulted in a proposal to establish an Ombudsman's Office with the inclusion of an NHRI. In 2017, the government invited SPC HRSD and APF to conduct a scoping study on the feasibility of establishing an NHRI. The resulting proposal to establish an NHRI is currently at the community consultation phase and will need to be put to a referendum, should it be supported.

Security sector

The 1986 Compact of Free Association allows the US military to operate in the country in exchange for defence guarantees and development assistance.⁸³⁴ Internal security is maintained by the National Police, local police

⁸²⁶ Freedom House. Freedom in the World 2018. Note 783.

⁸²⁷ CNMI. <http://www.cnmiclcp.gov.mp/micronesian-legal-services-corporation-mlcs/> (accessed 10 August 2019).

⁸²⁸ Radio New Zealand 2017. <https://www.rnz.co.nz/international/pacific-news/323160/more-women-reporting-domestic-violence-in-marshall-islands> (accessed 10 August 2019).

⁸²⁹ CEDAW/C/MHL/CO/1-3. Note 793.

⁸³⁰ CRC/C/MHL/CO/3-4. Note 794.

⁸³¹ UN Women 2019. Republic of the Marshall Islands National Review BPfA +25. Note 789.

⁸³² UN OHCHR. <https://www.ohchr.org/EN/HRBodies/UPR/Pages/MHIndex.aspx>

⁸³³ Constitutional Convention Act 2015. Available at: <https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/102768/124345/F-1925061989/MHL102768.pdf> (accessed 10 August 2019).

⁸³⁴ Freedom House. Freedom in the World 2018. Note 783.

forces and the maritime police.⁸³⁵ The 2004 Criminal Procedure Act expressly regulates police use of force but does not establish clear limits as the international principle of proportionality requires. There is a provision for prosecuting misconduct in office.⁸³⁶ Authorities are considered to generally observe legal safeguards against arbitrary arrest and detention, while due process standards for trials are upheld.⁸³⁷ There are few prison and jail facilities and conditions are below international standards.⁸³⁸

Refugees and asylum seekers

Laws do not provide for granting asylum or refugee status and there is no system for providing protection to refugees; nonetheless, the country has no history of receiving refugees or asylum seekers.⁸³⁹

Migration

The immigration and labour divisions were recently moved from the Department of Foreign Affairs and Trade to the Department of Justice, Immigration and Labour. The Immigration Division recently set up a new border management system with the support of the International Organization for Migration (IOM), and is the first of its kind in the region.

RMI has seen a drastic rise in inter-island and out-migration of Marshallese people. The capital island of Majuro has received a substantial increase in population, with in-migrants exceeding the number of out-migrants. In contrast, other islands in RMI have experienced a reduction in population through out-migration. Marshallese opt to migrate to Majuro, to Kwajalein or to the US to seek better health care, education and job opportunities, or to join other family members.⁸⁴⁰ Marshallese are able to freely enter, work in, and access health and educational benefits in the US through the Compact of Free Association, including joining the US military services. Estimates are that around 30,000 Marshallese live in the US.⁸⁴¹

There has also been an increase of immigration from foreign countries. Up-to-date disaggregation is not available, however, as an example, in 2013 the migrant population was made up of: the US (269), Philippines (212), China (70), Kiribati (90) and FSM (149).⁸⁴² Migrants from the US, Palau and FSM do not require work permits. Others need to qualify through the Occupational Shortages List, or the employer must be able to prove that a thorough local search process was unable to yield a suitably qualified and available citizen worker.⁸⁴³ RMI has seen a rise of Marshallese deportees, mainly from the US, due to various illegal activities. There were 20 deportees in 2017.⁸⁴⁴ Crimes range from assault to drug use and distribution, and misconduct. There are no programmes or services for rehabilitation and reintegration of deportees once they return to the Marshall Islands.

Human Trafficking, Forced Labour, and Contemporary Forms of Slavery

The Prohibition of Trafficking in Persons Act of 2017 criminalises sex trafficking and labour trafficking and prescribes penalties that are considered to be sufficiently stringent and, with regard to sex trafficking, commensurate with other serious crimes, such as rape.⁸⁴⁵

⁸³⁵ US Embassy. Marshall Islands 2018 human rights report. Available at: <https://mh.usembassy.gov/wp-content/uploads/sites/83/MARSHALL-ISLANDS-HUMAN-RIGHTS-REPORT-2018.pdf> (accessed 10 August 2019).

⁸³⁶ The Law on Police Use of Force Worldwide. <https://www.policinglaw.info/country/marshall-islands>

⁸³⁷ Freedom House Freedom in the World 2018. Note 783.

⁸³⁸ Ibid.

⁸³⁹ US Embassy. Marshall Islands 2018 human rights report. Note 806.

⁸⁴⁰ PBS 2018. <https://www.pbs.org/newshour/show/marshall-islands-a-third-of-the-nation-has-left-for-the-us> (accessed 10 September 2019).

⁸⁴¹ Ibid.

⁸⁴² UNICEF Migration Profiles. Available at: <https://esa.un.org/MigGMGProfiles/indicators/files/MarshallIslands.pdf>

⁸⁴³ Title 16 Labour and Industrial Relations. Available at: <https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/92367/107522/F-1597552176/MHL92367.pdf> (accessed 10 September 2019).

⁸⁴⁴ Homeland Security. <https://www.dhs.gov/immigration-statistics/yearbook/2017/table41> (accessed 10 August 2019).

⁸⁴⁵ US Department of State 2019. Trafficking in persons report June 2019. Available at: <https://www.state.gov/wp-content/uploads/2019/06/2019-Trafficking-in-Persons-Report.pdf> (accessed 10 August 2019).

The National Taskforce on Human Trafficking (NTHT) acts as an advisory body and provides a forum for the discussion of, and consultation on, issues pertaining to human trafficking and the effects it has on the population of RMI and its international partners. NTHT encompasses a wide range of government, NGO and international organisation members, and leads the government's anti-trafficking efforts. The 2019 Trafficking in Persons report commented that observers identified a need for increased coordination and information sharing between agencies to ensure the appropriate authorities took action on suspected cases. Measures have been continued to prevent the commercial sexual exploitation of vulnerable populations by visitors aboard foreign fishing vessels docked in Majuro.⁸⁴⁶

There is limited data on the demographics of the women who are victims of trafficking, including information on the people who facilitate the trafficking of women, the reasons why women engage in sex work, or the degree to which sex work is organised. While the Ministry of Health lists sex workers as a target group for the provision of services, including treatment, care and support, there is no record of anyone coming forward to take advantage of these services and no women who engage in sex work have been otherwise identified to receive these services.

In 2018, RMI was graded a Tier 2 in the Watch List by the US State Department as the government did not fully meet the minimum standards for the elimination of trafficking, although it was making significant effort to do so.⁸⁴⁷ Efforts included funding anti-trafficking training of officials and contracting an NGO to provide free legal advice and support to victims.⁸⁴⁸ The government contributed USD 93,000 to an NGO to provide free legal advice and support to victims, including trafficking victims; equal to the amount provided during the previous reporting period.⁸⁴⁹ There had been no prosecutions or convictions of any traffickers from 2011 to the time of this State Department report.⁸⁵⁰

According to the US State Department, forced labour of foreign fishermen on ships in Marshallese waters is also evident.⁸⁵¹ Some traffickers recruit Chinese women with the promise of other work and after paying large recruitment fees, the women are forced into prostitution to repay the debt. Some Marshallese searching for work in the US experience indicators of trafficking, such as passport confiscation, excessive work hours and fraudulent recruitment.⁸⁵² Some Marshallese children transported to the US are subjected to situations of sexual abuse with indicators of sex trafficking.⁸⁵³ It was also reported that some wealthier or more powerful families used traditional cultural practices to exploit impoverished Marshallese to serve as indentured labour on their property.⁸⁵⁴ The Government of RMI disputes the findings of the US State Department report.

Civil society and human rights defenders

The RMI government has a healthy and longstanding relationship with the civil society community. An important example of this relationship is the Women United Together Marshall Islands' (WUTMI) Weto in Mour: Violence Against Women and Girls Support Services, which is funded by the Australian Department of Foreign Affairs and Trade through the Pacific Women Shaping Pacific Development initiative and the RMI government.⁸⁵⁵ Further, in 2018, the government approved a three-year funding stream to support institutional strengthening of the Marshall Islands Council of Non-Governmental Organisations (MICNGOS), an umbrella organisation, and its members.⁸⁵⁶ Domestic and international human rights groups reportedly operated without government

⁸⁴⁶ Ibid.

⁸⁴⁷ Ibid.

⁸⁴⁸ Ibid.

⁸⁴⁹ Ibid.

⁸⁵⁰ Ibid.

⁸⁵¹ Ibid.

⁸⁵² Ibid.

⁸⁵³ Ibid.

⁸⁵⁴ Ibid.

⁸⁵⁵ A/HRC/WG.6/22/MHL/1. Available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G15/020/13/PDF/G1502013.pdf?OpenElement>

⁸⁵⁶ Pacific Islands Association of NGOs 2019. <http://www.piango.org/our-news-events/latest-news/marshall-island-cso-umbrella-body-appoints-laitia-tamata-as-new-director/> (10 August 2019).

restriction in a range of areas including youth rights, disability rights, health, education, women's rights and environmental rights, sometimes investigating and publishing findings on human rights cases. Government officials are often cooperative and responsive to their views.⁸⁵⁷

In 2018, the Committee on the Rights of the Child recommended the establishment of appropriate mechanisms and inclusive processes through which civil society, the public and children can participate in all stages of the national budget process, including formulation, implementation and evaluation.⁸⁵⁸

Domestic law and human rights

Changes to align laws with treaty obligations during the period of this report include:

- Domestic Violence Prevention and Protection Act (Amended 2018): new definition for family members; penalty changes to allow community courts to administer penalties; and language change for the police No Drop Policy.
- Minimum Wage Act (Amended) 2018: increasing the minimum wage to USD 3.50 per hour.
- Senior Citizens Act 2018: granting discounts for certain goods and services to senior citizens and, to some extent, peoples with disabilities.
- Equal Employment Opportunity Act 2017: all employees treated equally with regard to employment benefits.
- Prohibition of Trafficking in Persons Act of 2017: criminalises sex trafficking and labour trafficking.
- Births, Deaths and Marriages Registration Act (Amended) 2017: increases the legal age of marriage for girls from 16 to 18 years old.
- Youth Service Corps Act, 2016: to provide voluntary service for community development and conservation related activities.
- Child Rights Protection Act 2015: to declare the rights of children and provide for their protection, promotion, enforcement and implementation in the Republic of the Marshall Islands, as required under the CRC.
- Rights of Persons with Disabilities Act 2015: to declare the equal rights and freedoms of all persons with disabilities, and provide for the protection, promotion and enforcement of those rights and freedoms, as a step towards implementing legal obligations under the CRPD.
- Human Rights Act 2015: establishment of a Human Rights Committee to redress human rights violations and monitor adherence to international and regional human rights obligations.
- Criminal Code (Amended 2013): inclusion of trafficking in persons.

Additionally, a legislative review has been underway to implement CRPD⁸⁵⁹ and a Rights of Persons with Disabilities Act (Consequential Amendments) Bill has been drafted that revises over 100 public laws to align the Marshall Islands Revised Code with the Act.⁸⁶⁰ The Gender Equality Act passed in 2019.

⁸⁵⁷ US Embassy. Marshall Islands 2018 human rights report. Note 806.

⁸⁵⁸ CRC/C/MHL/CO/3-4. Note. 794.

⁸⁵⁹ US Embassy. Marshall Islands 2018 human rights report. Note 806.

⁸⁶⁰ CRPD/C/MHL/1. Available at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRPD%2fC%2fMHL%2f1&Lang=en

Human rights policies

The National Strategic Plan 2015-2017 was being updated during 2019. The expired plan informs the new plan and acknowledges well-being, peace and the creation of appropriate conditions to make sure that women and men have equal rights, equal opportunities and equal access to services.⁸⁶¹ A National Strategic Plan Stocktake Report was in draft form in early 2019 and will be used to inform revision of the plan. The government is reportedly working to endorse a new disability policy by the end of 2020 to replace the Disability Inclusive Development Policy 2014-2018. According to the government, the new policy is expected to fully incorporate the scope of needs and gaps that PWD are facing, such as in access to employment.⁸⁶²

The National Policy on Gender Mainstreaming was approved by the government in 2015. The National Reproductive Health Policy 2014-2016 had provisions for: family planning, adolescent sexual and reproductive health; the control of STIs/HIV and the integration with other sexual and reproductive health programmes; other gynaecological morbidities; cervical and breast cancer; and gender and reproductive health, reproductive health commodity security and male involvement in reproductive health.⁸⁶³

In 2018, the CEDAW Committee recommended the adoption a new action plan on reproductive health which takes into account the challenges and achievements in the implementation of the 2014-16 strategy.⁸⁶⁴ The Committee on the Rights of the Child in 2018 acknowledged the adoption of the Prevention of Adolescent Pregnancy Strategy (2014-2016) and the development of a family health education curriculum, before recommending that the government fully implement both and report on progress during the next cycle.⁸⁶⁵ The committee also acknowledged the development of the Joint National Action Plan for Climate Change Adaptation and Disaster Risk Management (2014-2018) and the National Climate Change Policy Framework, recommending that the government effectively implement these and also develop a comprehensive disaster-sensitive social protection system which ensures that the special vulnerabilities, needs and views of children are taken into account.⁸⁶⁶

Right to life, liberty and security of person

The constitution prohibits arbitrary arrest and detention and provides for the right of any person to challenge the lawfulness of his or her arrest or detention in court.⁸⁶⁷ Authorities generally observe legal safeguards against arbitrary arrest and detention. Due process standards for trials are upheld and the State provides lawyers for indigent defendants.⁸⁶⁸ There were no reports in 2018 that the government or its agents committed arbitrary or unlawful killings or abductions.⁸⁶⁹

Conditions in the country's few prison and jail facilities are reportedly below international standards and sometimes overcrowded.⁸⁷⁰ Women generally receive equal treatment under the law and are often held under house arrest due to the lack of facilities for women in jails.⁸⁷¹ There are no separate facilities for juveniles and the Committee on the Rights of the Child in 2018 urged RMI to bring its juvenile justice system fully into line with the convention and other relevant standards.⁸⁷²

861 CEDAW/C/MHL/1-3. Note. 793.

862 Ibid.

863 Ibid.

864 CEDAW/C/MHL/CO/1-3. Note 793.

865 Ibid.

866 CRC/C/MHL/CO/3-4. Note 794.

867 US Embassy. Marshall Islands 2018 human rights report. Note 806.

868 Freedom House. Freedom in the World 2018. Note 783.

869 US Embassy. Marshall Islands 2018 human rights report. Note 806.

870 Freedom House. Freedom in the World 2018. Note 783.

871 US Embassy. Marshall Islands 2018 human rights report. Note 806.

872 CRC/C/MHL/CO/3-4. Note 794.

WUTMI's Weto in Mour provides safety, psychosocial support and access to justice for women and children in need. MLSC assists with free legal aid for these and other qualifying cases.⁸⁷³ Between 2016-2019, 60 women accessed crisis services where Weto in Mour has supported 42 per cent of its clients to apply for Protection Orders and 38 per cent of its clients obtained Protection Orders.⁸⁷⁴

Equality and non-discrimination

The constitution prohibits discrimination on the basis of gender but not sex and disability, although discussions to include these provisions have been underway since April 2013. The government is taking steps to promote and advance gender equality, including implementing its National Gender Policy (NGP), which it views as a mechanism for achieving the commitments to the Pacific Leaders' Gender Equality Declaration adopted at the 2012 PIF Leaders meeting. Implementation of the policy has been slow due to the lack of human and financial capacity. The government acknowledges that "women face multiple barriers that prevent them from enjoying a life free from violence and coercion in a society where they can access equal opportunities and equal rights."⁸⁷⁵ Teenage pregnancy, violence against women and girls, vulnerable employment conditions, unemployment, and limited access to justice and protection were noted as priority areas.⁸⁷⁶

Although disability is not specifically mentioned in the constitution as prohibited grounds of discrimination, the government in its UPR submission commented that Article 2 Section 12 provides blanket protection of equality before the law so that discrimination against any person, including persons living with disabilities is prohibited.⁸⁷⁷ In 2018, a Consequential Amendment Bill to the Rights of Persons with Disabilities Act, 2015 was drafted and is awaiting Parliamentary approval. The bill aims to amend the RMI Code to bring it into line with CRPD in areas of equality, non-discrimination, accessibility, political life and many other areas.⁸⁷⁸

Neither the constitution nor law provides specific protection against discrimination for LGBTI persons. Same-sex sexual activity has been legal since 2005. There were no reports of societal violence based on sexual orientation or gender identity.⁸⁷⁹ The law prohibits same-sex couples or individuals involved in a same-sex relationship from adopting Marshallese children.⁸⁸⁰ The 2015 UPR Working Group report recommended that RMI fully prohibit all forms of discrimination based on gender or sexual orientation.⁸⁸¹ At the 2017 Constitutional Convention, a proposal to amend provisions under Equal Protection and Freedom to include sexual orientation as a basis for non-discrimination was defeated.⁸⁸²

In 2019, the government acceded to ICERD and the initial report was due in 2020.

Freedom of information (FOI)

RMI does not have FOI legislation that protects citizens' privacy of information collected by government services, or provides right of access to personal information on record. There is reportedly no strong legal mechanism for obtaining access to government information, but documents can often be obtained through the courts.⁸⁸³

⁸⁷³ Ministry of Culture and Internal Affairs 2018. Gender equality where do we stand? Republic of the Marshall Islands. Majuro: Republic of the Marshall Islands. Available at: http://www.spc.int/DigitalLibrary/Doc/SDD/Gender/RMI_2018_Gender_Equality_Booklet.pdf

⁸⁷⁴ Pacific Women and Republic of the Marshall Islands. <https://pacificwomen.org/our-work/focus-areas/leadership-decision-making/> (accessed 7 December 2020).

⁸⁷⁵ Op cit.

⁸⁷⁶ Op cit.

⁸⁷⁷ A/HRC/WG.6/22/MHL/1. Available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G15/020/13/PDF/G1502013.pdf?OpenElement>

⁸⁷⁸ Ibid.

⁸⁷⁹ US Embassy. Marshall Islands 2018 human rights report. Note 806.

⁸⁸⁰ Ibid.

⁸⁸¹ A/HRC/30/13. Available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G15/159/90/PDF/G1515990.pdf?OpenElement>

⁸⁸² UN Women 2019. Republic of the Marshall Islands National Review BPfA +25. Note 789.

⁸⁸³ Freedom House. Freedom in the World 2018. Note. 783.

Freedom of expression, association and peaceful assembly

The RMI Bill of Rights provides that “Every person has the right to freedom of thought, conscience, and belief; to freedom of speech and of the press; to the free exercise of religion; to freedom of peaceful assembly and association; and to petition the government for redress of grievances.” When it comes to labour, there is no legislation related to trade union organisation or the right to strike, but few employers are large enough to support union activity among their workers.⁸⁸⁴ There are no protections from hate speech and no reported cases are evident. Citizens are generally free to discuss their political opinions and there are no reports of improper government surveillance.⁸⁸⁵ Protests in recent years have been held to raise awareness on climate change, women’s rights and the legacy of US nuclear weapons tests in the country.⁸⁸⁶

The government generally respects the freedom of the media. The Marshall Islands Journal is a privately-owned newspaper that publishes articles in English and Marshallese. Broadcast outlets are owned by the government or churches, and cable television offers a variety of international news and entertainment programs, mostly to Majuro. Around a third of the population had internet access by 2017, which was limited due to poor infrastructure and high costs.⁸⁸⁷ There were no official restrictions or disruptions in access to the internet or censorship of online content, and no credible reports of monitoring of private online communications without appropriate legal authority.⁸⁸⁸

Religious freedoms are respected in practice and it is optional for religious groups to register with the government, but those that do are eligible for tax exemptions.⁸⁸⁹

Economic rights

The Compact of Free Association’s financial package was renegotiated for the 2004-2023 period to provide RMI with roughly USD 1.5 billion in direct US assistance. Under the amended Compact, the US and RMI are also jointly funding a trust fund meant to provide an income stream beyond 2023, when direct compact aid ends.⁸⁹⁰ The sale of fishing licenses is a source of revenue, but there are limited income options from exports.

The most recent census, held in 2011, reported that female participation in the paid workforce was 28%, compared to 51% of men.⁸⁹¹ The result not only reflects disparity in the workforce but also reflects the high level of under-employment and unemployment at the time. Working men were more likely to work for wages or salaries, while working women were more likely to work producing goods for sale, such as crafts.⁸⁹² In 2017, women comprised 32% of the paid workforce, and gross average earnings had increased by 27% for men and by 55% for women, reducing the gender gap in earnings.⁸⁹³ In 2017, the vast majority of employed women worked in service industries, such as wholesale and retail trade, public administration, education and financial intermediation.⁸⁹⁴

In 2016, the Social Security (Amendment) Act made significant changes to how the retirement fund operates, aiming at saving the fund from early depletion. The changes include removing the maximum taxable wage cap, increasing the Retirement Fund contribution rate from 7% to 8% for both employees and employers, decreasing benefits by 5% for those receiving more than USD 199 and introducing a maximum monthly benefit

⁸⁸⁴ Ibid.

⁸⁸⁵ Ibid.

⁸⁸⁶ Ibid.

⁸⁸⁷ Ibid.

⁸⁸⁸ US Embassy. Marshall Islands 2018 human rights report. Note 806.

⁸⁸⁹ Freedom House. Freedom in the World 2018. Note 783.

⁸⁹⁰ CIA Factbook. <https://www.cia.gov/library/publications/the-world-factbook/geos/rm.html> (accessed 5 August 2019).

⁸⁹¹ Ministry of Culture and Internal Affairs 2018. Gender equality where do we stand? Republic of the Marshall Islands. Note 845.

⁸⁹² Op cit.

⁸⁹³ Op cit.

⁸⁹⁴ Op cit.



of USD 1000.⁸⁹⁵ Public hearings were conducted by the relevant ministry to introduce the changes. Most of the general public, retirees and employers who attended the discussions are reported to have disagreed with the changes due to the adverse financial effect on their families; however, the government believed that a collective sacrifice was justified for the benefit of future generations of retirees and their families.⁸⁹⁶ Both private and public sector employees may contribute to the fund and benefit from it at retirement, however, given the low level of employment and the disparity between the employment of males and females, many do not have access to this social safety net.

Following publication of the 2011 census, the government developed the National Strategic Plan (NSP), which addresses five sectors: social development, environment, climate change and resiliency, infrastructure development, sustainable economic development, and good governance. The NSP was endorsed in 2014 and implemented from 2015 to 2017. The NSP was to be updated during the second half of 2019. RMI is currently conducting a household income and expenditure survey on 19 atolls and islands across the country. The next census was due in 2020.

The constitution states that no person may be treated in a discriminatory manner under law or by public officials; however, until 2017, labour laws and regulations did not specifically prohibit employment discrimination,⁸⁹⁷ which disadvantaged women in the workplace.⁸⁹⁸ The government enforces a minimum wage law for the public and private sector (currently USD 3.50 per hour), which does not apply to the informal sector.⁸⁹⁹ Government workers receive pay equity even though there is no law in place. Citizens receive hiring preference and noncitizen workers are hired to supplement the local work force when no citizens qualify for the job.⁹⁰⁰ There are no legislative protections for workers who file official complaints about conditions that endanger their health or safety, and no government workplace safety inspections were conducted in 2018.⁹⁰¹

Under the directive of President Heine's Administration, the *Kora Em An Kol* (gender equality) Fund was established and launched in March 2019 following the first contribution to the fund from the Government of Taiwan. The fund aims to address national priorities, including the acceleration of progress toward achieving gender equality by upscaling activities and support for women and girls in business, and strengthening the institutional capacity of organisations working to promote gender and social inclusion, including human rights, through transformative grants for groups, networks and communities to achieve the outcomes of gender equality. The fund works to: guarantee gender equality in the uptake of opportunities, resources and rewards; build and strengthen gender-focused networks and coalitions to improve the lives of women throughout RMI; foster economic growth while protecting and promoting human rights; and provide support to organisations that assist the government to implement policies and programs for gender equality and women's human rights.

RMI is a recipient of the Pacific Women initiative funded by DFAT, which includes support towards upscaling activities around women's economic empowerment. Particular focus is on expanding and growing the handicraft industry, financial management, and an export strategy to guide new private and public sector programmes.⁹⁰²

Right to health and education

Under Section 15 of the Constitution, the government "recognises the right of the people to health care, education, and legal services and the obligation to take every step reasonable and necessary to provide these services." The healthcare system is comprised of two hospitals, one in Majuro and one in Ebeye, and 56 healthcare centres in the outer atolls and islands.

⁸⁹⁵ Marshall Islands Social Security Administration. <http://www.rmimissa.org/HTML%20Pages/reformbill47.html> (accessed 20 August 2019).

⁸⁹⁶ Op cit.

⁸⁹⁷ US Embassy. Marshall Islands 2018 human rights report. Note 806.

⁸⁹⁸ Freedom House. Freedom in the World 2018. Note 783.

⁸⁹⁹ Ibid.

⁹⁰⁰ US Embassy. Marshall Islands 2018 human rights report. Note 806.

⁹⁰¹ Ibid.

⁹⁰² Pacific Women Shaping Pacific Development. Republic of the Marshall Islands country plan summary. Available at: <https://dfat.gov.au/about-us/publications/Documents/pwspd-marshall-islands-summary> (accessed 10 September 2019).

Both hospitals provide primary and secondary care but limited tertiary care; most patients requiring tertiary care are referred to Honolulu or the Philippines.⁹⁰³ In 2016, a National Strategic Plan (2017-2019) was developed for health to replace the former 15-Year Strategic Plan and is aligned with national, regional and international commitments such as the SDGs.⁹⁰⁴ Priorities are provision of high-quality health care in the outer islands, universal access to high-quality care for all people with communicable diseases, integrated NCD services, high-quality maternal, infant, child and adolescent health, increased community-based care and support for mental illness and substance use disorders, increased immunisation, healthy lifestyles education, and efficient, effective public healthcare services.⁹⁰⁵

A structural reorganisation in 2017 resulted in the new Ministry of Health and Human Services (MOHHS). A shortage of funds to implement programmes, combined with low absorption rates, contributes to the fragmentation of health service delivery.⁹⁰⁶ A challenge for MOHHS is setting priorities for developing and implementing programmes to address the range of critical health issues given financial, technical and human resource constraints.⁹⁰⁷ In 2018, government leaders signed an agreement to improve the flow of government funding, particularly relating to MOHHS.⁹⁰⁸

The National Reproductive Health Policy 2014-2016, which honours commitments under the International Conference on Population and Development, has expired and there is no apparent activity to replace it. The policy envisions quality sexual and reproductive health care for all RMI people, including maternal and child health. The teenage pregnancy rate is one of the highest in the Pacific region, although 2017 statistics show the rate is decreasing, as is the general fertility rate.⁹⁰⁹ In 2017, MOHSS reported that only 16% of women aged 15-44 years were using the free family planning services.⁹¹⁰ Malnutrition is evident in the high prevalence of stunting in children under five years of age due to widespread household food insecurity.⁹¹¹

NCDs are reported to be at epidemic levels due to imported food substitution, amongst other reasons. Providing equitable access to affordable health care is a major challenge, with 94% of rural women and 79% of urban women reporting problems in accessing health care, regardless of age, number of children, education or wealth. Men account for 56% of NCD-related deaths, mostly due to diabetes and cardiovascular diseases.⁹¹² The expected total number of cancers (fatal plus non-fatal) is estimated at 6130 and within the lifetime of the cohort of the population exposed to radioactive fallout in 1954, the excess cancers caused by the radiation are estimated at 530.⁹¹³ Recommendations have been made to RMI to seek assistance from UN specialised agencies, funds and programmes for addressing the legacy of nuclear tests.⁹¹⁴ The UN Special Rapporteur on toxic waste made similar recommendations.⁹¹⁵

No specific psychiatric facilities or community-based support for persons with mental disabilities exist. MOHSS provides short-term care at the Majuro Hospital and facilities off-island.⁹¹⁶

903 Ministry of Health. 3-Year Rolling Strategic Plan October 2017 – September 2019. Available at: http://www.nationalplanningcycles.org/sites/default/files/planning_cycle_repository/marshall_islands/rmi_moh_3year_rolling_strategic_plan_fy2017-2019.pdf (accessed 10 September 2019).

904 Ibid.

905 Marshall Islands–WHO Country Cooperation Strategy 2018–2022. WPRO/2017/DPM/012. Available at: <https://apps.who.int/iris/rest/bitstreams/1096360/retrieve> (accessed 10 September 2019).

906 Op cit.

907 Ministry of Culture and Internal Affairs 2018. Gender Equality where do we stand? Republic of the Marshall Islands. Note 845.

908 Marshall Islands Journal 2018. <https://marshallislandsjournal.com/rmi-aims-to-fix-spending-issues/> (accessed 10 September 2019).

909 Ministry of Culture and Internal Affairs 2018. Gender Equality where do we stand? Republic of the Marshall Islands. Note 845.

910 Ibid.

911 Ibid.

912 Ibid.

913 Ibid.

914 A/HRC/WG.6/22/MHL/2. Available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G15/039/45/PDF/G1503945.pdf?OpenElement>

915 A/HRC/21/48/Add.1. Available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G12/163/76/PDF/G1216376.pdf?OpenElement>

916 US Embassy. Marshall Islands 2018 human rights report. Note. 806.

RMI has a relatively high suicide rate; 10 of the 11 suicides in 2017 were male. Men's physical and mental health, including the ability to cope with stress, is identified as a major concern.⁹¹⁷

The RMI government recognises that improving access to quality education is crucial for achieving sustainable socioeconomic development. Recent increases in incomes for women and men are attributed to increased investment in education.⁹¹⁸ The Public-School System Act 2013 (MIPSSA) was enacted to replace the former Education Act.⁹¹⁹ MIPSSA created an autonomous public-school system and a governing National Board of Education. IPSSA stipulates that a child over the age of five years before the beginning of a school year is eligible to enrol in and attend any school, and that enrolment and attendance for these children is the responsibility of parents or guardians.⁹²⁰ While primary education is compulsory, the government reportedly does not strictly enforce the law. To enter public high school, students must take an admission exam; however, due to space constraints, not all who pass the exam attend public high schools.⁹²¹ Children in subsistence economies on remote atolls are at times taken out of school to assist their families with fishing, agriculture and other subsistence activities, thereby reducing educational outcomes.⁹²²

The public-school system supports special education for children with disabilities, particularly those with hearing disabilities, and incorporates awareness programmes for students.⁹²³ In the 2017-2018 school year, there were 25 early education enrolments for children with disabilities (14 males, 11 females), and 581 enrolments of school-aged children with disabilities (213 males, 368 females).⁹²⁴

There have been several programmes over the years to increase enrolment of four- and five-year olds in early childhood education (ECE).⁹²⁵ However, ECE enrolment rates are very low, with only 28% of eligible children enrolled in 2017.⁹²⁶ The consequence is that even six-year olds are being enrolled in kindergarten classes, not first grade, due to their lack of preparation for more rigorous learning,⁹²⁷ causing rolling effects through grades 1-12.

Attendance statistics show that 90% of all girls and 88% of all boys aged 6-13 years are enrolled in school.⁹²⁸ In the 2018 school year, enrolments of boys and girls were nearly equal in both primary and secondary schools, with girls accounting for 49% of elementary students and 51% of secondary students in public and private schools.⁹²⁹ In 2017, the National Education for All Report 2015 identified that less than half of the students enrolling in grade 1 will graduate from high school.⁹³⁰ Many teenage mothers drop out of school, with subsequent adverse consequences for themselves, their families and communities.⁹³¹ A 2018 report on the status of gender equality identified that 80% of mothers aged 15-24 years have no schooling or only elementary level education.⁹³² A Teen Pregnancy Prevention Project commenced in 2016 and will run until 2021.⁹³³

917 Ministry of Culture and Internal Affairs 2018. Gender Equality where do we stand? Republic of the Marshall Islands. Note. 845.

918 Ibid.

919 A/HRC/WG.6/22/MHL/1. Available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G15/020/13/PDF/G1502013.pdf?OpenElement>

920 Ibid.

921 US Embassy. Marshall Islands 2018 human rights report. Note. 806.

922 Ibid.

923 Ibid.

924 CRPD/C/MHL/1. Note 831.

925 Ministry of Culture and Internal Affairs 2018. Gender equality where do we stand? RMI. Note 878.

926 Ibid.

927 Ibid.

928 Ibid.

929 Ibid.

930 UNICEF 2017. Situation analysis of children in the Marshall Islands. Available at: [https://www.unicef.org/pacificislands/05_Situation_Analysis_of_Children_Marshall_Islands\(1\).pdf](https://www.unicef.org/pacificislands/05_Situation_Analysis_of_Children_Marshall_Islands(1).pdf)

931 Ministry of Culture and Internal Affairs 2018. Gender equality where do we stand? RMI. Note 862.

932 Ibid.

933 UN Women 2019. Republic of the Marshall Islands National Review BPfA +25. Note 862.

RMI's Beijing+25 report states that efforts are ongoing to address challenges affecting access to quality education in the outer islands. Key challenges include: logistics, given the geographic dispersion of the islands and transportation and shipping delays, affecting the delivery of school materials in a timely manner; school disruptions due to deteriorating weather conditions; and the difficulty of attracting qualified teachers from urban schools to teach in outer islands.⁹³⁴

Through the Pacific Partnership to End Violence Against Women and Girls, the Public School System and SPC HRSD are implementing the Social Citizenship Education programme aimed at integrating human rights, gender equality, violence against women and girls, and the nuclear legacy, into the national school curriculum. The integrated curriculum for secondary schools has been approved and will commence piloting at nine schools on the three atolls of Majuro, Jaluit and Wotje.

Women's and children's rights

In July 2019, RMI submitted its Beijing+25 report in preparation for the 2020 anniversary. The report noted that since the last report, RMI has adopted the following laws to achieve compliance with CEDAW and other related commitments:

- Domestic Prevention and Protection Act (Amended) 2018: to strengthen the Domestic Violence Prevention and Protection Act 2011.
- Senior Citizens Act 2018: to grant benefits and privileges to senior citizens, among others.
- Equal Employment Opportunity Act 2017: ensuring all employees (public and private sector) are treated equally in the workplace and do not experience discrimination.
- Prohibition of Trafficking in Persons Act, 2017: strengthening the legal framework and penalties for dealing with trafficking, including sex trafficking of girls and women.
- Birth, Deaths and Marriages Registration Act (Amendment) 2016: increasing the age of consent for females from 16 to 18 years of age.⁹³⁵

In early 2019, Cabinet submitted a Gender Equality Bill, which establishes a legislative framework for domesticating many of the fundamental rights and obligations under CEDAW and makes a strong symbolic statement about the importance the government attaches to achieving gender equality.⁹³⁶ The bill is in the review stages. Additionally, the National Gender Mainstreaming Policy 2015-2019 was approved by the government in 2015, which aims to "guide the process of developing laws, policies, procedures and practices that will address the needs, priorities and aspirations of all women and men and effectively eliminate all forms of discrimination and inequality."⁹³⁷ The policy aligns with CEDAW, CRC, the Pacific Plan, the Beijing Platform for Action, the Revised Platform for Action for the Advancement of Women and Gender Equality, the 2012 Forum Leaders' Gender Equality Declaration, and the National Strategic Plan.⁹³⁸

According to the Beijing+25 report, gender focal points have been established in every ministry to monitor accountability for mainstreaming gender within their functions and the Gender in Development unit has been strengthened to improve coordination.⁹³⁹ At the legislative level, there are currently three women elected into the 33-seat Nitijelā, while the 12-seat Council of Iroij (Chiefs) currently has two women members.⁹⁴⁰

934 Ibid.

935 Ibid.

936 Ibid.

937 Ibid.

938 Ibid.

939 Ibid.

940 Ibid.

Temporary special measures were discussed during the 2017 Constitutional Convention; however, a proposal raised at the convention to amend the constitution to establish a quota of six reserved seats for women, including two from Majuro Atoll and one each from the other main atolls, was defeated.⁹⁴¹

There are no legal barriers preventing women from running for national or local office but negative perceptions and social barriers remain; however, progress is being made in local government elections. Women won 56 of the 314 seats (17.8%) at the last local election.⁹⁴² Other important decision-making structures, including in the religious, private and judicial spheres, are male dominated.⁹⁴³

Increasing numbers of women occupy high level government positions in management, on boards and at diplomatic posts, while access to tertiary education is believed to be driving progress for women in the workplace.⁹⁴⁴ The Beijing+25 report stated that the government is committed to creating the conditions required to prevent domestic violence, protect victims and provide justice and care for the survivors. Gender-based violence (GBV) was described as a challenge complicated by social practices, cultural beliefs, and a lack of institutional support and agencies to provide relief or shelter. The report noted that the 2014 Family Health and Safety Study (FHSS) identified that 48% of ever-partnered women reported having experienced violence in their lifetime, and 16% had experienced physical violence in the 12 months preceding the study.⁹⁴⁵

Key progress in the elimination of GBV includes the enactment of the Domestic Prevention and Protection Act (Amended) 2018, and continuous support to CSOs to provide effective services to survivors, such as the WUTMI Weto in Mour project for women and girl victims to access support and protection. Other achievements include training for judges, prosecutors and other law enforcement officers on domestic violence legislation through technical assistance from development partners.⁹⁴⁶ The government recognises the need to develop legislation on technology-facilitated violence against women and girls.⁹⁴⁷

A Child Protection Baseline Report conducted in 2013 with support from UNICEF is providing necessary baseline data for addressing child protection issues.⁹⁴⁸ In compliance with CRC and similar obligations, the government has instigated:

- The Child Rights Protection Act 2015: to declare the rights of children and provide for their protection, promotion, enforcement and implementation. The Child Abuse and Neglect Act and Adult Film Act 1994 were repealed and replaced by the Child Rights Protection Act.
- The Youth Service Corps Act 2016: to provide voluntary service for community development and conservation related activities.⁹⁴⁹

In 2017, the government launched the Integrated Child Health and Nutrition Survey report, which was conducted with support from UNICEF. The study, which identified high rates of malnutrition and stunting in 35% of Marshallese children,⁹⁵⁰ led to the development of the multi-year (2019-2024), Multi-Sector Early Childhood Development Project, with support from UNICEF and the World Bank, which contributed USD 13 million. The project seeks to improve children's development by: increasing access to maternal and child health services; creating opportunities for early stimulation and learning; piloting a social protection system and support for families with young children; and addressing the affordability of nutritious diets, especially for children in vulnerable families.⁹⁵¹

⁹⁴¹ Ibid.

⁹⁴² Ibid.

⁹⁴³ Ibid.

⁹⁴⁴ Ibid.

⁹⁴⁵ Ibid.

⁹⁴⁶ Ibid.

⁹⁴⁷ Ibid.

⁹⁴⁸ Ibid.

⁹⁴⁹ Ibid.

⁹⁵⁰ World Bank 2019. <https://www.worldbank.org/en/news/press-release/2019/01/28/boosting-early-childhood-development-in-the-marshall-islands> (accessed 10 September 2019).

⁹⁵¹ Op cit.

The Public School System (PSS) Child Protection Policy promotes a rights-based approach to child protection, and the Code of Conduct for Working with Children provides that all regular and volunteer teachers are required to make a signed declaration of compliance with the Code as a condition of their engagement. This includes an agreement to report to a child protection officer whenever they believe a child has been harmed or is at potential risk of harm.⁹⁵² PSS and volunteer teachers and staff working with children with disabilities are required to participate in induction training that raises their awareness of particular risk factors and demonstrates examples of good practice.⁹⁵³

Availability of disaggregated data is an issue that arises in many contexts for RMI, including in addressing child rights. A UNICEF Situation Analysis in 2018 reported a lack of data on specific types of child rights violations, such as child labour and sexual exploitation, and limited data on the disparities between different population groups, such as gender disparities, and disparities between urban and rural areas.⁹⁵⁴ The situation analysis commented that the Child Rights Protection Act is primarily response-oriented, lacks an explicit focus on family strengthening and family preservation, and makes no specific provision for the active involvement of children, parents or extended family in care and protection planning.⁹⁵⁵ Moreover, RMI lacks a comprehensive juvenile justice legislation addressing the special handling of children at all stages of the criminal justice process, and at 10 years, the minimum age of criminal responsibility is below the accepted minimum. Numerous other legislative deficiencies were identified.⁹⁵⁶ Further, a working mechanism was not in place for reporting, referral and case management of children who are at risk of or have experienced harm, and the hotline mandated by the Child Rights Protection Act had not yet been established. There were no standard operating procedures or inter-agency protocols for handling cases of children suspected of being abused or neglected.⁹⁵⁷ Customary adoption was another area of concern, where family members adopt children as a response to the adoptive parents need for labour or care, to solidify family relationships, or to ensure rights of inheritance.⁹⁵⁸ The report states that the government has acknowledged difficulties with monitoring these arrangements, including key child protection issues.⁹⁵⁹

Rights of persons with disabilities (PWD)

RMI ratified CRPD in January 2015 and enacted the Rights of Persons with Disabilities Act in September 2015. The initial report to the CRPD Committee was submitted in 2019 and RMI is awaiting scheduling to appear before the committee. The Rights of Persons with Disabilities Act legislates the equal rights and freedoms of all persons with disabilities and provides for the protection, promotion and enforcement of those rights and freedoms as a step towards implementing the obligations of the Marshall Islands.⁹⁶⁰ A Rights of Persons with Disabilities (Consequential Amendment) Bill 2018 was submitted to the Nitijelā in August 2018 and is still under review. The bill revises over 100 public laws to align the Marshall Islands Revised Code with the Disabilities Act in areas such as the rights to equality and non-discrimination, accessibility, equal recognition before the law, access to justice, liberty and security of person, education, employment and participation in public and political life.⁹⁶¹

The 2015 Act established a Disability Coordination Office (DCO) at the Ministry of Culture and Internal Affairs and a Disability Assistance Fund. Strategies for creating revenue for the fund are being pursued so that it does not depend solely on constrained government budgets.⁹⁶²

⁹⁵² UN Women 2019. Republic of the Marshall Islands National Review BPfA +25. Note 789.

⁹⁵³ Ibid.

⁹⁵⁴ UNICEF 2017. Situation analysis of children in the Marshall Islands. Note 902.

⁹⁵⁵ Ibid.

⁹⁵⁶ Ibid.

⁹⁵⁷ Ibid.

⁹⁵⁸ Ibid.

⁹⁵⁹ Ibid.

⁹⁶⁰ UN Women 2019. Republic of the Marshall Islands National Review BPfA +25. Note. 789.

⁹⁶¹ Ibid.

⁹⁶² CRPD/C/MHL/1. Note 831.

The role of the DCO is to oversee implementation of the Act, relevant policies and amendments, and CRPD recommendations. The DCO also engages with the Marshall Islands Disabled Persons Organisation and raises public awareness on disability issues.

The DCO's budget for 2019 was USD 23,000 for staff and operational costs. Low funding and lack of systematic support for the coordinator position have resulted in difficulties keeping the position filled.⁹⁶³ The government intends to implement programmes for enhanced access of PWD to public buildings, legal aid and protection, and participation in policy level discussions.⁹⁶⁴

The National Policy on Disability Inclusive Development Action Plan (2014-2018) was approved by the Nitijelā in 2014 as a comprehensive framework for improving the quality of life of persons with disabilities and increasing meaningful participation in society.⁹⁶⁵ In 2019, the policy was being reviewed and revised.⁹⁶⁶

The Economic Policy, Planning and Statistics Office rolled out a household income and expenditure survey in mid-2019 and was preparing the National Census for rollout in 2020. Both surveys will include the full list of Washington Group questions on disability. This information will be disaggregated and shared with relevant offices, such as the DCO, upon completion of data collection and analysis.⁹⁶⁷

There is a Mental Health Care team at Majuro hospital which includes the only psychiatrist in the country. There are no institutions for persons with mental disabilities and the government does not have the funds or capacity to develop the infrastructure.⁹⁶⁸ The Public Health, Safety and Welfare Act allows a physician, justice of the peace or police officer to involuntarily detain a person for psychiatric assessment, although this provision is proposed for amendment under the new Rights of Persons with Disabilities (Consequential Amendment) Bill 2018. There are no formal support services for persons experiencing mental illness who are observed wandering the streets of Majuro and the government acknowledges the need for improvement in this area.⁹⁶⁹

Systemic barriers include a fee of USD 5 to obtain a referral from the public hospital to rehabilitation services and no formalised process to ensure rehabilitation services are free.⁹⁷⁰ The lack of financial resources generally has been identified by PWD as a barrier to accessing medical services and adequate nutrition, and engaging in social and community events.⁹⁷¹ A benefit programme established under the Senior Citizens Act 2018 allows for PWDs to register and receive the same offers,⁹⁷² although it does not provide for cash transfers, only access to discounts on the presentation of an identification card. The system is expected to be in place by 2020 and PWDs will be eligible for 25% discounts on government medical and dental services, supplies and equipment, and on air and sea travel.⁹⁷³ The absence of interpretation services has been reported as a significant barrier to accessing education, health services, law enforcement and access to information for persons with a hearing impairment.⁹⁷⁴ A lack of housing for PWDs is a pressing challenge,⁹⁷⁵ and attitudes towards PWDs are described as typically negative with teasing and mocking, reinforcing stigma and stereotypes.⁹⁷⁶

963 Ibid.

964 Ibid.

965 A/HRC/30/13. Available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G15/159/90/PDF/G1515990.pdf?OpenElement>

966 UN Women 2019. Republic of the Marshall Islands National Review BPFa+25. Note 789.

967 CRPD/C/MHL/1. Note 831.

968 Ibid.

969 Ibid.

970 Ibid.

971 Ibid.

972 Ibid.

973 Senior Citizens Act 2018. Available at: <https://rmiparliament.org/cms/images/LEGISLATION/BILLS/2018/2018-0115/SeniorCitizensAct2018.pdf> (accessed 12 September 2019).

974 Ibid.

975 Asia Pacific Human Rights Information Centre. <https://www.hurights.or.jp/archives/focus/section3/2015/06/marshall-islands-developing-policy-for-persons-with-disabilities.html> (accessed 10 September 2019).

976 Op cit.

Climate justice

An Intergovernmental Panel on Climate Change (IPCC) report in October 2018 identified the Marshall Islands as one of four most at risk atoll nations. Dredging and reclaiming land was acknowledged as being expensive and environmentally damaging but necessary for cultural survival.⁹⁷⁷ RMI's Joint National Action Plan for Climate Change Adaptation and Disaster Risk Management (JNAP) (2013-18) provides a detailed strategy for "holistically and co-operatively" addressing risks in the country. The JNAP's goals include: establishing and supporting an enabling environment for improved coordination of disaster risk management and climate change adaptation, public education and awareness of effective climate change adaptation and disaster risk management from the local to the national level; enhanced emergency preparedness and response at all levels within RMI; improved energy security while working toward a low carbon future; enhanced local livelihoods and community resilience for all people; and an integrated approach to development planning.⁹⁷⁸

As a leader in the fight for climate justice and having played a key role in securing the Paris Agreement on Climate Change, RMI has developed strategies and plans to achieve its 100% decarbonisation vision. The National Energy Policy was reviewed and renewed in 2015 with a three-year action plan (2016-19). The Energy Division also developed an Electricity Roadmap identifying specific implementation measures to decarbonise the electricity sector.⁹⁷⁹ In 2015, RMI committed to a 32% reduction of greenhouse gas emissions by 2025, based on 2010 levels, and an indicative commitment to reduce emissions by 45% by 2030, based on 2010 levels. RMI has since developed its National Determined Contribution Partnership Plan to achieve its commitment. In September 2018, RMI produced a climate strategy titled Tile Til Eo 2050 Strategy setting "a clear framework for progressing towards net zero greenhouse gas emissions by 2050, as well as transitioning to an economy and society that is resilient and can adapt to the inevitable impacts of climate change."⁹⁸⁰ The strategy states the intention to mainstream gender considerations and a human rights-based approach in all aspects of policy and legislative development, and adoption and implementation in relation to climate change. Gender-differentiated and disaggregated data will be collected to identify gaps, needs and opportunities for women, men, youth, and marginalised and vulnerable groups to address gender and social inequities, including in rural communities. The intention is to align with all human rights obligations.⁹⁸¹ PWDs are acknowledged as one of the most vulnerable and disproportionately affected groups.

The National Disaster Management Office (NDMO) Strategic Plan 2017-2019 focusses on prevention, preparedness, response and recovery in three main areas: establishing an NDMO governance framework through reporting, planning, resourcing, legislation, policy and procedures; improving disaster risk management coordination and communication arrangements with all stakeholders at all levels; and improving disaster management operations.⁹⁸² The plan will see the development of NDMO and cluster terms of reference and disaster management standard operating procedures, and awareness programmes through engagement at all levels, including community workshops incorporating local knowledge into programme development.⁹⁸³

Recovery actions will be guided by compliance with principles of the Sendai Framework for Disaster Risk Reduction 2015-2030 and the Framework for Resilient Development in the Pacific 2017-2030, by advocating for Build Back Better programs to ensure future resilience.⁹⁸⁴ A Post Disaster Needs Assessment from the 2016 drought estimated the total economic losses to be approximately USD 4.9 million, with agriculture being the single most affected sector. In 2015, Typhoon Nangka cost RMI more than 3% of its GDP.

⁹⁷⁷ Op cit.

⁹⁷⁸ UN Women 2019. Republic of the Marshall Islands National Review BPfA +25. Note 789.

⁹⁷⁹ Ibid.

⁹⁸⁰ Tile Til Eo: 2050 Climate Strategy, September 2018. Available at: https://unfccc.int/sites/default/files/resource/180924%20rmi%202050%20climate%20strategy%20final_0.pdf

⁹⁸¹ Ibid.

⁹⁸² National Disaster Management Office Strategic Plan 2017 – 2019. Available at: <https://rmi-data.sprep.org/dataset/ndmo-strategic-plan/resource/c3a7af20-27af-4713-8b6b-6c2a56b8f534> (accessed 10 September 2019).

⁹⁸³ Ibid.

⁹⁸⁴ Ibid.

As king tides become more frequent and intense, saltwater is increasingly seeping into freshwater lenses, creating urgent challenges for the islands.⁹⁸⁵ Food security, water security and health security were identified by NDMO as priority areas for adaptation and building resilience.⁹⁸⁶

The National Adaptation Plan (NAP) is currently in development. NAP will present and assess a series of adaptation options to support the livelihood of the Marshallese and national economic development. Due to the projected level of risk, in particular due to sea level rise, ambitious adaptation options, including protection, elevation, consolidation and relocation, need to be evaluated, as well as their potential impacts on the Marshallese way of life. These aspects will be included in the review and appraisal of the NAP options.⁹⁸⁷

985 Ibid.

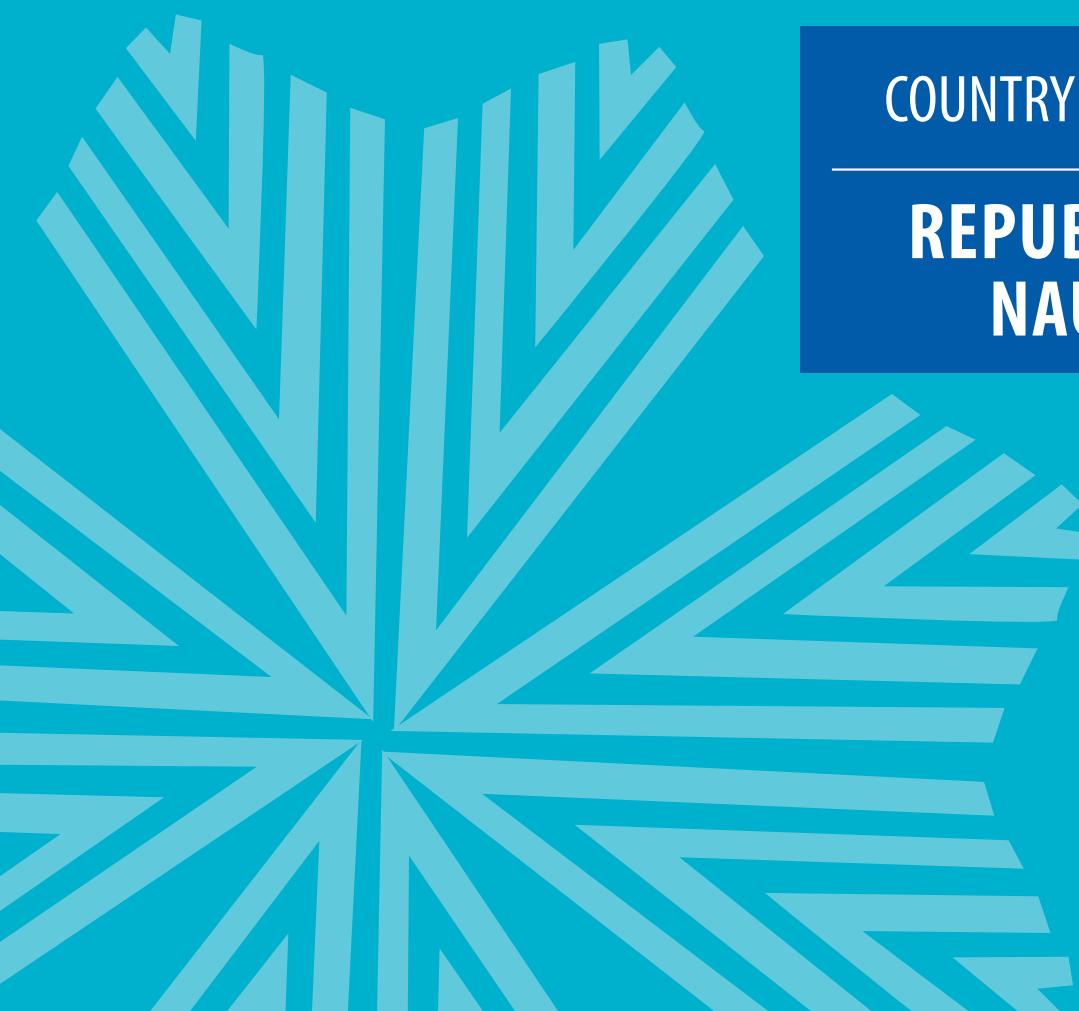
986 Ibid.

987 Information provided by the Chair of the RMI Human Rights Committee.



COUNTRY CHAPTERS

**REPUBLIC OF
NAURU**



Republic of Nauru

Key facts

Capital city	No official capital. Government offices are located in the Yaren District. ⁹⁸⁸	Total land area	21 sq. km
Population (year)	9692 (July 2018 est.) ⁹⁸⁹	Population growth % (year)	0.51% (2018 est.) ⁹⁹⁰
GDP per capita (year)	USD 12,300 (2017 est.) ⁹⁹¹	GNI per capita (Atlas method) (year)	USD 11,240 (2018) ⁹⁹²
Type of government	Parliamentary republic, the president is both head of state and head of government. ⁹⁹³		
Electoral system	Unicameral parliament, members directly elected in multi-seat constituencies by majority vote where voters rank candidates on their ballots. ⁹⁹⁴		
Number of members of parliament (MPs): total/female (year)	19 seats: 17 males and 2 females. ⁹⁹⁵ Ratio of females 10.5%.		
Religions: by % of population (year)	Protestant 60.4% (includes Nauru Congregational 35.7%, Assembly of God 13%, Nauru Independent Church 9.5%, Baptist 1.5%, and Seventh Day Adventist 0.7%), Roman Catholic 33%, other 3.7%, none 1.8%, unspecified 1.1% (2011 est.). ⁹⁹⁶		
Ethnic groups: by % of population (year)	Nauruan 88.9%, part Nauruan 6.6%, I-Kiribati 2%, other 2.5% (2007 est.) ⁹⁹⁷		
Languages: by % of population (year)	Nauruan 93% (official, a distinct Pacific Island language), English 2% (widely understood, spoken, and used for most government and commercial purposes), other 5% (includes I-Kiribati 2% and Chinese 2%) (2011 est.). ⁹⁹⁸		
Life expectancy: male/female (year)	67.8 years male: 63.6 years female: 71.2 years (2018 est.) ⁹⁹⁹	% youth aged 15–24 years: total male/female (year)	16.37% (male 764 / female 823) (2018 est.) ¹⁰⁰⁰
% disability: total male/female (year)	5.5% 295 male/ 245 female (2011) ¹⁰⁰¹		

988 World Atlas. <https://www.worldatlas.com/articles/the-country-without-a-capital-city-nauru.html> (accessed 15 October 2019).

989 CIA World Factbook. https://www.cia.gov/library/publications/the-world-factbook/geos/print_nr.html (accessed 15 Oct.2019).

990 Ibid.

991 Ibid.

992 World Bank Data. <https://data.worldbank.org/country/nauru?view=chart> (accessed 15 October 2019).

993 CIA World Factbook. Note 961.

994 Ibid.

995 Pacific Women in Politics. <https://www.pacwip.org/country-profiles/nauru/> (accessed 15 October 2019).

996 CIA World Factbook. Note 961.

997 Ibid.

998 Ibid.

999 Ibid.

1000 Ibid.

1001 Republic of Nauru Government Bureau of Statistics 2015. Disability monograph: Analysis of the 2011 Nauru Population and Housing Census. Available at: http://www.spc.int/DigitalLibrary/Doc/SDD/Disability/Nauru_2015_Disability_Monograph_Report_NBS_UNFPA_sml.pdf

International human rights treaty ratification and reporting obligations

Treaty	Date of signature (S) ratification (R) accession (a)	Reservations	Latest report submitted	Reporting status
ICCPR	12 November 2001 (S)			
ICERD	12 November 2001 (S)			
CEDAW	23 June 2011 (a)		1 st and 2 nd report 13 January 2016.	3 rd report due 30 November 2021.
CAT	26 September 2012 (R)			1 st report overdue since 26 October 2013.
CRC	27 July 1994 (a)		1 st report 11 January 2016.	2 nd to 6 th report due 25 August 2021.
CRPD	27 June 2012 (a)			1 st report overdue since 27 July 2014.
ICCPR-OP1	12 Nov. 2001 (S)			
OP-CAT	24 January 2013 (a)			N/A
OP-CRC-AC	8 September 2000 (S)			
OP-CRC-SC	8 September 2000 (S)			

Special Procedures:

Open invitation extended 30 May 2011.

Country visits:¹⁰⁰²

- UN Subcommittee on the Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment visited in May 2015.
- International Expert on access to safe drinking water and sanitation: requested 7 June 2010, no invitation.
- Working Group on mercenaries: requested 25 November 2015, reminders 16 November 2016 and 20 January 2017, no invitation.
- Working Group on arbitrary detention: six requests since 2002, most recently 24 February 2015. Government postponed 2 April 2015.

Universal Periodic Review: 1st cycle 24 January 2011; 2nd cycle 3 November 2015; 3rd cycle due mid-2020.

International Criminal Court: Ratified the Rome Statute on 12 November 2001.

System of government

Nauru has a unicameral parliament of 19 seats where members are directly elected in multi-seat constituencies by majority vote using the Dowdall counting system, by which voters rank candidates on their ballots to serve three-year terms.¹⁰⁰³ The constitution was adopted in 1968 at independence. Changes to the constitution are proposed by Parliament and passage requires a two-thirds majority vote of the membership. A referendum is required to amend constitutional articles such as the republican form of government, protection of fundamental rights and freedoms, the structure and authorities of the executive and legislative branches, and requires a two-thirds majority of votes to succeed. The constitution has been amended twice, most recently in 2014.¹⁰⁰⁴

¹⁰⁰² OHCHR. https://spinternet.ohchr.org/_layouts/15/SpecialProceduresInternet/ViewCountryVisits.aspx?Lang=en&country=NRU

¹⁰⁰³ CIA World Factbook. Note 961.

¹⁰⁰⁴ Op cit.



The President is elected by Parliament and may serve for two terms. The President is both the head of state and head of government. Cabinet is appointed by the President from among Members of Parliament (MPs).

Elections were last held in August 2019.¹⁰⁰⁵ Two women were elected in 2019, one of whom was re-elected, making a total of only three women ever elected to Parliament. Reserving seats for women was proposed during the 2006-2007 constitutional reform process but was not supported during public consultations.¹⁰⁰⁶ In 2017, the CEDAW Committee expressed concerns at the absence of temporary special measures in legislation and policies, recommending that these be adopted and implemented in order to achieve substantive equality of women and men in all areas where women are disadvantaged or underrepresented, in particular in political and public life.¹⁰⁰⁷

Judicial system and administration of justice

Nauru's legal system is a mix of common law and customary law, and comprises the Supreme Court, which consists of the Chief Justice and several justices, in addition to a District Court and a Family Court. The President appoints judges to serve until age 65 or over.¹⁰⁰⁸ There have been concerns about undue influence by the government on the judiciary and accusations of judges being dismissed for rulings found unfavourable to officials.¹⁰⁰⁹

In late 2017, the government revoked the 1976 High Court Appeals Act, which had allowed appeals to the Australian High Court of decisions by the Nauruan Supreme Court in civil and criminal matters.¹⁰¹⁰ Parliament established the Nauru Court Appeal, severing links with the Australian High Court.¹⁰¹¹ In September 2018, a permanent stay was granted on proceedings relating to the so-called 'Nauru 19' – a group, including former politicians, who were involved in anti-government protests in 2015 – with the judgement stating that the actions of the Nauru government in the matter were an affront to the rule of law.¹⁰¹² The contract of the Australian judge who had decided the matter was subsequently terminated.¹⁰¹³ In June 2019, the new Nauruan Appeals Court overturned the ruling of 2018, leaving the way open for the government to reopen the case.¹⁰¹⁴ In December 2019, the case of the Nauru 19 was re-litigated before a single judge in the Supreme Court who eventually convicted the remaining 12 accused persons. There was criticism that new laws had effectively denied the defendants from being represented at the retrial by lawyers of their choice from overseas, thus denying them a fair trial.¹⁰¹⁵ The government claimed that the defendants had refused the opportunity to be represented by local lawyers,¹⁰¹⁶ and ultimately, the defendants were represented by a public defender.

Access to justice and the right to remedy

The constitution provides for due process rights, which are generally respected, except for public servants. In June 2017, the government amended the Public Service Act 2017 which distinguishes between public servants who testify in favour of the government or against it.

¹⁰⁰⁵ Op cit.

¹⁰⁰⁶ Pacific Women in Politics. <https://www.pacwip.org/country-profiles/nauru/> (accessed 15 October 2019).

¹⁰⁰⁷ CEDAW/C/NRU/CO/1-2. Available at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fNRU%2fCO%2f1-2&Lang=en

¹⁰⁰⁸ See Section 50 (1) Constitution of Nauru.

¹⁰⁰⁹ Freedom House. Freedom in the World 2018. Available at: <https://freedomhouse.org/report/freedom-world/2018/nauru> (accessed 15 October 2019).

¹⁰¹⁰ Ibid.

¹⁰¹¹ Radio New Zealand 2018. <https://www.rnz.co.nz/international/pacific-news/362538/nauru-govt-sets-up-court-of-appeal> (accessed 15 October 2019).

¹⁰¹² Republic of Nauru vs Mathew Batsua & Ors, Criminal Case No. 12 of 2017. Available at: <https://uploads.guim.co.uk/2018/09/13/Republic-v-Batsua-Ors-No-2.pdf> (accessed 15 October 2019).

¹⁰¹³ Radio New Zealand 2019. <https://www.rnz.co.nz/international/pacific-news/402970/controversial-trial-of-nauru-19-about-to-open> (accessed 15 October 2019).

¹⁰¹⁴ The Guardian 2019. <https://www.theguardian.com/world/2019/jun/25/nauru-19-back-at-square-one-after-stay-of-prosecution-thrown-out> (accessed 15 October 2019).

¹⁰¹⁵ Australian Broadcasting Corporation 2019. <https://www.abc.net.au/radio/programs/pm/nauru-accused-if-obstructing-peoples-access-to-justice/11222410>

¹⁰¹⁶ Australian Broadcasting Corporation 2019. <https://www.abc.net.au/news/2019-12-20/nauru-19-sentenced-to-jail-terms-over-2015-protest/11817052>

Analysts said the law appeared to represent an attempt to discourage civil servants from testifying in favour of defendants on trial in connection with the 2015 protest.¹⁰¹⁷

In relation to sexual and gender-based violence, free legal aid is available through the Public Defender's Office, and women with insufficient financial means are able to apply for a reduction of court fees. The CEDAW Committee in 2017 expressed concern that many women are not aware of their rights and how to claim them, and that many victims who report gender-based violence to the police often refrain from filing court cases.¹⁰¹⁸ Along with recommendations to address these concerns, the committee also recommended adequate protection and redress for refugee and asylum-seeking women and girls who are victims of gender-based violence, including through access to free legal aid.¹⁰¹⁹

The Committee on the Rights of the Child in 2016 expressed concern over the absence of specialised magistrates and personnel appropriately trained in children's rights and at the insufficient application of recognised juvenile justice principles when dealing with children in conflict with the law.¹⁰²⁰ The committee was also concerned that many cases involving child abuse and sexual assault against children that proceed to the prosecution stage are withdrawn by the victims or witnesses owing to fear of financial hardship and the risk of damaging the family's reputation.¹⁰²¹ Amongst the recommendations were the establishment of child-sensitive procedures and mechanisms to ensure that police interviews are conducted in an appropriate manner and by adequately trained police in order to prevent re-victimisation and traumatisation. It further recommended that the judiciary, probation officers, defence advocates and other staff in the judicial process be trained and sensitised to child-friendly procedures.¹⁰²²

National Human Rights Institutions (NHRI)

In January 2017, the government requested that SPC HRSD review and update the 2009 scoping study on the establishment of a Paris Principles-compliant NHRI, which then took place in March 2017 in collaboration with APF.¹⁰²³ Recommendations were made for consideration by the government, including an enhanced Ombudsman-NHRI model, given that Nauru established the Ombudsman's Office under the Leadership Code Act 2016, and creating enabling legislation as the legal foundation for the NHRI and other consequential amendments. In 2017, the government delegation to the CEDAW Committee advised that Nauru had decided to establish an NHRI.¹⁰²⁴ Discussions on the potential draft legislation have been initiated and, according to SPC HRSD, some progress was made by 2019.

Security sector

Civilian authorities control the small police force.¹⁰²⁵ The government is deemed to have effective mechanisms to investigate and punish abuse and corruption. There were no recent reports of impunity involving the security forces.¹⁰²⁶ Section 7 of the Constitution provides that: "No person shall be subjected to torture or to treatment or punishment that is inhuman or degrading."¹⁰²⁷ The Domestic Violence Unit of the Nauru Police Force is mandated to investigate, report and respond to victims of domestic violence and child abuse.¹⁰²⁸

¹⁰¹⁷ Ibid.

¹⁰¹⁸ CEDAW/C/NRU/CO/1-2. Note. 979.

¹⁰¹⁹ Ibid.

¹⁰²⁰ CRC/C/NRU/CO/1. Available at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2fNRU%2fCO%2f1&Lang=en

¹⁰²¹ Ibid.

¹⁰²² Ibid.

¹⁰²³ Asia Pacific Forum 2018. <https://www.asiapacificforum.net/news/building-momentum-nhris-pacific/>

¹⁰²⁴ OHCHR 2017. <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=22334&LangID=E> (accessed 15 October 2019).

¹⁰²⁵ Freedom House. Freedom in the World 2018 website. Note. 981.

¹⁰²⁶ United States Department of State 2017. 2016 country reports on human rights practices – Nauru. Available at: <https://www.refworld.org/docid/58ec89f313.html> (accessed 17 October 2019).

¹⁰²⁷ The Law on Police Use of Force Worldwide. <https://www.policinglaw.info/country/nauru> (accessed 15 October 2019).

¹⁰²⁸ A/HRC/WG.6/23/NRU/1. <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G15/237/21/PDF/G1523721.pdf?OpenElement>

In September 2018, Nauru police detained a journalist who was there to cover a regional forum. The journalist was meeting with a refugee when police arrived saying she was in breach of her visa conditions. She was detained for three hours and had her media accreditation to the forum revoked. The journalist later reported that she was well treated by police who she thought “were just playing it by the book.”¹⁰²⁹

Australia supports Nauru with safety, security and law enforcement for the refugees associated with the regional processing centre, including providing Australian Federal Police assistance.¹⁰³⁰ The Australian offshore processing centre for asylum seekers has received considerable international criticism for poor treatment of asylum seekers, and few arrests have been made in connection with alleged abuses of its residents¹⁰³¹ or those now living in the community. A security company contracted to run the detention centre was accused in 2016 of regularly downgrading reports of abuse.¹⁰³² Another private security firm took over in October 2017 and in April 2019 was expected to hand over control of the centre to the Nauru Regional Processing Centre Corporation, the Nauruan government’s commercial entity.¹⁰³³ However, in May 2019 the handover was delayed and the private company’s contract extended.¹⁰³⁴ No updated information was available as of May 2019.

The Subcommittee on the Prevention of Torture visited Nauru in May 2015, focusing on the situation of detainees and the need to establish an independent body to monitor places of detention. The subcommittee visited the police station and the prison as well as the regional processing centre for asylum seekers.¹⁰³⁵ One member of the UPR Working Group recommended that Nauru make public the entire report of the subcommittee on the Prevention of Torture.¹⁰³⁶

Refugees and asylum seekers

At its peak in August 2014, Australian government data reported that the Nauru detention centre housed over 1200 asylum seekers, including 222 children and 114 women.¹⁰³⁷ In October 2015, the Nauruan government announced that asylum seekers would no longer be detained at the detention centre and would instead be free to move around the island. In August 2019, over 300 refugees remained on Nauru, a population considered to have a high rate of mental illness, as stated in coverage of a refugee detained on Nauru who was in intensive care in an Australian hospital after setting himself on fire.¹⁰³⁸ Approximately 3000 refugees and asylum-seekers have been transferred by Australia to so-called “offshore processing” facilities in Papua New Guinea and Nauru since the introduction of the current policy in 2013 until 2018.¹⁰³⁹ Circumstances and conditions for refugees under Australia’s “offshore processing” policy have had negative impacts on health, and particularly mental health. During 2016, UNHCR medical experts found cumulative rates of depression, anxiety and PTSD among refugees forcibly transferred to Papua New Guinea and Nauru to be the highest recorded in the medical literature to date at over 80% in both locations.¹⁰⁴⁰

¹⁰²⁹ Radio New Zealand 2018. <https://www.rnz.co.nz/news/political/365688/pm-to-ask-questions-of-nz-journalist-s-detention-in-nauru> (accessed 15 October 2019).

¹⁰³⁰ A/HRC/31/7. Available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G15/286/17/PDF/G1528617.pdf?OpenElement>

¹⁰³¹ Freedom House. Freedom in the World 2018 website. Note. 981.

¹⁰³² The Guardian 2016. <https://www.theguardian.com/australia-news/2016/aug/12/nauru-files-show-wilson-security-staff-regularly-downgraded-reports-of-abuse> (accessed 15 October 2019).

¹⁰³³ The Guardian 2018. <https://www.theguardian.com/world/2018/nov/15/brisbane-construction-firm-made-43m-profit-running-nauru-detention-centre-last-year> (accessed 15 October 2019).

¹⁰³⁴ Radio New Zealand 2019. <https://www.rnz.co.nz/international/pacific-news/388267/service-contract-for-nauru-refugees-extended> (accessed 15 October 2019).

¹⁰³⁵ A/HRC/WG.6/23/NRU/2.

¹⁰³⁶ A/HRC/31/7. Available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G15/286/17/PDF/G1528617.pdf?OpenElement>

¹⁰³⁷ CNN 2019. <https://edition.cnn.com/2019/04/18/australia/nauru-former-president-intl/index.html>

¹⁰³⁸ Radio New Zealand 2019. <https://www.rnz.co.nz/international/pacific-news/397500/nauru-refugee-in-intensive-care> (accessed 15 October 2019).

¹⁰³⁹ UN Refugee Agency 2018. <https://www.unhcr.org/en-au/news/press/2018/11/5bff8f237/unhcr-appeals-for-urgent-medical-intervention-by-australia.html> (accessed 21 August 2020).

¹⁰⁴⁰ UN Refugee Agency. Submission to the Senate Legal and Constitutional Affairs Committee: Serious allegations of abuse, self-harm and neglect of asylum seekers in relation to the Nauru Regional Processing Centre, and any like allegations in relation to the Manus Regional Processing Centre 2016. <https://www.unhcr.org/en-au/publications/legal/58362da34/submission-to-the-senate-legal-and-constitutional-affairs-committee-serious.html>

In April 2017, an Australian Senate Committee report described numerous allegations of physical and sexual abuse, self-harm and neglect of refugees and asylum seekers in Nauru and another detention centre in PNG. The committee found that the main contributing factors were a harmful living environment, uncertainty about the future, an inadequate regulatory framework (including child protection policies), a lack of transparency in operations affecting refugees, and a failure to hold authorities accountable for abuses.¹⁰⁴¹ Action was slow to follow, but according to the Australian government, by the end of March 2019, all remaining refugees and asylum seekers had moved out of the detention centre and were living in the Nauru community.¹⁰⁴²

In February 2019, as part of a group of 19 people, the last four refugee children on Nauru left for resettlement in the US. Estimates suggest the US has resettled around 500 of Australia's refugees from both Nauru and PNG since the deal between the two countries was signed in late 2016. The US offered to take up to 1200 of those assessed as refugees by the PNG Foreign Minister and the Nauruan government, but refugees and advocates in Australia have become distressed at the slow pace of resettlement as well as frequent rejections.

In 2018, the NGO Médecins Sans Frontières/Doctors without Borders (MSF) warned that Nauru was in the grip of a mental health crisis, releasing findings that showed 60% of people in detention on the island had suicidal thoughts and stating there was insufficient independent medical care available on the island to cope with the levels of need.¹⁰⁴³ Since November 2017, at the invitation of the Nauru government, MSF had been providing free critically-needed mental health care to refugees, many of whom had attempted suicide, and to the local Nauruan population. In October 2018, the government of Nauru ordered MSF to leave within 24 hours,¹⁰⁴⁴ which appeared to be in response to MSF speaking publicly about conditions for refugees on Nauru.¹⁰⁴⁵ Another NGO health service provider had the same experience in 2015.¹⁰⁴⁶ In February 2019, MSF launched a free tele-mental health service, providing psychological support to former patients, including Nauruan nationals, asylum seekers and refugees, in an attempt to provide continuity of care to those who remained highly vulnerable on Nauru. Two weeks later, the Nauruan government banned telemedicine in the country, once again forcing MSF to suspend services.¹⁰⁴⁷

Migration

Nauru, which joined the United Nations in 1999, initially drew global attention for its migration policies when it finalised an extraterritorial cooperation deal with Australia to host an asylum seeker detention centre in 2001. This deal was part of what later became known as Australia's first "Pacific Solution" migrant deterrence policy, which involved intercepting and transferring asylum seekers arriving by sea to "offshore processing centres" in Nauru and Manus Island, Papua New Guinea.¹⁰⁴⁸ After criticism of how asylum seekers were detained,¹⁰⁴⁹ the offshore centre was abandoned in 2008. During the facility's seven years in operation, 1544 persons, including women and children, were detained.

¹⁰⁴¹ Amnesty International 2018. Amnesty International Report 2017-18: The State of the World's Human Rights. Available at: <https://www.amnesty.org/en/documents/pol10/6700/2018/en/>

¹⁰⁴² CNN 2019. <https://edition.cnn.com/2019/04/18/australia/nauru-former-president-intl/index.html>

¹⁰⁴³ The Guardian 2019. <https://www.theguardian.com/world/2019/jul/15/it-is-like-a-slow-death-seriously-ill-nauru-refugees-remain-trapped-amid-delays> (accessed 15 October 2019).

¹⁰⁴⁴ Médecins Sans Frontières 2018. <https://www.msf.org/msf-slams-decision-ends-critically-needed-mental-healthcare-nauru> (accessed 15 October 2019).

¹⁰⁴⁵ The Guardian 2018. <https://www.theguardian.com/australia-news/2018/oct/12/they-conspired-against-us-nauru-government-accuses-msf-of-activism> (accessed 15 October 2019).

¹⁰⁴⁶ The Guardian 2017. <https://www.theguardian.com/australia-news/2017/jan/31/government-pays-compensation-to-sacked-nauru-save-the-children-staff> (accessed 15 October 2019).

¹⁰⁴⁷ Médecins Sans Frontières. <https://www.msf.org/nauru> (accessed 15 October 2019).

¹⁰⁴⁸ Global Detention Project (GDP) 2014. How and Why Immigration Detention Crossed the Globe, Global Detention Project Working Paper No. 8. Available at: <https://www.refworld.org/docid/545b41254.html> (accessed 23 August 2020).

¹⁰⁴⁹ Phillips J. 2012. The 'Pacific Solution' revisited: a statistical guide to the asylum seeker caseloads on Nauru and Manus Island. Available at: https://parlinfo.aph.gov.au/parlInfo/download/library/prspub/1893669/upload_binary/1893669.pdf;fileType=application/pdf

A new Memorandum of Understanding was signed between Nauru and Australia¹⁰⁵⁰ which led to construction of a new regional processing centre on Nauru in 2012. Since the opening of the centre, the Human Rights Law Centre (HRLC) litigated a test case on behalf of a pregnant Bangladeshi woman detained on Nauru who had been brought to Australia for urgent medical treatment. According to HRLC lawyers, more than 260 people have been brought to Australia for urgent medical treatment after suffering harm in offshore detention centres. In February 2016, the High Court ruled in favour of Australia in the matter of a challenge to the legality of offshore funding.¹⁰⁵¹

Nauru does not experience the internal migration of other small island states, while external migration is limited as Nauru has no special migration access to larger countries, with estimates that only 8% of the population live in the diaspora.¹⁰⁵² There are also very few permanent immigrants into Nauru. Over the five years to 2016-2017, Australia accepted 106 permanent migrants from Nauru as skilled migrant workers.¹⁰⁵³ Since 2015, Nauru has been included in temporary seasonal worker programmes in New Zealand and Australia, and in 2016-2017, 57 seasonal workers were employed in New Zealand and 27 in Australia.¹⁰⁵⁴

Human Trafficking, Forced Labour, and Contemporary Forms of Slavery

There are no confirmed reports that Nauru is a source, destination or transit country for human trafficking.¹⁰⁵⁵ However, the Special Rapporteur on trafficking in persons, especially women and children observed during the country visit to Australia in 2011 that the country's restrictive migration policy severely limits the possibilities for unskilled migrants to enter Australia legally and safely, thereby creating a lucrative market for migrant smugglers and exacerbating the vulnerability that feeds trafficking and related exploitation.¹⁰⁵⁶ Nauru's report to the CEDAW Committee in 2016 advised that plans are underway to ensure that relevant government departments, including police, customs and immigration, are properly trained to deal with issues relating to trafficking in women.¹⁰⁵⁷ The Committee on the Rights of the Child in 2016 expressed concern that the Immigration Act 2014 does not specifically criminalise the sale of, trafficking in or abduction of children, and that the guidance and measures in place are insufficient for the protection, rehabilitation and support of children who have been sold, trafficked or abducted.¹⁰⁵⁸

Civil society and human rights defenders

A UNICEF analysis in 2017 commented that Nauru does not have a history of strong, active CSOs and that the government provides most, if not all, social services.¹⁰⁵⁹ The Nauru Island Association of Non-Governmental Organisations (NIANGO) is the recognised NGO umbrella body, and facilitates the actions of the few NGOs which operate in the country. Current information could not be found but in 2007 there were 25 member organisations. There is no national register of NGOs. The National Council of Women is the leading gender affairs NGO and works closely with the Department of Women's Affairs. The Nauru Persons with Disabilities Organisation is the main NGO working for the rights of persons with disabilities, and a group known as Able

1050 Memorandum of Understanding between the Republic of Nauru and the Commonwealth of Australia, relating to the transfer to and assessment of persons in Nauru, and related issues, Australian Government, Department of Foreign Affairs and Trade. 3 August 2013, <http://dfat.gov.au/geo/nauru/pages/memorandum-of-understanding-between-the-republic-of-nauru-and-the-commonwealth-of-australia-relating-to-the-transfer-to-and.aspx>.

1051 Human Rights Law Centre 2016. . <https://www.hrlc.org.au/news/families-fear-imminent-deportation-as-high-court-confirms-governments-nauru-arrangements-do-not-breach-australian-domestic-law> (accessed 23 August 2020).

1052 DevPolicy Blog 15 February 2019. Available at: <https://devpolicy.org/climate-change-migration-kiribati-tuvalu-nauru-20190215/> (accessed 15 October 2019).

1053 Curtain R. and Dornan M. 2019. A pressure release valve? Migration and climate change in Kiribati, Nauru and Tuvalu. Available at: <https://devpolicy.org/publications/reports/Migration-climate%20change-Kiribati-Nauru-Tuvalu.pdf> (accessed 10 October 2019).

1054 Ibid.

1055 United States Department of State 2017. 2016 country reports on human rights practices – Nauru. Available at: <https://www.refworld.org/docid/58ec89f313.html> (accessed 17 October 2019).

1056 A/HRC/20/18/Add.1

1057 CEDAW/C/NRU/1-2. Note. 979.

1058 CRC/C/NRU/CO/1. Note. 992.

1059 UNICEF Pacific 2017. Situation analysis of children in Nauru. Available at: https://www.unicef.org/pacificislands/07_Situation_Analysis_of_Children_Nauru.pdf

Disabled is a body of parents and friends who look into the needs of children with disabilities in Nauru.¹⁰⁶⁰ There is also a National Youth Council that is affiliated with the Pacific Youth Council.¹⁰⁶¹ In 2017, a government delegate acknowledged that there was a need to strengthen the civil society sector and increase cooperation in the formation of legislation and development strategy.¹⁰⁶²

Domestic law and human rights

The following legislation with implications for human rights has been enacted since 2016:

- Mentally-Disordered Persons (Amendment) No.2 Act 2017, articulating the rights of persons admitted to a mental health facility, including informed consent and access to personal treatment records.¹⁰⁶³
- Domestic Violence and Family Protection Act 2017, providing for the protection of victims of domestic violence and related matters.¹⁰⁶⁴
- Public Service (Amendment) Act 2017, allowing leave with pay for public service employees testifying in court on behalf of the Republic and leave without pay for public service employees testifying in court in any other circumstances.¹⁰⁶⁵
- Nauru (RPC) Corporation Act 2017, establishing the Nauru Regional Processing Centre Corporation to administer, manage and facilitate all commercial operations related to regional processing centres and settlements in Nauru.¹⁰⁶⁶
- Nauru Court of Appeal Act 2018, establishing the Court of Appeal (COA) and providing for the transfer of appeals filed in the High Court of Australia after 13 March 2018 to the Nauru COA.¹⁰⁶⁷
- Administration of Justice Act 2018, including the application of common law on contempt of court to the challenges of technology and other developments; and providing a balance between freedom of expression and the protection of the public.¹⁰⁶⁸
- Refugees Convention (Amendment) Act 2018, providing for the determining of asylum seekers as refugees entitled to temporary resident visas until the Commonwealth of Australia resettles the persons in another country.¹⁰⁶⁹
- Public Service (Amendment) Act 2019, obliging public servants to resign if they intend to stand for election.¹⁰⁷⁰

Human rights policies

The Nauru National Women's Policy (2014–2024) is being implemented to provide direction for the government, civil society and community representatives in achieving goals relating to the promotion of gender equality. In 2017, a new gender policy was said to be in development to complement the national women's policy

1060 Commonwealth Network. http://www.commonwealthofnations.org/sectors-nauru/civil_society/ (accessed 14 October 2019).

1061 Pacific Youth Council. <https://www.pacificyouthcouncil.org/nauru.php> (accessed 10 October 2019).

1062 OHCHR 2019. Note 996.

1063 Mentally-disordered Persons (Amendment) No. 2 Act 2017. Available at: http://ronlaw.gov.nr/nauru_lpms/files/acts/93c6a77f62cbb58e69672ef70c11bae6.pdf (accessed 15 October 2019).

1064 Domestic Violence and Family Protection Act 2017. Available at: http://ronlaw.gov.nr/nauru_lpms/files/acts/3f6b883ca6cfbf1c2e83767f876266e8.pdf (accessed 15 October 2019).

1065 Public Service (Amendment) Act 2017. Available at: http://ronlaw.gov.nr/nauru_lpms/files/acts/96ab41b98972dd04363341d0639a9542.pdf (accessed 15 October 2019).

1066 Nauru (RPC) Corporation Act 2017. Available at: http://ronlaw.gov.nr/nauru_lpms/files/acts/490b73798c408e3ea78f4b6e3720b895.pdf

1067 Nauru Court of Appeal Act 2018. Available at: http://ronlaw.gov.nr/nauru_lpms/files/acts/641872e1c48b1735dbe7fe413a46bf02.pdf

1068 Administration of Justice Act 2018. Available at: http://ronlaw.gov.nr/nauru_lpms/files/acts/f4e8a1d864c7e94322e2bc442feaf257.pdf

1069 Refugees Convention (Amendment) Act 2018. Available at: http://ronlaw.gov.nr/nauru_lpms/files/acts/f07e0636c6092ce1fc6b34d2b60caf8.pdf

1070 Public Service (Amendment) Act 2019. Available at: http://ronlaw.gov.nr/nauru_lpms/files/acts/a8fb0d043045cfb3e015309db2b06701.pdf

and frameworks already in place.¹⁰⁷¹ The CEDAW Committee in 2017 recommended development of a gender mainstreaming strategy that includes gender-responsive budgeting which can be applied in all policies and programmes, at all levels, to address various aspects of women's lives.¹⁰⁷² The Committee on the Rights of the Child in 2016 recommended that Nauru develop a comprehensive policy to promote and protect the rights of children.¹⁰⁷³

Right to life, liberty and security of person

Domestic violence remains a serious problem, mostly affecting women and children. Authorities have taken efforts to address these problems by approving protections within the 2017 Domestic Violence and Family Protection Act and the 2016 Child Protection and Welfare Act. Marital rape was also made a criminal offence in 2016.¹⁰⁷⁴ The government provides a safe house and counselling services.¹⁰⁷⁵ The CEDAW Committee in 2017 recommended that services of the safe house and other shelters should be expanded to provide victims of gender-based violence with access to legal services, vocational training and income-generating opportunities.¹⁰⁷⁶

Reports continued in 2018 of widespread abuse of refugees and asylum seekers forcibly transferred to Nauru under its agreement with Australia. Alleged crimes committed against asylum seekers living in the community were said to be frequently not investigated.¹⁰⁷⁷

Equality and non-discrimination

The constitution provides for equal treatment regardless of race, country of origin, ethnicity, politics or gender, although those rights are not always protected in practice. There are few legal protections against discrimination, which is known to impact women in the workplace and other areas. In 2016, the government decriminalised homosexuality.¹⁰⁷⁸ Same-sex marriage is still not recognized in Nauru.

The CEDAW Committee in 2017 recommended that, within a clearly defined time frame, Nauru incorporate into the constitution a comprehensive definition of discrimination against women which covers direct, indirect and intersecting forms of discrimination, as well as discrimination in the public and private spheres, and reviews all existing laws to eliminate all discriminatory provisions so that laws are compatible with the principles of equality and non-discrimination.¹⁰⁷⁹ The Committee on the Rights of the Child in 2016 recommended that Nauru ensure the full implementation of relevant existing laws prohibiting discrimination, including by strengthening public education campaigns to address negative social attitudes towards refugee and asylum-seeking children, and children with disabilities.¹⁰⁸⁰

Freedom of information (FOI)

Nauru lacks a law on access to public information. The Government Information Office releases some budget information. Officials are not required to disclose financial information. In recent times the government has made attempts to prevent journalists and other observers from reporting on operations and conditions at the offshore processing centre for asylum seekers.¹⁰⁸¹

¹⁰⁷¹ OHCHR website 27 October 2017. Note. 996.

¹⁰⁷² CEDAW/C/NRU/CO/1-2. Note. 979.

¹⁰⁷³ CRC/C/NRU/CO/1. Note. 992.

¹⁰⁷⁴ Freedom House. Freedom in the World 2018. Note. 981.

¹⁰⁷⁵ CEDAW/C/NRU/1-2. Note. 979.

¹⁰⁷⁶ CEDAW/C/NRU/CO/1-2. Note. 979.

¹⁰⁷⁷ Freedom House. Freedom in the World 2018. Note. 981.

¹⁰⁷⁸ CHARMAINE RODRIGUES The Royal Commonwealth Society, September 2019. https://pgaction.org/pdf/Opportunities_for_women_and_LGBTI_rights_Pacific.pdf ISBN 9781913173036

¹⁰⁷⁹ CEDAW/C/NRU/CO/1-2. Note 979.

¹⁰⁸⁰ CRC/C/NRU/CO/1. Note. 992.

¹⁰⁸¹ Freedom House. Freedom in the World 2018. Note. 981.

The constitution provides for the freedoms of conscience, expression, assembly and association; however, these rights may be restricted by any law which is reasonably required in the interests of defence or public safety, order, morality or health.¹⁰⁸² The constitution upholds the right to assemble peacefully, but the right has not always been respected in practice and demonstrations related to the treatment of asylum seekers are often said to be repressed.¹⁰⁸³ There are no trade unions and only limited labour protection laws, while the right to strike and to collectively bargain is not protected by law.¹⁰⁸⁴ Religious groups must register with the government to operate in an official capacity, which requires having at least 750 enrolled members, land and a building in the country, and leadership by a Nauruan member of the clergy who must reside in the country.¹⁰⁸⁵

The constitution and law provide for freedom of expression, including of the press; however, the government owns all media and exercises editorial control over content.¹⁰⁸⁶ The government has implemented restrictions on foreign journalists that appear to be aimed at deterring outside coverage of conditions for asylum seekers and refugees, including foreign journalists being subject to a visa application fee of roughly USD 6000.¹⁰⁸⁷ This is reportedly said to restrict media freedom and hamper independent scrutiny of Nauru's policies and practices.¹⁰⁸⁸ The Pacific Islands Forum meeting held in Nauru in September in 2018 was not without media incidents.¹⁰⁸⁹ Authorities are not known to illegally monitor private online communications; however, for three years until January 2018, the government blocked Facebook, citing the need to protect users from obscene and pornographic content, which was seen as another attempt by the government to restrict coverage of the Australian processing centre.¹⁰⁹⁰

Economic rights

Nauru faces significant economic challenges, including a lack of job opportunities, and is expecting hardships to increase.¹⁰⁹¹ Economic constraints include Nauru's small size, remoteness, a harsh natural environment with infertile soils, limited exploitable resources, and the need to create jobs for an expanding population. Over 90 years of mining phosphate has caused at least three quarters of the island to be deemed uninhabitable and unsuitable for sustaining any kind of livelihood.¹⁰⁹² While there are entitlements to fundamental rights and freedoms, there is no reference to economic and social rights, substantive equality or disability.¹⁰⁹³

The government is the largest employer, followed by the mining sector and a smaller private sector. Most women work in clerical and professional occupations, while men work in occupations related to crafts, trades, and plant and machine operation. More than one third of all households are female headed.¹⁰⁹⁴ The lack of recent data makes it difficult to gauge trends in women's economic participation. Only 2% of the economically active population is engaged in traditional (non-formal) work such as agriculture and fishing activities, which involve more men than women. There are no produce markets in Nauru as almost all foods are imported.

The Public Service Act is considered to be outdated and coverage for inequality is limited, especially for women in the workplace. The Act is weak on provisions for fair and proper treatment of employees in all aspects of their

¹⁰⁸² United States Department of State 2017. 2016 country reports on human rights practices – Nauru. Available at: <https://www.refworld.org/docid/58ec89f313.html> (accessed 17 October 2019).

¹⁰⁸³ Freedom House. Freedom in the World 2018. Note. 981.

¹⁰⁸⁴ Ibid.

¹⁰⁸⁵ United States Department of State 2017. Note. 1049.

¹⁰⁸⁶ Nauru 2017 Human Rights Report. Available at: <https://fj.usembassy.gov/wp-content/uploads/sites/180/Nauru-2017-Human-Rights-Report.pdf> (accessed 10 October 2019).

¹⁰⁸⁷ Freedom House. Freedom in the World 2018 .. Note. 981.

¹⁰⁸⁸ Amnesty International 201). Amnesty International Report 2017-18: The State of the World's Human Rights. Available at: <https://www.amnesty.org/en/documents/pol10/6700/2018/en/>

¹⁰⁸⁹ The Australian Broadcasting Corporation was banned from entering the country and during the forum a New Zealand journalist was detained for three hours and had her media accreditation to cover the forum revoked.

¹⁰⁹⁰ Freedom House. Freedom in the World 2018. Note. 981.

¹⁰⁹¹ CEDAW/C/NRU/1-2. Note. 979.

¹⁰⁹² Ibid.

¹⁰⁹³ Ibid.

¹⁰⁹⁴ Ibid.



employment, including a safe working environment, the impartial selection of suitably qualified persons for employment, and opportunities for the development of individual employees.¹⁰⁹⁵ No law applies to the private sector, and although some state-owned enterprises have developed regulations, these are also considered to be weak on protections for women. Employees working in the private sector are reported to be severely disadvantaged compared to public servants. Some examples of reported mistreatment include unfair dismissal because of pregnancy, no maternity leave, and no sick, special or recreation leave.¹⁰⁹⁶

The donor-funded Nauru Entrepreneurship Development Programme aims to strengthen the small and medium enterprise sector,¹⁰⁹⁷ and an enterprise resource centre provides training and access to microcredit fund loans of up to AUD 2000.¹⁰⁹⁸ Parents and youths say there is a lack of social and economic opportunities for young people, especially those who drop out of school without a school certificate.¹⁰⁹⁹ A limited welfare system is in place, which allows for payment of allowances to senior citizen, persons with disabilities and families with new-born babies. Retired persons aged over 60 years receive an allowance of AUD 150 every two weeks.¹¹⁰⁰

Right to health and education

The Government of Nauru provides healthcare services to all citizens. Primary health care and public health services are managed by the Division of Public Health at the Naeoro Public Health Centre and curative services are provided by the Republic of Nauru Hospital. Other services include medical, surgical and dental specialties, alongside haemodialysis, laboratory, radiological, physiotherapy and pharmaceutical services. The Nauru National Health Strategic Plan for 2016–2020¹¹⁰¹ guides delivery of health services.

Nauru faces a triple public health burden of communicable diseases, NCDs and the health impacts of climate change. There have been some improvements in recent times, although tuberculosis and leprosy programmes continue to report new cases and outbreaks of diarrhoeal illness or typhoid fever still occur.¹¹⁰² According to the WHO, the health workforce needs to be improved in numbers, quality and diversity.¹¹⁰³ The health system is heavily reliant on expatriate professionals on short-term contracts, leading to significant fluctuations in the quality and coverage of services provided.¹¹⁰⁴

Adolescents and young people lack opportunities, which perpetuates cycles of poverty and leads to unhealthy behaviours, such as drug and alcohol abuse, and mental health issues.¹¹⁰⁵ A UNICEF situation analysis in 2017 found that 30% of school children aged 13–15 years reported having attempted suicide.¹¹⁰⁶ Further findings from the situational analysis include: child mortality rates have been declining over the past decades, although the country still has one of the highest child mortality rates in the region; immunisation coverage for vaccine-preventable diseases is near universal; the maternal mortality ratio is zero; and all pregnant women give birth in the presence of a skilled health professional in a health facility. However, sexually transmitted infections are considered to be a significant health problem with 21% of the total population tested for chlamydia (84%) testing positive; 24% of children under five years are stunted; and 44% of school children aged 13–15 years are overweight.¹¹⁰⁷

¹⁰⁹⁵ Ibid.

¹⁰⁹⁶ Ibid.

¹⁰⁹⁷ Ibid.

¹⁰⁹⁸ A/HRC/WG.6/23/NRU/1. Available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G15/237/21/PDF/G1523721.pdf?OpenElement>

¹⁰⁹⁹ CEDAW/C/NRU/1-2. Note. 979.

¹¹⁰⁰ UNICEF Pacific 2017. Situation Analysis of Children in Nauru. Suva: UNICEF. Note 1025.

¹¹⁰¹ WHO. <https://www.who.int/nauru/our-work> (accessed 15 October 2019).

¹¹⁰² Nauru–WHO Country Cooperation Strategy 2018–2022, WPRO/2017/DPM/014. Available at: <https://www.who.int/nauru/our-work>

¹¹⁰³ Op cit.

¹¹⁰⁴ UNICEF Pacific 2017. Situation analysis of children in Nauru. Note. 1025.

¹¹⁰⁵ Ibid.

¹¹⁰⁶ Ibid

¹¹⁰⁷ Ibid.

Education is compulsory from 5 to 18 years of age and is free. The government provides free basic materials to all students as well as free bus transport.¹¹⁰⁸ Teachers are required to uphold a policy of non-discrimination and failure to comply is penalised. The National Strategic Development Strategy (2005–2025) promotes the integration of sexual health education in the school curriculum and support has been received from UNFPA to develop a Family Life Education curriculum. In 2017, female students who fell pregnant were unable to restart schooling from where they left off.¹¹⁰⁹

According to a 2017 UNICEF report, up-to-date statistical information on the education sector is limited. Persistence of a longstanding truancy problem and accessibility of education for children with disabilities remained areas of concern for Nauru's education sector. As of 2015, the net enrolment ratio was 78.1% for early childhood education, 76% for primary education, and with trends pointing downwards, 55.4% for lower secondary and 35.3% for upper secondary. This was considered to be particularly concerning since education is compulsory up until the age of 18.¹¹¹⁰ In households where both parents are working, older children drop out to take on care responsibilities for younger siblings.¹¹¹¹

In 2016 the Committee on the Rights of the Child recommended a further strengthening of efforts to improve access to quality education for all children, including: preschool, secondary and higher education; programmes to reduce dropout rates, along with monitoring and evaluation of such programmes; and campaigns within schools to prevent bullying and violence against all children.¹¹¹² The CEDAW Committee in 2017 recommended increasing the completion, retention and enrolment rates of women and girls at all levels of education, including by: providing more scholarships for girls and incentives and subsidies for their families; ensuring that girls who have dropped out due to pregnancy or other caregiving responsibilities are able to complete school by analysing and addressing the obstacles that they face; integrating age-appropriate comprehensive education on sexual and reproductive health and rights; and ensuring that legislation and policies on education are gender-sensitive and integrate gender equality into education at all levels.¹¹¹³

Women's and children's rights

Nauru is a matrilineal society and women have unlimited access to land and leadership roles in customary activities; however, over the years, patriarchal standards and values are reported to have been ingrained and reinforced through practice, policy and law.¹¹¹⁴ A large number of public sector agencies are said to be historically headed by women. Generally, women are reported to face particular challenges to their equal representation, participation and experience of life in Nauru.¹¹¹⁵

The Nauru Family Health and Safety Study 2014 estimated that 48% of ever-partnered women experienced physical or sexual violence by a partner at least once in their lifetime, 51% reported having been injured and 18% were hurt enough to require treatment. Nearly 29% never disclosed the violence to anyone, and those who did tell mostly confided in family and friends.¹¹¹⁶

The Nauru delegation before the CEDAW Committee in 2017 said that Nauru had made progress in bridging the gap between the genders and had focused on areas that continued to foster a culture of discrimination. Archaic laws were said to have been abolished and those that needed to be adapted had been, particularly in relation to criminal legislation with the adoption of the Domestic Violence and Family Protection Act.¹¹¹⁷ The committee welcomed efforts to improve the situation of women in Nauru, recognising that challenges remained. Efforts

¹¹⁰⁸ CEDAW/C/NRU/1-2. Note 979.

¹¹⁰⁹ Ibid.

¹¹¹⁰ UNICEF Pacific 2017. Situation analysis of children in Nauru. Note. 1025.

¹¹¹¹ CEDAW/C/NRU/1-2. Note. 979.

¹¹¹² CRC/C/NRU/CO/1. Note. 992.

¹¹¹³ CEDAW/C/NRU/CO/1-2. Note. 979.

¹¹¹⁴ Ibid.

¹¹¹⁵ Ibid.

¹¹¹⁶ Ibid.

¹¹¹⁷ OHCHR 2017. Note. 996.

to set up mechanisms to enhance equality between women and men and prevent and eradicate violence, as a manifestation of gender inequality and gender-based discrimination, were commended. However, regret was expressed that the constitution and legislation did not contain a definition of discrimination or a guarantee of equality between men and women, and that the attempt to reform the constitution, enshrining temporary special measures therein, had failed. Also of concern to the committee was the high rate and the rise of pregnancy among teenage girls, which amounted to 13% of this age group and influenced the high education dropout rate, thereby negatively impacting girls' education.

In 2017 UNICEF reported that a lack of available resources across nearly all government departments undermined the delivery of services and systems for children.¹¹¹⁸ Evidence on the quality of health services and equipment at Nauru's two health facilities was limited, as was information on water sanitation and hygiene systems in schools, menstrual hygiene management, and access to water, sanitation and hygiene systems for vulnerable groups.¹¹¹⁹ The report went on to say that despite a relatively robust legal framework that seeks to protect children from violence, available data indicated that children in Nauru experience violence in several contexts, including within the home, in schools and in the community.¹¹²⁰ Cultural norms, attitudes and traditions were frequently found to act as barriers, and in some cases enablers, to the realisation of children's and women's rights in several sectors in Nauru. Traditional and customary justice processes are frequently resorted to, which can be problematic in relation to sexual offences against children and domestic violence.¹¹²¹ There is a lack of data on specific types of child rights violations, such as child labour and sexual exploitation.¹¹²²

A recent assessment of Nauru's social protection system had ranked it second lowest within the region, both for comprehensiveness and impact.¹¹²³ Amongst the recommendations of the Committee on the Rights of the Child in 2016 were a constitutional amendment to ensure that children's rights are specifically guaranteed and development of a capacity-building strategy for the social welfare sector, including a programme of education and development on child well-being, welfare and protection for the Ministry of Home Affairs and its divisions.¹¹²⁴

Rights of persons with disabilities (PWD)

Nauru ratified CRPD in 2012 but has yet to submit its first report to the CRPD Committee. The National Disability Policy 2015 provides for protections and guarantees of fundamental freedoms for persons with disabilities. Additionally, the policy sets out a comprehensive framework to address needs and rights, improve quality of lives, and ensure full and equal participation as empowered citizens.¹¹²⁵

A disability monograph produced in 2015, using data from the 2011 census, reported 5.5% of the population with some form of disability. PWDs appeared in all age ranges, although half were aged over 40 years. Seventy-eight people were considered to be severely disabled: 44 males (56%) and 34 females (44%). Just under 2% (46) of current school students had disabilities. PWDs are not integrated into mainstream education, attending the Able Disable Centre¹¹²⁶ instead and, according to the monograph, were more likely than the general population to have never been to school.¹¹²⁷

¹¹¹⁸ UNICEF Pacific 2017. Situation analysis of children in Nauru. Note. 1025.

¹¹¹⁹ Ibid.

¹¹²⁰ Ibid.

¹¹²¹ Ibid.

¹¹²² Ibid.

¹¹²³ Ibid.

¹¹²⁴ CRC/C/NRU/CO/1. Note. 992.

¹¹²⁵ UNICEF Pacific 2017. Situation analysis of children in Nauru. Note. 1025.

¹¹²⁶ Ibid.

¹¹²⁷ Statistics Nauru and UNFPA 2015. Disability monograph: Analysis of the 2011 Nauru population and housing census. Available at: https://spccfpstore1.blob.core.windows.net/digitallibrary-docs/files/5c/5c22f97b80c3af97d76d4a389843f1b2.pdf?sv=2015-12-11&sr=b&sig=0S37eggqEFywaUhnbx7Mw3HZ23PuCPvWEXkbE6h0%2FOs%3D&se=2020-04-18T00%3A21%3A39Z&sp=r&rscc=public%2C%20max-age%3D864000%2C%20max-stale%3D86400&rsct=application%2Fpdf&rscd=inline%3B%20filename%3D%22Nauru_2015_Disability_Monograph_Report_NBS_UNFPA_sml.pdf%22

Disabled students ranging from age 4 to 34 attend classes at the Able Disabled Centre, where classes are held from Monday to Friday, with pre-schoolers attending from 9:00am to 12:00pm, and primary and secondary levels from 9:00am to 3:00pm. Programs taught at the Able Disable Centre focus on: life skills in gardening, cooking, health, and art and craft; and Individual Education Program (IEP).

Difficulty with mobility, movement and sight were the most common types of disability. Just over half (54.8%) of those who reported a disability reported one disability and almost one quarter (24.1%) had difficulty in three or more disability areas. Females were more likely than males to have multiple disabilities: 53.8% of females with disabilities had two or more areas of difficulty compared to 38% of males with disabilities.¹¹²⁸ The unemployment rate for PWD (21%) was similar to the overall unemployment rate of 23%; however, the labour force participation rate was much lower at 47% compared to 64% of the total adult population. The most common occupation group was protective services worker, as it is for the total employed population, and all of the main industries employed people with a disability to varying degrees.¹¹²⁹ Support mechanisms identified were the disability pension for eligible persons, funding for approved modifications to houses and a special school for children and adults with disabilities.¹¹³⁰

The Committee on the Rights of the Child expressed a number of concerns, including: the absence of explicit legal provision mandating the delivery of services for persons with disabilities or their access to public buildings, public spaces and all service delivery areas; that the inclusion of children with intellectual and psychosocial disabilities remains unsatisfactory owing to a shortage of trained specialists, including speech therapists, mental health professionals and psychologists; and that, owing to societal attitudes, parents may decide, without taking into account the child's best interests, that a child with disabilities will not attend school.¹¹³¹

A legislative review of 160 laws for compliance with CRPD was undertaken in December 2016. The review report commented that Nauru's anti-discrimination clause in the constitution could be extended to include the additional prohibition of discrimination on several grounds, such as disability, gender, age or any other ground that violates human dignity. There were also various articles in the constitution that were found to be inconsistent with CRPD. Over 100 amendments were proposed to ensure protections for women, men, girls and boys, including for additional social protections and protections from abuse. The review proposed that the Ombudsman should be regarded as an appropriate institution to serve as the national monitoring mechanism for CRPD.¹¹³²

Climate Justice

The Nauru Framework for Climate Change Adaptation and Disaster Risk Reduction is the government's response to the risks to sustainable development posed by climate change and disasters.¹¹³³ The framework identifies the potential of climate variability and climate change to challenge Nauru's efforts to secure sustainable development, stating that sea level rise threatens to increase saltwater intrusion into precious groundwater reserves as well as exacerbate costal erosion and flooding during storm events. Changes in rainfall patterns were expected to affect water scarcity, while important fish resources may be affected by changes in ocean temperature and acidification.¹¹³⁴ A scarcity of arable land and fresh water resources, geographic isolation, dependence on imports for meeting basic food and energy needs, environmental degradation and the emergence of chronic health problems all make achieving sustainable development a difficult task, creating vulnerabilities to other stresses such as climate change, according to the framework.¹¹³⁵

¹¹²⁸ Ibid.

¹¹²⁹ Ibid.

¹¹³⁰ Ibid.

¹¹³¹ CRC/C/NRU/CO/1. Note. 992.

¹¹³² UNESCAP, Pacific Office and Pacific Islands Forum Secretariat 2016. Nauru: A legislative review for compliance with the Convention on the Rights of Persons with Disabilities (CRPD). Not available online.

¹¹³³ Government of the Republic of Nauru 2015. Climate change: Building our resilience. Republic of Nauru Framework for Climate Change Adaptation and Disaster Risk Reduction (RONAdapt). Available at: <https://www.preventionweb.net/english/professional/policies/v.php?id=42756>

¹¹³⁴ Op cit.

¹¹³⁵ Op cit.



The perspectives of the most vulnerable people are to be incorporated into planning and priority setting, taking into account variables such as gender, age, marital status, physical health and mobility, income levels, housing location, religion, and educational background, amongst others.¹¹³⁶

Climate and environmental determinants of health figure prominently among the main public health issues in Nauru, compounding the risk factors for communicable and non-communicable diseases.¹¹³⁷ Moreover, a key finding of the 2017 UNICEF situation analysis was that climate change and disaster risks have a considerable impact on all sectors in relation to the realisation of children and women's rights. Phosphate dust pollution, caused by extensive phosphate mining, together with changing wind patterns and rising temperatures, were said to pose significant health risks to children and women in Nauru.¹¹³⁸

Key climate-sensitive health risks were proposed as poor air quality (from phosphate dust), compromised food security (owing to shrinking arable land), injuries and deaths from extreme weather events, water insecurity and water-, food- and vector-borne diseases. Water safety was proposed as a top priority in preventing or mitigating climate-sensitive health risks.¹¹³⁹

As a land-poor microstate, the pressure on the people of Nauru to migrate is expected to build in coming years.¹¹⁴⁰ Nauru has no internal options for movement of its population, so the response to a significant one-off disaster is likely to require movement to another country.¹¹⁴¹ A 2019 report cites a survey conducted between 2005 and 2015 that found one in four households in Nauru believe that migration would be a likely response for them – and they had the resources to do so – if droughts, sea level rise or floods worsened.¹¹⁴² The major constraint on migration is the limited opportunities for low-skilled workers to migrate to Australia and New Zealand.¹¹⁴³

¹¹³⁶ Ibid.

¹¹³⁷ Nauru–WHO Country Cooperation Strategy 2018–2022, WPRO/2017/DPM/014. Available at: <https://www.who.int/nauru/our-work> (accessed 10 October 2019).

¹¹³⁸ UNICEF Pacific 2017. Situation analysis of children in Nauru. Note. 1025.

¹¹³⁹ Ibid.

¹¹⁴⁰ Curtin R. and Dornan M. 2019. A pressure release valve? Migration and climate change in Kiribati, Nauru and Tuvalu. Available at: <https://devpolicy.org/publications/reports/Migration-climate%20change-Kiribati-Nauru-Tuvalu.pdf> (accessed 10/10/2019)

¹¹⁴¹ Ibid.

¹¹⁴² Ibid.

¹¹⁴³ Ibid.



COUNTRY CHAPTERS

**NEW
ZEALAND**

New Zealand/Aotearoa

Key facts

Capital city	Wellington	Total land area	264,537 sq. km ¹¹⁴⁴
Population (year)	4,545,627 (July 2018 est.) ¹¹⁴⁵	Population growth % (year)	0.77% (2018 est.) ¹¹⁴⁶
GDP per capita (year)	USD 39,000 (2017 est.) ¹¹⁴⁷	GNI per capita (Atlas method) (year)	USD 40,820 (2018) ¹¹⁴⁸
Type of government	Parliamentary democracy under a constitutional monarchy; a British Commonwealth realm.		
Electoral system	Unicameral House of Representatives usually 120 seats; 71 members directly elected in single-seat constituencies, including 7 Māori constituencies, by simple majority vote and 49 directly elected by proportional representation vote. ¹¹⁴⁹		
Number of members of parliament (MPs): total/female (year)	120: 63 males/57 females. Ratio of women 48% (2020)		
Religions: by % of population (year) ¹¹⁵⁰	Christian 37.3% (Catholic 10.1%, Anglican 6.8%, Presbyterian and Congregational 5.2%, Pentecostal 1.8%, Methodist 1.6%, Mormon 1.2%, other 10.7%), Hindu 2.7%, Māori 1.3%, Muslim, 1.3%, Buddhist 1.1%, other religion 1.6% (includes Judaism, Spiritualism and New Age religions, Baha'i, Asian religions other than Buddhism), no religion 48.6%, objected to answering 6.7% (2018 est.) ¹¹⁵¹		
Ethnic groups: by % of population (year) ¹¹⁵²	European 64.1%, Māori 16.5%, Chinese 4.9%, Indian 4.7%, Samoan 3.9%, Tongan 1.8%, Cook Islands Māori 1.7%, English 1.5%, Filipino 1.5%, New Zealander 1%, other 13.7% (2018 est.) ¹¹⁵³		
Languages: by % of population (year) ¹¹⁵⁴	English (de facto official) 95.4%, Māori (de jure official) 4%, Samoan 2.2%, Northern Chinese 2%, Hindi 1.5%, French 1.2%, Yue 1.1%, New Zealand Sign Language (de jure official) .5%, other or not stated 17.2% (2018 est.) ¹¹⁵⁵		
Life expectancy: male/female (year)	81.4 years male 79.2 / female: 83.6 (2018 est.) ¹¹⁵⁶	% youth aged 15–24 years: total male/female (year)	13.16%: male 307,574 /female 290,771 (2018 est.) ¹¹⁵⁷
% disability: total male/female (year)	24% male and female (2013) ¹¹⁵⁸		

1144 CIA World Factbook. <https://www.cia.gov/library/publications/the-world-factbook/geos/nz.html> (accessed 28 October 2019).

1145 Ibid.

1146 Ibid.

1147 Ibid.

1148 World Bank Data. <https://data.worldbank.org/indicator/NY.GNP.PCAP.CD> (accessed 28 October 2019).

1149 CIA World Factbook. Note. 1111.

1150 Based on the 2018 census of the usually resident population; percentages add up to more than 100% because respondents were able to identify more than one religion.

1151 CIA World Factbook. Note. 1111.

1152 Based on the 2018 census of the usually resident population; percentages add up to more than 100% because respondents were able to identify more than one ethnic group.

1153 CIA World Factbook. Note. 1111.

1154 Shares sum to 124.1% because respondents were able to identify more than one language group in the 2018 census.

1155 CIA World Factbook. Note. 1111.

1156 Op cit.

1157 Op cit.

1158 Statistics NZ. Disability Survey 2013 Key Facts. Available at: http://archive.stats.govt.nz/browse_for_stats/health/disabilities/DisabilitySurvey_HOTP2013/Tables.aspx (accessed 1 November 2019).

International human rights treaty ratification and reporting obligation

Treaty	Date of signature (S) ratification (R) accession (a)	Reservations	Latest report submitted	Reporting status
ICESCR	28 December 1978 (R)	Article 8	4 th report 17 August 2017.	5 th report due 31 March 2023.
ICCPR	28 December 1978 (R)	Articles 10(2)(b), 10(3), 14(6), 20 and 22	6 th report 8 May 2015.	7 th report due 31 March 2023.
ICERD	22 November 1972 (R)		21 st and 22 nd report 6 January 2016.	23 rd and 24 th report due 22 December 2021.
CEDAW	10 January 1975 (R)		8 th report 30 June 2016.	9 th report due 20 July 2022.
CAT	10 December 1989 (R)	Article 14	7 th report 25 September 2019.	Waiting to appear before Committee.
CRC	6 April 1993 (R)	Articles 32(2), 37(c)	5 th report 5 May 2015.	6 th report due 5 May 2021.
CRPD	25 September 2008 (R)		2 nd and 3 rd report 8 Mar 2019.	Waiting to appear before Committee.
ICCPR-OP1	26 May 1989 (a)		N/A	N/A
ICCPR – OP2	22 Feb. 1990 (R)		N/A	N/A
OP-CAT	14 March 2007 (R)		10 Feb 2017	N/A
OP-CEDAW	7 Sep 2000 (R)		N/A	N/A
OP-CRC-AC	12 Nov 2001 (R)		30 Jul 2003	N/A
OP-CRC-SC	20 Sept. 2011 (R)		19 Jan 2016	N/A
OP-CRPD	4 October 2016 (a)		N/A	N/A

Special Procedures: Standing invitation extended 3 February 2004.

Country visits:

- Special Rapporteur on indigenous people complete 2010.
- Working Group on arbitrary detention completed 2014.
- Working Group on mercenaries, visit request made 17 November 2017.
- Working Group on discrimination against women, visit request made 7 February 2018.
- Special Rapporteur on health, visit request made 14 December 2018.
- Independent Expert on older persons, reminder visit request 26 February 2018.
- Special Rapporteur on human rights and counter terrorism, visit request 23 May 2019.
- Special Rapporteur on housing, reminder request 20 August 2019.

Universal Periodic Review: 1st cycle 7 May 2009; 2nd cycle 27 January 2014; 3rd cycle 21 January 2019; 4th cycle due 2024.

International Criminal Court: Ratified the Rome Statute on 7 September 2000.

System of government

New Zealand is a constitutional monarchy with the British monarch as the head of state, who is represented by a Governor-General appointed by the monarch on the advice of the New Zealand government. The Governor-General usually serves a five-year term. The head of government is the Prime Minister, who is also the leader of the majority partner forming the government. The New Zealand Constitution is found in formal legal documents, in decisions of the courts, and in practices or conventions. Legal documents increasingly reflect the Tiriti o Waitangi (Treaty of Waitangi),¹¹⁵⁹ which is regarded as a founding document of government.¹¹⁶⁰ New Zealand has a unicameral House of Representatives made up of around 120 members, but the final number may vary depending on election results.

The mixed member proportional representation electoral system has been in place since 1996 and governments generally consist of coalitions of a major party and one or more smaller parties. Of the 120 Members of Parliament in 2017, 48% were women, 20% members identified as Māori, 8% identified as Pacific Islanders, 5% identified as Asian and 10% identified as being LGBTQI+. The Prime Minister is a woman,¹¹⁶¹ while a woman of Iranian heritage became the first refugee to win a seat in Parliament. In 2017 the position of Parliamentary Under-Secretary to the Minister of Justice (Domestic and Sexual Violence) was created to lead a group of ministers coordinating cross-government work in this area.¹¹⁶²

The most recent election in 2020 resulted in five parties in Parliament represented by 120 MPs, with one in government and four in opposition. These MPs represent 65 general electorate seats and seven Māori electorates. The other 48 MPs are selected from the party lists.¹¹⁶³

In 2020, Nanaia Mahuta became the first Maori indigenous female Foreign Minister.

Judicial System and Administration Of Justice

Power is distributed across three branches of government: Parliament, the Executive and the Judiciary. New Zealand legislation sets out the separation of powers and how they work together to make, pass, apply and enforce the law.¹¹⁶⁴ Judges are appointed by the Governor-General on the advice of the Attorney-General (AG), who is a Cabinet Member in the government. The AG consults widely before recommending judges, particularly seeking the opinion of the legal profession. Judges are expected to act independently and to protect the independence of the judiciary. Judges in the three highest general courts may not be removed from office or have their salaries cut.¹¹⁶⁵

New Zealand has general courts and specialist courts. Most legal issues are dealt with by courts of general jurisdiction, which decide criminal and civil matters. There are four levels: 58 District courts, three High Courts, an Appeal Court and the Supreme Court. High Court judges travel on a circuit to 16 other centres across New Zealand. Specialist courts deal with employment matters, family issues and youth offending, Māori land matters, and environment management.¹¹⁶⁶ Over 100 tribunals, authorities, boards and committees deal with disputes involving issues such as censorship, taxation, tenancy and employment. The Waitangi Tribunal¹¹⁶⁷ is among the better known of these.¹¹⁶⁸

¹¹⁵⁹ New Zealand Immigration. <https://www.newzealandnow.govt.nz/living-in-nz/history-government/the-treaty-of-waitangi> (accessed 28 October 2019).

¹¹⁶⁰ Government House. <https://gg.govt.nz/office-governor-general/roles-and-functions-governor-general/constitutional-role/constitution> (accessed 28 October 2019).

¹¹⁶¹ New Zealand Parliament. <https://www.parliament.nz/en/> (accessed 7 December 2020).

¹¹⁶² CAT/C/NZL/7. Available at: https://tbinternet.ohchr.org/Treaties/CAT/Shared%20Documents/NZL/CAT_C_NZL_7_7703_E.pdf

¹¹⁶³ New Zealand Parliament, MPs and Electorates. <https://www.parliament.nz/en/mps-and-electorates/> (accessed 8 December 2020).

¹¹⁶⁴ Ministry of Justice. <https://www.justice.govt.nz/about/learn-about-the-justice-system/how-the-justice-system-works/> (accessed 28 October 2019).

¹¹⁶⁵ New Zealand Immigration. <https://www.newzealandnow.govt.nz/living-in-nz/history-government/legal-system> (accessed 28 October 2019).

¹¹⁶⁶ Op cit.

¹¹⁶⁷ Waitangi Tribunal. <https://waitangitribunal.govt.nz/> (accessed 28 October 2019).

¹¹⁶⁸ New Zealand Immigration. Note 1132.

Since the 2017 election, several government inquiries were established, often through the select committee process, to look into a range of issues, including safe drinking water, renewable energy, and improving identification and support for children and young people with dyslexia, dyspraxia and autism spectrum disorders, amongst other areas.¹¹⁶⁹ Several Royal Commissions have also commenced, including into the Christchurch terror attack of March 2019 and into historical abuse in state care and in faith-based institutions.¹¹⁷⁰

Access to justice and the right to remedy

Free access to a duty lawyer is provided for anyone arrested or held by the police, including juveniles.¹¹⁷¹ Legal Aid is provided to defendants through advice and representation in criminal cases.¹¹⁷² The increase in the prison population is impacting prison conditions.¹¹⁷³ (note that in 2006 New Zealand's prison population was 7595 and towards the end of 2016 it reached 10,000 for the first time)

In 2018 the New Zealand Law Society expressed concern that reforms to legal aid introduced by the Legal Services Act 2011 had diminished New Zealanders' access to justice over time, as it was seeing an increase in the inequality between legally-aided and privately-funded litigants, and between legally-aided litigants and the State.¹¹⁷⁴ The society referred to research by the Otago University Legal Issues Centre that found the three key reasons for the barriers to accessing civil legal aid were the grant of legal aid assistance as a loan with the imposition of a user charge, problems in finding a lawyer who would take a legal aid case, and finding a specialist legal aid lawyer. The number of registered civil legal aid lawyers had decreased by 54% between 2011 and 2016.¹¹⁷⁵ In October 2019, Ministry of Justice consultations opened for improving the experience lawyers have with the approval and contract processes to provide legal aid services.¹¹⁷⁶ There is a network of 24 free Community Law Centres throughout the country that send lawyers to over 120 outreach locations, including in rural areas, to give advice or represent low-income people. Community Law Centres are independent charities and receive funding through government sources but are not connected in any way to the public service or the legal aid system. The centres are able to assist with serious legal issues such as child, youth and family cases, work and income matters, criminal charges, Māori land issues, domestic violence and other forms of violence, refugee issues, and disability, mobility or mental illness issues.¹¹⁷⁷

In 2018 the CEDAW Committee expressed concern about the persistence of multiple barriers impeding women and girls from obtaining access to justice and effective remedies, in particular for rural women, Māori, Pacific, Asian, migrant and refugee women, women with disabilities, and LGBTI persons. These barriers are due to reductions in legal aid services, limited legal literacy and access to information on available remedies, and the lack of gender sensitivity within the judiciary, including negative attitudes among judges and law enforcement officials towards women claiming violations of their rights.¹¹⁷⁸

In June 2019, the report of the Independent Panel's review of the 2014 family justice system reforms was released. The review found that the reforms had not worked as intended, cases were taking longer to resolve, and many family members involved in the court process felt unsupported. The Minister of Justice welcomed the report and tasked officials with developing a workable programme for change based on the panel's recommendations.¹¹⁷⁹

¹¹⁶⁹ NZ Government. <https://www.beehive.govt.nz/search?query=Committee+of+Inquiry> (accessed 28 October 2019).

¹¹⁷⁰ NZ Government. <https://www.beehive.govt.nz/search?query=Royal+Commission> (accessed 28 October 2019).

¹¹⁷¹ NZ Government. <https://www.govt.nz/browse/law-crime-and-justice/courts/how-the-youth-justice-system-works/> (accessed 28 October 2019).

¹¹⁷² New Zealand Ministry of Justice, Public Defence Service. <https://www.pds.govt.nz/> (accessed 8 December 2020).

¹¹⁷³ UN, Human Rights Council. Summary of Stakeholders' submissions on New Zealand. Available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G18/342/40/PDF/G1834240.pdf?OpenElement> (accessed 8 December 2020).

¹¹⁷⁴ NZ Law Society 2018. <https://www.lawsociety.org.nz/practice-resources/the-business-of-law/access-to-justice/legal-aid-the-problems-and-issues> (accessed 28 October 2019).

¹¹⁷⁵ Op cit.

¹¹⁷⁶ Ministry of Justice 2019. <https://www.justice.govt.nz/about/lawyers-and-service-providers/legal-aid-lawyers/whats-new/#updatecrimatg> (accessed 29 October 2019).

¹¹⁷⁷ Community Law. <https://communitylaw.org.nz/> (accessed 28 October 2019).

¹¹⁷⁸ CEDAW/C/NZL/CO/8. Available at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fc%2fnzl%2fco%2f8&Lang=en

¹¹⁷⁹ New Zealand Government 2019. <https://www.beehive.govt.nz/release/independent-panel%28099s-report-family-justice-system-welcomed> (accessed 28 October 2019).

In November 2018, the Supreme Court confirmed a lower court's finding that a 2010 law barring all prisoners serving sentences from voting, was inconsistent with the Bill of Rights. Previous rules had allowed prisoners serving terms of less than three years to vote. The decision had no immediate effect, as it did not require Parliament to change the law. Restrictions on prisoners' voting rights particularly affect indigenous people, who make up a disproportionate share of inmates.¹¹⁸⁰ Political debates on restoring prisoner voting rights continued throughout 2019.¹¹⁸¹

National Human Rights Institution (NHRI)

The New Zealand Human Rights Commission was set up in 1977 and is mandated under the Human Rights Act 1993 to promote and protect the human rights of all people in Aotearoa New Zealand. There are four Human Rights Commissioners: Chief Commissioner, Race Relations Commissioner, Equal Employment Opportunities Commissioner and Disability Rights Commissioner. The Director of Human Rights Proceedings heads up an independent office within the commission. Commissioners are appointed by the Governor-General on the recommendation of the Minister of Justice, for terms of up to five years. The commissioners and the director must act independently and are supported by around 60 staff in the three main cities.¹¹⁸² The commission has A-status with GANHRI, indicating full compliance with the Paris Principles. Current priorities for the Human Rights Commission are integrating human rights into business practices, pay equity and employment equality, promoting positive race relations, reducing school violence, bullying and abuse, and promoting inclusive education. In 2019, one UPR Working Group member congratulated New Zealand for the work of its Human Rights Commission in following up on the recommendations accepted during the previous review, while recommending increasing financial and human resources for it to carry out its work sufficient with its mandate.¹¹⁸³ As well as the Human Rights Commission, other independent commissioners oversee good governance in specific areas and investigate complaints from the public, such as the Privacy Commissioner, the Health and Disability Commissioner, the Retirement Commissioner, the Race Relations Commissioner and the Children's Commissioner.

The Office of the Ombudsman is an independent parliamentary authority that handles complaints against government agencies and undertakes investigations and inspections, including in relation to official information requests. The Office also carries out a range of roles that go toward protecting rights, such as monitoring places of detention, and the implementation of the UN Disabilities Convention.¹¹⁸⁴ There is also an Insurance and Financial Services Ombudsman and a Banking Ombudsman with powers to investigate complaints from the public.

Security sector

The New Zealand Police must keep to a code of conduct that demands their ethical and professional behaviour at all times, and work within strict legal limits.¹¹⁸⁵ There are over 12,000 staff (32.9% women) who operate by land, sea and air.¹¹⁸⁶ The use of force by New Zealand Police is generally regulated by the 1961 Crimes Act and a police officer is criminally liable for any excessive force.¹¹⁸⁷ Police do not generally carry personal firearms but there are 17 Armed Offenders Squads covering the country's main centres.¹¹⁸⁸ In October 2019, the Police Commissioner announced the trial of special police vehicles carrying trained armed officers to routinely patrol two centres in the North Island and one in the South Island, in order to cut down response times to serious incidents involving firearms.

¹¹⁸⁰ Freedom House. Freedom in the World 2019. Note. 1138.

¹¹⁸¹ Radio New Zealand 2019. <https://www.rnz.co.nz/news/political/396526/nz-first-tightlipped-on-prisoners-voting-rights> (accessed 28 October 2019).

¹¹⁸² Human Rights Commission. <https://www.hrc.co.nz/about/commissioners-and-senior-leadership/>

¹¹⁸³ A/HRC/41/4. Available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G19/087/77/PDF/G1908777.pdf?OpenElement>

¹¹⁸⁴ Office of the Ombudsman. <http://www.ombudsman.parliament.nz/what-we-do> (accessed 29 October 2019).

¹¹⁸⁵ NZ Immigration. <https://www.newzealandnow.govt.nz/living-in-nz/safety/new-zealand-police-force> (accessed 29 October 2019).

¹¹⁸⁶ NZ Police website. Available at <https://www.police.govt.nz/about-us/nz-police/overview> (accessed 29 October 2019).

¹¹⁸⁷ The Law on Police Use of Force Worldwide. <https://www.policinglaw.info/country/new-zealand> (accessed 29 October 2019).

¹¹⁸⁸ NZ Police. [https://www.police.govt.nz/about-us/structure/teams-units/aos](https://www.police.govt.nz/about-us/structure/teams-units/-aos) (accessed 29 October 2019).

The trial was said to be due to growing concerns about the increasing number of incidents that police respond to involving firearms.¹¹⁸⁹ Public response was mixed, with some expressing concern that the move will increase police violence and unfairly target Māori and Pasifika.¹¹⁹⁰

Those who believe they have been treated unfairly by the police can make a formal complaint to the Independent Police Conduct Authority.¹¹⁹¹ A media report in 2018 advised that over 2600 allegations of police misconduct were levelled at more than 2270 officers and staff nationwide from January to September 2017, and 887 sworn officers were accused of using excessive force or assault during the past three years, although just nine were charged and only one convicted.¹¹⁹² In 2015, the CAT Committee expressed concern that the law leaves it up to the police to initiate investigations on itself, which raises questions about the independence of such investigations and whether the authority received insufficient resources to fulfil its mandate.¹¹⁹³ In October 2019, after allegations made to the media of bullying in the force, the Police Commissioner announced an independent review of how police address bullying.¹¹⁹⁴ A few days later, the Independent Police Conduct Authority announced a wider investigation into allegations of bullying and related issues, including whether there are ongoing organisational, cultural, management or practice issues that foster bullying or allow it to occur.¹¹⁹⁵

In the wake of the Christchurch terror attacks in March 2019, the government acted swiftly to amend the Arms Act to ban most semi-automatic firearms, some pump-action shotguns and certain large capacity magazines, and to increase penalties for offences involving prohibited items. An amnesty and buy-back scheme managed by police was in place until 20 December 2019.¹¹⁹⁶ Nearing the halfway stage of the amnesty in September 2019, 19,837 firearms and 73,949 parts had been handed in, which was estimated to be 10% of newly-banned firearms in the community.¹¹⁹⁷

Corrections Services

The initial training course for corrections officers includes the CAT Convention and all new custodial staff participate in a human rights learning programme.¹¹⁹⁸ The Corrections Amendment Regulations 2017 enables prison directors to issue pepper spray to trained officers, who must first undergo a certification course as part of their tactical options training for de-escalation of events. Between July 2017 and June 2019, there were 744 incidents in 18 prisons, roughly a third involving the use of pepper spray, and there were five complaints.¹¹⁹⁹ Privately managed prisons must comply with the same laws relating to prisoner welfare, management and human rights standards,¹²⁰⁰ and in 2019, the Ombudsman released a critical report on a particular facility and how it was run.¹²⁰¹ The Ombudsman had previously raised concerns that there are variable conditions faced by prisoners with disabilities, those who are transgender, and foreign nationals with English as a second language. Corrections was said to be working to address these issues.¹²⁰²

¹¹⁸⁹ NZ Herald 2019. https://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=12277479 (accessed 29 October 2019).

¹¹⁹⁰ The Spinoff 2019. <https://thespinoff.co.nz/atea/22-10-2019/armed-police-patrols-are-a-dangerous-response-to-a-non-existent-problem/> (accessed 29 October 2019).

¹¹⁹¹ New Zealand Immigration. <https://www.newzealandnow.govt.nz/living-in-nz/safety/new-zealand-police-force> (accessed 29 October 2019).

¹¹⁹² NZ Herald 2018. https://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=11958936 (accessed 29 October 2019).

¹¹⁹³ The Law on Police Use of Force Worldwide. <https://www.policinglaw.info/country/new-zealand>

¹¹⁹⁴ Radio New Zealand 2019. <https://www.rnz.co.nz/news/national/401520/police-commissioner-announces-independent-review-of-how-police-address-bullying> (accessed 29 October 2019).

¹¹⁹⁵ Scoop 2019. <http://www.scoop.co.nz/stories/PO1910/S00249/ipca-investigation-into-bullying-within-new-zealand-police.htm> (accessed 29 October 2019).

¹¹⁹⁶ NZ Police. <https://www.police.govt.nz/advice/firearms-and-safety/firearm-law-changes-prohibited-firearms>

¹¹⁹⁷ New Zealand Herald 2019. https://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=12267036

¹¹⁹⁸ CAT/C/NZL/7. Available at: https://tbinternet.ohchr.org/Treaties/CAT/Shared%20Documents/NZL/CAT_C_NZL_7_7703_E.pdf

¹¹⁹⁹ Ibid.

¹²⁰⁰ Ibid.

¹²⁰¹ Stuff 2019. Available at: <https://www.stuff.co.nz/national/politics/110725103/11m-bonus-for-private-prison-company-serco-for-keeping-people-out-of-jail> (accessed 29 October 2019).

¹²⁰² CAT/C/NZL/7. Note. 1164.

In 2018, there were 10,052 prisoners and prisons were at 94% occupancy rate. A criminal justice reform programme has been underway since 2018 to address areas such as the disproportionate incarceration of Māori and reducing the prison population. An independent Advisory Group was established to lead public discussion and in September 2019 was developing options for government decision-making.¹²⁰³

Customs and Immigration

The Maritime Powers Extension Act 2018 amended the Misuse of Drugs Act 1975 to make drug smuggling in international waters an offence under New Zealand law. It also amended the Customs and Excise Act 2018 to allow customs officers to board and search ships and take action against individuals suspected of committing these offences.¹²⁰⁴ The 2018 Customs and Excise Act gives officials new powers to force travellers to New Zealand to hand over phone passwords and pin numbers if there is a reasonable suspicion against either the device or the carrier.¹²⁰⁵ The Council for Civil Liberties called it a grave invasion of privacy.¹²⁰⁶ In September 2019, New Zealand Customs seized an estimated 469kg of methamphetamine stashed inside a shipment of electric motors, arresting three men in connection with the drugs.¹²⁰⁷ With a street value of around NZD 235 million (USD 151 million), it was the largest ever methamphetamine seizure at the border and had the potential to cause an estimated NZD 582 million (USD 374 million) worth of social harm to communities.¹²⁰⁸ While three months of the calendar year remained at the time, 2019 was already the first year in which more than a tonne of methamphetamine had been seized.¹²⁰⁹

Defence Force

The New Zealand Defence Force (NZDF) is made up of the army, navy and air force. In 2019, there were 9474 regular forces, 2708 reserve forces and 3023 civilians, with 23% women¹²¹⁰ and 12.5% Māori.¹²¹¹ NZDF personnel are deployed on major peace support operations, training missions and into headquarters positions around the world, including playing a leadership role in the South Pacific.¹²¹² Throughout 2018 and 2019, an inquiry into Operation Burnham continued, investigating claims of civilian deaths in a New Zealand-led raid in Afghanistan in 2010.¹²¹³

In 2016, Operation RESPECT commenced to change NZDF's culture and behaviours and challenge persistent sexism and inappropriate sexual behaviour in order to better integrate women.¹²¹⁴ Following the passing of the Human Rights Act in 1993, NZDF incorporated the Act into its policies, and in early 1994, openly homosexual men and women were able to join and serve. In May 2019, the Chief of NZDF led a contingent marching in the Wellington Pride Parade to remember those who had left NZDF over the years because they did not always feel safe, welcome or supported, and to honour those who helped to build a more inclusive organisation.¹²¹⁵

¹²⁰³ Ibid.

¹²⁰⁴ New Zealand Government 2018. <https://www.beehive.govt.nz/release/new-powers-combat-drug-smuggling-sea> (accessed 30 October 2019).

¹²⁰⁵ NZ Herald 2018. https://www.nzherald.co.nz/travel/news/article.cfm?c_id=7&objectid=12136955

¹²⁰⁶ Stuff 2018. <https://www.stuff.co.nz/travel/news/107617171/fines-for-travellers-who-wont-unlock-secure-devices>

¹²⁰⁷ New Zealand Herald 2019. https://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=12265466 (accessed 29 October 2019).

¹²⁰⁸ Op cit.

¹²⁰⁹ Op cit.

¹²¹⁰ NZ Defence Force. <http://www.nzdf.mil.nz/what-we-do/personnel-composition.htm> (accessed 29 October 2019).

¹²¹¹ Te Ao Māori News 2019. <https://teaomaori.news/aotearoa-s-great-theres-so-much-more-rangatahi-mull-nzdf-future> (29 October 2019).

¹²¹² NZ Defence Force. <http://www.nzdf.mil.nz/operations/default.htm> (29 October 2019).

¹²¹³ Radio New Zealand 2019. <https://www.rnz.co.nz/news/national/399171/operation-burnham-inquiry-hearing-suspended-witnesses-may-be-recalled> (accessed 29 October 2019).

¹²¹⁴ Human Rights Commission 2016. <https://www.hrc.co.nz/news/nz-defence-force-commended-challenging-its-own-culture/> (accessed 29 October 2019).

¹²¹⁵ Stuff 2019. <https://www.stuff.co.nz/national/112651439/chief-of-the-new-zealand-defence-force-marches-in-wellington-pride-parade> (accessed 29 October 2019).

Security Agencies

The Government Communications Security Bureau's (GCSB) main functions are to collect foreign intelligence and provide cyber security and information assurance services for New Zealand's organisations of national significance. Its role and powers are defined by the Intelligence and Security Act 2017 and in accordance with New Zealand's human rights obligations. The GCSB works closely with the New Zealand Security Intelligence Service (NZSIS) and the police.¹²¹⁶ After the Christchurch mosque terror attacks in March 2019, which resulted in numerous deaths and injuries, NZSIS focused on supporting New Zealand Police in their investigation into the attacks and the resulting prosecutions, and on mitigating the risks to New Zealanders posed by possible revenge or copycat attacks.¹²¹⁷ At the time, the GCSB reported that it had not collected or received from partners any relevant intelligence ahead of the terror attacks.¹²¹⁸ In April 2019, a Royal Commission of Inquiry commenced into the attacks to investigate whether state agencies were doing all they could to protect the people of New Zealand from terrorist attacks and whether more could be done. In November 2020, the Royal Commission report and findings were to be handed to the Governor-General and Minister of Internal Affairs, to then be presented to Parliament, with the Prime Minister to decide how much of the report is made public.¹²¹⁹

Refugees and asylum seekers

New Zealand has specifically incorporated certain aspects of its international obligations with respect to non-refoulement into its national legislation. A person may be recognised as a protected person in New Zealand: a) under the Convention Against Torture if there are substantial grounds for believing that they would be in danger of being subjected to torture if deported; and b) under the Covenant on Civil and Political Rights if they would be in danger of being subjected to arbitrary deprivation of life or cruel, inhuman or degrading treatment or punishment if deported. Issues in relation to the availability and quality of health or medical care in the country of origin are explicitly excluded from the scope of arbitrary deprivation of life or cruel, inhuman or degrading treatment or punishment.¹²²⁰ Protected status is not granted if there is access to meaningful domestic protection in the home country and deportation to a third country is possible, unless there is a risk in that country of torture, arbitrary deprivation of life or cruel, inhuman or degrading treatment or punishment.¹²²¹

In 2018, the government announced its intention to increase the refugee quota from 750 to 1500 per year from 2020-21. Between 2015-2016 and 2017-2018 an additional 600 places were filled by Syrian refugees.¹²²² All asylum applications are considered under the Refugee Convention, then the CAT Convention, and if still unsuccessful, ICCPR. Under the Immigration Act 2009, a refugee or protected person cannot be deported, except where relevant articles of the Refugee Convention apply. Asylum cases are assessed on a case-by-case basis by trained Immigration New Zealand staff.¹²²³

UNHCR quota refugees arrive in New Zealand already holding resident visas and undertake a reception programme at a Refugee Resettlement Centre, which provides them with information on living and working in New Zealand. When moving into the community, they are provided with up to 12 months settlement support to link them to the services they require. Quota refugees receive food, a weekly allowance, and access to medical and social services, recreation facilities, telephone and email. Officers must process all vulnerable claimants in a timely and sensitive way. Guidelines were developed regarding the treatment of children and are being developed for people presenting with serious mental health issues, including victims of torture. Claimants can present medical evidence during their claim, are eligible for legal aid, and most are represented by a government-funded lawyer.¹²²⁴

¹²¹⁶ Government Communications and Security Bureau 2019. <https://www.gcsb.govt.nz/news/improving-the-cyber-security-resilience-of-new-zealand-businesses/> (accessed 30 October 2019).

¹²¹⁷ Op cit.

¹²¹⁸ Op cit.

¹²¹⁹ The Guardian 2020. <https://www.theguardian.com/world/2020/nov/26/christchurch-attacks-royal-commission-hands-in-report-on-new-zealand-mosque-shootings> (accessed 8 December 2020).

¹²²⁰ Immigration Act, Section 130 and 131.

¹²²¹ Immigration Act, Section 164.

¹²²² CAT/C/NZL/7. Note. 1164.

¹²²³ Op cit.

¹²²⁴ Ibid.

Most asylum seekers awaiting determination live in the community on temporary visas, and if lawfully in New Zealand, can apply for welfare support, access publicly-funded health services and children can attend school. People with approved refugee or protected person status can apply for residence. The organisation, Refugees as Survivors New Zealand, provides onsite support to survivors of torture and ill-treatment.¹²²⁵

In 2018, there were 455 claims for asylum (449 in 2017), resulting in 440 determinations (350 in 2017) and 139 approvals (113 in 2017). Appeals can be made to the Immigration and Protection Tribunal and some may concurrently lodge a deportation appeal on humanitarian grounds, and if dissatisfied with the decision, can seek the leave of the High Court to appeal on points of law. In 2018, there were 233 appeals (194 in 2017) and 167 decisions (177 in 2017), of which 91 were successful (63 in 2017). Between March 2014 and August 2018, 146 people had been deported: 136 adults (111 males, 23 females, 2 not recorded) and 10 minors (4 males, 6 females).¹²²⁶

Migration

Almost one in four people in New Zealand was born overseas.¹²²⁷ Between September 2018 and August 2019, the annual net migration gain was 53,800, up from 49,200 the previous year. Apart from migrant New Zealanders returning or departing long-term, most migrants arrived from China, followed by India, South Africa, Australia and the Philippines. Departing migrants originated from China, followed by the United Kingdom, Australia and India.¹²²⁸

The Migrant Exploitation Prevention Strategy is aimed at ensuring the fair treatment of all migrant workers. Interventions include education of migrant employees and employers of migrants, and the provision of targeted employment guides, including for the aged care sector, which has a particularly high proportion of migrant women workers.¹²²⁹ In 2017, the government adopted new measures to stop employers who breach immigration and employment law from recruiting migrant workers. More than 90 employers were prevented from recruiting migrants for varying periods since the new rules came into effect.¹²³⁰

Migration Access Categories

The Immigration and Protection Tribunal (Tribunal) has jurisdiction to hear appeals against deportation liability on humanitarian grounds, which are defined as exceptional circumstances of a humanitarian nature that would make it unjust or unduly harsh for the migrant to be deported from New Zealand. Allowing the person to remain in New Zealand should not be contrary to the public interest.¹²³¹ In determining whether deportation would be unjust or unduly harsh, the primary focus is on the personal circumstances of the individual who faces deportation, including their immediate family members.¹²³² Humanitarian appeals may raise issues that are relevant to international human rights obligations,¹²³³ such as the right to family life¹²³⁴ and the right to social security.¹²³⁵

People in New Zealand who have been partners of New Zealand citizens or residence class visa holders and whose partnership has ended due to domestic violence may be granted residence if they establish that they are unable to return to their home country because they would have no means of independent financial support or because they would be at risk of abuse or exclusion from their community due to stigma.

¹²²⁵ Ibid.

¹²²⁶ Ibid.

¹²²⁷ CEDAW/C/NZL/8. Note. 1144.

¹²²⁸ Stats New Zealand. <https://www.stats.govt.nz/information-releases/international-migration-august-2019> (accessed 30 October 2019).

¹²²⁹ CEDAW/C/NZL/8. Note. 1144.

¹²³⁰ CAT/C/NZL/7. Note. 1164.

¹²³¹ Immigration Act, Section 206 and 207.

¹²³² Guo v Minister of Immigration [2016] 1 NZLR 248 at [9].

¹²³³ Re DZ (Sri Lanka) [2017] NZIPT 502646 at [35] to [36].

¹²³⁴ Re An (Columbia) [2017] NZIPT 502843.

¹²³⁵ Re Pienaar [2017] NZIPT 503372.

The objective of this residence category is explicitly to recognize New Zealand's international human rights obligations, in particular to end discrimination against women in all matters related to marriage and family relations (CEDAW, Article 16), and to protect children from mental and physical violence (CRC Article 19).¹²³⁶

Residency in New Zealand can be obtained through a Skilled Migrant Category Resident Visa, an Entrepreneur Resident Visa – which are both points based¹²³⁷ – or the Pacific Access Category Resident Visa (PACRV). Through PACRV, New Zealand annually accepts 75 Kiribati citizens, 75 Tuvaluan citizens, 250 Tongan citizens and 250 Fijian citizens through a ballot application process.¹²³⁸ Additionally, there is a Samoan annual quota of 1100 citizens, in recognition of the special relationship between New Zealand and Samoa.¹²³⁹ Partners and dependent children aged 24 and under, are included. In order to be eligible for PACRV, the applicant or a family member must have a job offer in New Zealand that pays enough to support the family, and be literate and conversant in the English language.¹²⁴⁰

In October 2017, the Climate Minister proposed a humanitarian visa for 100 people from the Pacific affected by climate change. The pilot visa was to enable Pacific Islanders who face rising sea levels, saltwater intrusion and other adverse effects of climate change to move to New Zealand; however, in 2018, the concept was abandoned after further discussions.¹²⁴¹ While there have only been a few cases of migrants claiming refugee status in New Zealand because of climate-driven impacts, all unsuccessful, the number is expected to increase this century.¹²⁴² In June 2019, a three-year study was funded to be carried out in New Zealand, Niue and the Cook Islands to look at the health preparations that would need to be made for climate refugees, especially for mental health services.¹²⁴³

In 2019, the cap for Recognised Seasonal Employer (RSE) recruits was 14,400 temporary migrants.¹²⁴⁴ Workers are primarily recruited from Fiji, Kiribati, Nauru, PNG, Samoa, Solomon Islands, Tonga, Tuvalu and Vanuatu. Workers must meet health and character requirements and provide evidence of arrangements to leave New Zealand at the end of their stay, which is usually seven months.¹²⁴⁵ In September 2019, Immigration New Zealand was investigating a complaint of corruption against an employee at the agency,¹²⁴⁶ and in December 2018, an employer was charged with both human trafficking and slavery in relation to bringing migrant workers from Samoa to work in New Zealand.¹²⁴⁷

Deportees

A reciprocal Trans-Tasman Travel Arrangement has been in place between Australia and New Zealand since 1973, allowing Australian and New Zealand citizens to enter each other's country to visit, live and work.¹²⁴⁸ Since 2001, New Zealanders arriving in Australia cannot access the full range of social security services,¹²⁴⁹

1236 Operational Manual, S4.5.b.

1237 Immigration New Zealand. <https://www.immigration.govt.nz/new-zealand-visas/apply-for-a-visa/about-visa/skilled-migrant-category-resident-visa> (accessed 30 October 2019).

1238 Op cit.

1239 Immigration New Zealand. <https://www.immigration.govt.nz/about-us/media-centre/media-releases/2019-pacific-quota-registrations-open> (accessed 30 October 2019).

1240 Immigration New Zealand. <https://www.immigration.govt.nz/new-zealand-visas/apply-for-a-visa/about-visa/pacific-access-category-resident-visa> (accessed 30 October 2019).

1241 Asia and the Pacific Policy Society 2019. <https://www.policyforum.net/new-zealand-a-global-leader-on-climate-and-displacement/> (accessed 30 October 2019).

1242 New Zealand Herald 2019. https://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=12245227 (accessed 30 October 2019).

1243 Op cit.

1244 Immigration New Zealand. <https://www.immigration.govt.nz/about-us/research-and-statistics/research-reports/recognised-seasonal-employer-rse-scheme> (accessed 30 October 2019).

1245 Op cit.

1246 Radio New Zealand 2019. <https://www.rnz.co.nz/news/national/399810/corruption-complaint-at-immigration-nz-being-investigated> (accessed 30 October 2019).

1247 Stuff 2019. <https://www.stuff.co.nz/national/109401842/suspected-slave-boss-arrested> (accessed 30 October 2019).

1248 Ozkiwi 2018. <http://www.ozkiwi2001.org/2018/08/aust-2016-census-nz-born/> (accessed 24 October 2019).

1249 Op cit.

which is not a condition placed on Australians living in New Zealand. Australian deportation legislation changes were introduced in 2014 and is resulting in the deportation of New Zealand citizens on character grounds.¹²⁵⁰ New Zealanders who stay in Australia to appeal their deportation are placed in immigration detention and some have been held in the offshore Christmas Island detention centre.¹²⁵¹ Many people being deported from Australia under the character test rule arrived in Australia as children, having spent very little time in New Zealand.¹²⁵² Estimates are that 1800 people have been deported to New Zealand since 2015.¹²⁵³ Notification of, or information on, deportees was not shared with New Zealand authorities until an information sharing agreement was signed in 2015.¹²⁵⁴

The Returning Offenders (Management and Information) Act 2015 applies to New Zealanders who have been sentenced to more than one year in an overseas prison and who have been recently released from detention before returning to New Zealand. Upon arrival, returnees are supervised by Community Corrections for a period based on the length of the sentence served overseas. Assistance is provided to find accommodation, if required, and to access benefits and work opportunities.¹²⁵⁵ Some deportees, who were gang members in Australia, are believed to be involved in illegal drug distribution in New Zealand and are said to have completely changed the gang ecosystem.¹²⁵⁶ The deportees are said to have transnational connections to organised crime networks and to have brought a level of professional organisation that had never been seen before, prompting the Police Minister to consider introducing new powers for police to deal with gangs.¹²⁵⁷

Human Trafficking, Forced Labour, and Contemporary Forms of Slavery

New Zealand has been engaged in combating trafficking in persons for a long time. The Crimes Act of 1961 criminalizes both cross-border and internal trafficking in persons.¹²⁵⁸ The government has also taken measures to enhance protection and assistance of victims of trafficking in persons. For instance, victims are entitled to seek legal employment and may be provided with accommodation assistance. Moreover, New Zealand is currently reviewing its Plan of Action to Prevent People Trafficking of 2009.¹²⁵⁹

On 13 December 2019, the Government of New Zealand deposited the instrument of ratification of the Protocol of 2014 to the Forced Labour Convention 1930 with the Director General of ILO, thereby becoming the 43rd country worldwide to ratify the Protocol. The Forced Labour Protocol entered into force for New Zealand on 13 December 2020.¹²⁶⁰ New Zealand is also increasing its domestic efforts to collaborate in support of investigations, activities and operations against people trafficking. In 2019, New Zealand established a Trafficking in Persons Operations Group, the purpose of which is to support lawful information sharing between government agencies and collaborate and coordinate investigations and prosecutions.¹²⁶¹

1250 New Zealand Herald 2019. https://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=12252700 (accessed 25 October 2019).

1251 TV One News 2018. <https://www.tvnz.co.nz/one-news/new-zealand/australian-government-finally-reveals-number-kiwis-locked-up-christmas-island-detention-centre> (accessed 24 October 2019).

1252 Op cit.

1253 News Hub 2019. <https://www.newshub.co.nz/home/new-zealand/2019/06/exclusive-kiwi-mistakenly-deported-by-australia-speaks-out.html> (accessed 24 October 2019).

1254 Stuff 2015. <https://www.stuff.co.nz/national/72572995/nz-signs-criminal-information-sharing-deal-with-australia> (accessed 30 October 2019).

1255 Department of Corrections. https://www.corrections.govt.nz/working_with_offenders/community_sentences/sentences_and_orders/returning_offenders_order/faqs_for_returning_offenders (accessed 30 October 2019).

1256 One News Now 2019. <https://www.tvnz.co.nz/one-news/new-zealand/deported-australian-gang-members-predicted-attempt-corrupt-nz-police> (accessed 30 October 2019).

1257 Stuff 2019. <https://www.stuff.co.nz/national/politics/116419602/government-considers-new-police-powers-to-deal-with-suited-and-booted-gang-kingpins> (accessed 30 October 2019).

1258 International Labour Organisation. https://www.ilo.org/global/standards/subjects-covered-by-international-labour-standards/forced-labour/WCMS_732516/lang--en/index.htm (accessed 9 December 2020).

1259 Ibid.

1260 Ibid.

1261 UNODC 2020. New Zealand National Statement to the Working Group on Trafficking in Persons 10-11 September 2020. Available at: https://www.unodc.org/documents/treaties/WG_TIP/WEBSITE/STATEMENTS/NEW_ZEALAND.pdf (accessed 9 December 2020).

New Zealand continues to actively investigate and prosecute people trafficking crimes. On 17 March 2020, New Zealand secured its second human trafficking conviction following a complex joint investigation by Immigration New Zealand and New Zealand Police, in close collaboration with international partners in the Pacific.¹²⁶² Trafficking in persons is criminalized and defined to not require transnational movement of victims to qualify as a criminal offence and to cover trafficking within the country.¹²⁶³

New Zealand Police mandated anti-trafficking training for all criminal investigators and included a trafficking and smuggling chapter in its police manual. Labour inspectors and customs and immigration officials received training, but no training was reported for prosecutors or judiciary officials. Victims of human trafficking who cannot return home because they will be endangered, at risk of being re-victimised or at risk of suffering significant social stigma and financial hardship as a result of being trafficked may be granted a residence visa. The objective of this residence category is also to recognise New Zealand's international obligations, particularly to offer protection and assistance to victims of human trafficking who are likely to be suffering the effects of trauma and abuse, and to enable trafficking offenders to be prosecuted.¹²⁶⁴

Civil society and human rights defenders

New Zealand has many philanthropic NGOs and CSOs working in the areas of social services, health, education and the environment, and some contract to the government to deliver services.¹²⁶⁵ TirītīHui E! Community Aotearoa is a peak body focused on the needs of the broader community and voluntary sector, with over 100 member organisations.¹²⁶⁶

A number of international aid and relief organisations are based in the country. Most of their local operations are in fundraising and campaigning for overseas causes,¹²⁶⁷ and many contract with the government to deliver social services in partner countries, mostly in South East Asia and the Pacific. The Council for International Development is the peak body for these agencies and in 2019 had 45 members.¹²⁶⁸ Additionally, Amnesty International advocates for civil and political rights, both within New Zealand and abroad.

Community and voluntary organisations are advised to apply to the Charities Commission for fundraising and tax purposes, which is responsible for registering and monitoring not-for-profit organisations. The commission provides support and training to the charitable sector on good governance and management,¹²⁶⁹ and in 2018–2019, there were 27,239 charities on the register.¹²⁷⁰

Domestic law and human rights

New legislation is openly discussed in Parliament and in the media. Parliamentary records, government policies and commissioned reports are published online and readily available, as required by law.¹²⁷¹ Recent new legislation includes:

- Legislation Act 2019, promoting high-quality legislation that is easy to find, use and understand.¹²⁷²

¹²⁶² Ibid.

¹²⁶³ UN Human Rights Council. Report of the Working Group on the Universal Periodic Review. Available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G19/087/77/PDF/G1908777.pdf?OpenElement> (accessed 9 December 2020).

¹²⁶⁴ Operational Manual, S4.15.

¹²⁶⁵ Commonwealth Network .. http://www.commonwealthofnations.org/sectors-new_zealand/civil_society/ (accessed 1 November 2019).

¹²⁶⁶ HuiE!. <http://www.huie.org.nz/about/> (accessed 1 November 2019).

¹²⁶⁷ Commonwealth Network. http://www.commonwealthofnations.org/sectors-new_zealand/civil_society/

¹²⁶⁸ Council for International Development. <https://www.cid.org.nz/about-us/members/> (accessed 1 November 2019).

¹²⁶⁹ Commonwealth Network. Note. 1223.

¹²⁷⁰ Charities Services. <https://www.charities.govt.nz/view-data/> (accessed 31 October 2019).

¹²⁷¹ Freedom House. Freedom in the World 2019. Note. 1138.

¹²⁷² Parliamentary Counsel Office. http://www.legislation.govt.nz/act/public/2019/0058/latest/DLM7298131.html?search=ts_act_2019_rese1_25_a&p=1 (accessed 1 November 2019).

- Arms (Prohibited Firearms, Magazines, and Parts) Amendment Act 2019,¹²⁷³ which substantively tightens the open and easy access to semiautomatic firearms in the interests of public and personal safety.
- Parihaka Reconciliation Act 2019, confirming the commitments made by the Crown and the people of Parihaka,¹²⁷⁴ and recording the apology given by the Crown to the people of Parihaka.¹²⁷⁵
- Brokering (Weapons and Related Items) Controls Act 2018, regulating the brokering of weapons and related items, and supporting New Zealand's commitments under the Arms Trade Treaty.¹²⁷⁶
- Child Poverty Reduction Act 2018, which aims at achieving a significant and sustained reduction in child poverty by facilitating political accountability against published targets and requiring transparent reporting on levels of child poverty.¹²⁷⁷
- Family Violence Act 2018, updating the Domestic Violence Act 1995, to stop and prevent family violence, stop and prevent perpetrators from inflicting family violence and keep victims, including children, safe from family violence.¹²⁷⁸
- Family Violence (Amendments) Act 2018 amends the Crimes Act, Care of Children Act and four others to introduce new criminal offences of strangulation or suffocation, assault on a person in a family relationship, coerced marriage or civil union.¹²⁷⁹
- Criminal Records (Expungement of Convictions for Historical Homosexual Offences) Act 2018 to reduce prejudice, stigma, and all other negative effects, arising from a conviction for a historical homosexual offence by enabling an application for expungement of the conviction.¹²⁸⁰
- Care and Support Workers (Pay Equity) Settlement Act 2017, addressing pay equity issues for care and support workers.¹²⁸¹

The Intelligence and Security Act 2017 resulted in changes to the Privacy Act, reducing exemptions to the handling of personal information by NZSIS and GCSB, which are now subject to most information privacy principles.¹²⁸² Concerns were expressed about the definition of private communication, which could enable mass collection of communications and mass surveillance of New Zealanders.¹²⁸³

Human rights policies

The principles behind the SDGs have been embedded in domestic policies, and in 2019, New Zealand was trying a range of approaches to tackle disparities amongst all communities, especially the most vulnerable. These include: the government reviewing the criminal justice system to reduce the disproportionate incarceration of Māori; plans being underway to specifically acknowledge gender identity, in addition to sex, as prohibited grounds of discrimination in law; and in regard to persons with disabilities, the government exploring ways to

1273 Parliamentary Counsel Office. <http://www.legislation.govt.nz/act/public/2019/0012/latest/whole.html> (accessed 1 November 2019).

1274 NZ History. <https://nzhistory.govt.nz/occupation-pacifist-settlement-at-parihaka> (accessed 1 November 2019).

1275 Parliamentary Counsel Office. http://www.legislation.govt.nz/act/public/2019/0060/latest/DLM7397109.html?search=ts_act_2019_resel_25_a&p=1

1276 Parliamentary Counsel Office. http://www.legislation.govt.nz/act/public/2018/0009/latest/DLM7318220.html?search=ts_act_2018_resel_50_a&p=1 (access 2 November 2019).

1277 Parliamentary Counsel Office. http://www.legislation.govt.nz/act/public/2018/0057/latest/LMS8298.html?search=ts_act_2018_resel_50_a&p=1 (accessed 2 November 2019).

1278 Parliamentary Counsel Office. http://www.legislation.govt.nz/act/public/2018/0046/latest/LMS112850.html?search=ts_act_2018_resel_50_a&p=1 (accessed 2 November 2019).

1279 Parliamentary Counsel Office. <http://www.legislation.govt.nz/act/public/2018/0047/latest/LMS113435.html> (accessed 2 November 2019).

1280 Parliamentary Counsel Office. http://www.legislation.govt.nz/act/public/2018/0007/latest/DLM7293259.html?search=ts_act_2018_resel_50_a&p=1 (accessed 2 November 2019).

1281 Parliamentary Counsel Office. http://www.legislation.govt.nz/act/public/2017/0024/latest/DLM7269116.html?search=ts_act_2017_resel_25_a&p=1 (accessed 1 November 2019).

1282 Privacy Commissioner. <https://www.privacy.org.nz/news-and-publications/guidance-resources/intelligence-and-security-act-amendments-to-privacy-act-faqs/> (accessed 30 October 2019).

1283 Internet NZ. <https://internetcnz.nz/blog/intelligence-and-security-act-2017> (accessed 30 October 2019).

reduce violence, abuse and neglect. In May 2019, New Zealand was the first country in the world to deliver a Well-being Budget to embed the notion of wellbeing into public policy.¹²⁸⁴

Child protection policies have been adopted by the government, district health boards and school boards of trustees, and are required by all government-funded organisations providing services to children.¹²⁸⁵

New Zealand's Māori Health Strategy is the overarching framework that guides the health and disability sector to improve disparities and achieve the best health outcomes for Māori. Commencing in 2017-2018, dedicated Māori health plans have been incorporated into the annual plans of district health boards to strengthen Māori health outcomes.¹²⁸⁶ The Ministry of Health collects routine disability data on its Māori disabled client group. This data supports strategic and business planning for Whāia Te Ao Mārama 2018–2022: The Māori Disability Action Plan,¹²⁸⁷ which is jointly governed by the Disabled People's Organisations Coalition and government agencies.¹²⁸⁸ The 'Ala Mo'ui: Pathways to Pacific Health and Wellbeing (2014–2018) action plan was in the process of being updated in 2019.¹²⁸⁹

Further policies and strategies include: a Māori Housing work plan to ensure that wider housing policies benefit Māori; guidance by the Ministry of Education for schools on supporting the inclusion and well-being of LGBTI students; and a Migrant Settlement and Integration Strategy.¹²⁹⁰ New Zealand's Cyber Security Strategy was released in July 2019.¹²⁹¹ A national strategy for the prevention of family violence and sexual violence, and an investment strategy for family violence and sexual violence services were in place in 2019.¹²⁹²

Right to life, liberty and security of person

The New Zealand Bill of Rights Act 1990 sets out obligations relating to civil and political rights, and prohibits torture and other cruel treatment. New legislative proposals are vetted for compliance with the rights and freedoms set out in the Act.¹²⁹³ Since 2011, access to legal aid lawyers has steadily declined¹²⁹⁴ due to systemic issues. There are concerns about young people being held in police cells for extended periods (over 24 hours).¹²⁹⁵ New Zealand has reserved its right not to apply Article 37 of CRC on separating children under age 18 in detention from adults because avoiding age-mixing is not always possible due to limitations of existing facilities or because it is necessary to avoid isolation.¹²⁹⁶

An Integrated Safety Response multiagency pilot commenced at the end of 2016 to ensure the immediate safety of victims and children and to work with perpetrators to prevent further violence. The pilot is led by the New Zealand Police and is part of the broader Family Violence and Sexual Violence Work Programme.¹²⁹⁷ Nevertheless, while the number of family violence investigations was increasing annually, the number of

1284 A/HRC/41/4. Available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G19/087/77/PDF/G1908777.pdf?OpenElement>

1285 A/HRC/WG.6/32/NZL/1. Available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G18/338/73/PDF/G1833873.pdf?OpenElement>

1286 A/HRC/41/4. Note. 1242.

1287 CRPD/C/NZL/2-3. Available at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRPD%2fC%2fNZL%2f2-3&Lang=en

1288 Ibid.

1289 Ministry of Health 2019. <https://www.health.govt.nz/our-work/populations/pacific-health/pacific-health-action-plan> (accessed 3 November 2019).

1290 A/HRC/41/4. Note. 1242.

1291 Department of the Prime Minister and Cabinet 2019. <https://dpmc.govt.nz/publications/new-zealands-cyber-security-strategy-2019> (accessed 3 November 2019).

1292 Ministry of Justice 2019. <https://www.justice.govt.nz/justice-sector-policy/key-initiatives/reducing-family-and-sexual-violence/work-programme/> (accessed 3 November 2019).

1293 CAT/C/NZL/7. Note. 1164.

1294 CEDAW/C/NZL/CO/8. Note. 1144.

1295 CAT/C/NZL/7. Note. 1164.

1296 Ibid.

1297 New Zealand Police. <https://www.police.govt.nz/about-us/programmes-and-initiatives/integrated-safety-response-isr-pilot> (accessed 1 November 2019).

apprehensions and prosecutions was trending downwards.¹²⁹⁸ People who feel unjustly deprived of liberty under mental health legislation or the Intellectual Disability Act may complain to one of 34 mental health district inspectors, who are lawyers appointed by the Minister of Health to handle complaints of rights breaches and assist patients to apply for a judge's review.¹²⁹⁹

Equality and non-discrimination

The 1993 Human Rights Act protects all people in New Zealand from discrimination on the basis of gender, religion, ethnicity and sexual orientation, among other categories, and its provisions are generally respected in practice. Marriage equality became law in 2013. The government enforces strong legislation protecting the rights of LGBTI communities,¹³⁰⁰ although discrimination still exists. Women continue to face some disparities in employment and wage equality, and underrepresentation in leadership positions in both the public and private sectors.¹³⁰¹

Some Māori and Pacific Islanders experience discrimination in schools, the workplace and the health system. Māori are also disproportionately incarcerated by the penal system, accounting for just over half of the prison population as of December 2018, despite being only 16% of the population.¹³⁰² Recent campaigns to recruit more officers of Māori, Pacific Islander and Asian descent aim to improve cultural and ethnic sensitivity within the police force, and combat racial profiling and discrimination.¹³⁰³ According to the 2018 Child Poverty Monitor Technical Report, nearly 20% of children experienced food insecurity and children of Māori and Pacific Islander descent are especially vulnerable. In December 2018, Parliament adopted the Child Poverty Reduction Act, which requires the government to report on child poverty rates and produce plans to address the problem.¹³⁰⁴

Freedom of information (FOI)

The Official Information Act (OIA) 1982 allows anyone in New Zealand to access information held by government agencies. Requests for information must be responded to within 20 working days, except if the request is for large amounts of information or if it requires consultation. Requests may be refused, or information withheld, when a good reason exists under the Act, such as to protect people's privacy.¹³⁰⁵ Citizens and residents may access and correct any information held about them. In the six months between January and June 2018, 112 government agencies completed 23,733 requests, which was an 11.8% increase on the previous six months.¹³⁰⁶ The Chief Ombudsman received 697 complaints on OIA request outcomes over the same period.¹³⁰⁷ In March 2019, after complaints from media organisations, the Ombudsman warned government departments not to use the Official Information Act as a way of delaying responses to media enquiries for the 20-day period.¹³⁰⁸

Freedom of expression, association and peaceful assembly

New Zealanders are free to discuss personal views on sensitive topics; however, new intelligence and security legislation adopted in 2017 allows law enforcement agencies to access private communications under certain conditions in order to protect national security.¹³⁰⁹ Freedom of assembly is generally respected and large protests on a variety of issues have proceeded without incident in recent years.¹³¹⁰

1298 New Zealand Herald 2018. https://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=12107431 (accessed 1 November 2019).

1299 CAT/C/NZL/7. Note. 1164.

1300 Freedom House. Freedom in the World 2019. Note. 1138.

1301 Ibid.

1302 Op cit.

1303 Op cit.

1304 Op cit.

1305 Department of Internal Affairs. <https://www.dia.govt.nz/Official-Information-Act-requests> (accessed 31 October 2019).

1306 State Services Commission 2018. <https://ssc.govt.nz/resources/latest-official-information-act-statistics-released/> (accessed 1 November 2019).

1307 Office of the Ombudsman. <http://www.ombudsman.parliament.nz/resources-and-publications/oia-complaints-data> (accessed 1 November 2019).

1308 Radio New Zealand 2019. <https://www.rnz.co.nz/news/political/383963/public-service-should-not-treat-all-media-queries-as-oia-requests-ombudsman> (accessed 1 November 2019).

1309 Freedom House. Freedom in the World 2019. Note. 1138.

1310 Op cit.

In December 2018, a State Services Commission report found multiple government agencies had broken the public service code of conduct in their use of private investigators to spy on a range of people, including protesters. The inquiry that led to the report uncovered system-wide failings across the entire public service.¹³¹¹

Academic freedom typically prevails at all levels of instruction; however, concerns persisted regarding Chinese interference in New Zealand's higher education sector due to attempted intimidation of a prominent China Studies university professor. Throughout 2017 and 2018, the academic had been subjected to anonymous threatening letters, vehicle tampering and theft of research materials critical of the Chinese Communist Party.¹³¹²

Trade unions actively engage in political debates and campaigns and workers may freely organise and bargain collectively and have the right to strike, with the exception of uniformed police personnel.¹³¹³ The New Zealand Council of Trade Unions is the national trade union centre, hosting approximately 40 unions. There are legal requirements unions must follow under the 1908 Trade Unions Act.¹³¹⁴

New Zealand has a free and robust independent media sector. The government owns and subsidises four commercial television stations, two of which are Māori-language networks, and fully funds an independent national radio network. There are numerous commercial radio stations, some of which broadcast in Māori. Satellite and subscription channels are widely available, as are access to the internet and social media. Government subsidisation of some channels is often criticised by the largest fully commercial network for skewing the television advertising market.¹³¹⁵ In 2019, Reporters without Borders commented that the independence and pluralism of the press are often undermined by the profit imperatives of media groups trying to cut costs.¹³¹⁶ The 2018 takeover of a leading news portal by an Australian entertainment giant resulted in the closure of a third of the news portal's sites and the imposition of major budget cuts on related local media outlets.¹³¹⁷ In January 2019, the Australian media giant advised it would be selling the New Zealand portal, which included three of the largest print and digital newspapers in the country.¹³¹⁸ By July 2019 no acceptable bids had been received and the Australian company decided to retain ownership for the time being.¹³¹⁹

In August 2019, a Local Democracy Reporting scheme was announced backed by the Newspaper Publishers' Association and jointly funded by Radio New Zealand and NZ On Air, which will place journalists with regional newspapers in eight districts across the country.¹³²⁰ The journalists will report exclusively on practices by publicly-appointed and publicly-funded organisations, including local councils, council committees, community boards, district health boards, Māori trusts and incorporations, and port and airport authorities.¹³²¹

Religious freedom is protected by law and generally respected in practice.¹³²² Racist attacks on two mosques in March 2019 left 51 worshipers dead and another 40 injured. The victims ranged from children to retirees, including women and girls. A Royal Commission into the attacks got underway in April 2019 and the final report was due in December 2019.¹³²³

1311 Newsroom 2018. <https://www.newsroom.co.nz/2018/12/17/367769/state-sector-spy-inquiry-finds-wide-failings> (accessed 1 November 2019).

1312 Freedom House. Freedom in the World 2019. Note. 1138.

1313 Ibid.

1314 Commonwealth Network. http://www.commonwealthofnations.org/sectors-new_zealand/civil_society/ (accessed 1 November 2019).

1315 Stuff 2019. <https://www.stuff.co.nz/business/116683532/mediaworks-facing-commercial-realities-with-sale-of-tv-business> (accessed 1 November 2019).

1316 Reporters without Borders. <https://rsf.org/en/new-zealand> (accessed 1 November 2019).

1317 Op cit.

1318 Stuff 2019. <https://www.stuff.co.nz/business/109931109/stuff-set-for-quick-sale-by-new-owner-nine> (accessed 1 November 2019).

1319 Stuff 2019. <https://www.stuff.co.nz/business/114452561/nine-will-focus-on-the-long-term-with-bids-for-stuff-below-fair-value> (accessed 1 November 2019).

1320 Radio New Zealand 2019. <https://www.rnz.co.nz/news/national/397105/local-democracy-reporting-scheme-seeks-journalists-to-cover-the-regions> (accessed 1 November 2019).

1321 Op cit.

1322 Freedom House. Freedom in the World 2019. Note. 1138.

1323 Royal Commission of Inquiry. <https://christchurchattack.royalcommission.nz/about-the-inquiry/> (accessed 30 October 2019).

As a result of the mosque attacks, the Prime Minister has been working with the international community and social media companies on the Christchurch Call, which is a pledge to eliminate terrorist and violent extremist content online.¹³²⁴

Economic rights

According to World Bank annual ratings, since 2017, New Zealand has ranked first among 190 economies in the ease of doing business based on the time and costs involved to meet government requirements in areas such as starting a business.¹³²⁵ Good use of the internet for easy business registration and accessing legislation was a factor. Due to New Zealand's small consumer pool, many businesses were using international online selling platforms, and some were said to be exceeding expectations, particularly those in the honey, wine, fruit, dairy, seafood, health supplements and skincare categories.¹³²⁶ An Ethnic People in Commerce conference held in 2017 connected New Zealand's ethnically diverse business community with business leaders and government agencies.¹³²⁷ The government funds business enterprises to provide vocational and employment support for disabled people.¹³²⁸ The ESCR Committee in 2018 recommended that New Zealand expedite the adoption of a national plan of action to implement the Guiding Principles on Business and Human Rights.¹³²⁹

New Zealanders generally have access to economic opportunities, however, the Māori and Pacific Islander populations have disproportionately high rates of unemployment, affecting their economic and social mobility. Migrant workers are vulnerable to exploitative conditions in industries such as fishing, agriculture, construction, hospitality and domestic services. The government has taken action to combat these abuses but more resources may be needed to improve enforcement.¹³³⁰ In June 2019, the seasonally adjusted unemployment rate fell to an 11-year low of 3.9%. The Māori unemployment rate was 7.7%, down from 9.4% the previous year. The employment rate for men was 72.4% and for women 63.1%.¹³³¹

Women's greater share of care responsibilities in the family, and the resultant need for flexible and part-time work, was identified as a potential barrier to fully utilising women's skills in workplaces. The Ministry for Women has collaborated with chambers of commerce, economic development agencies, industry training organisations, trade associations and other government departments to promote greater workplace flexibility for both women and men.¹³³² In July 2018, the government increased paid parental leave entitlements from 18 weeks to 22 weeks as a first step towards extending paid parental leave to 26 weeks by 2020. The maximum weekly entitlement was also increased by 4.7%, in line with an increase in the nation's average weekly earnings.¹³³³

The CEDAW Committee in 2018 expressed concern about occupational segregation with concomitant wage differentials and women's concentration in unpaid work or in lower paid jobs in the informal economy.¹³³⁴ The committee recommended that New Zealand take measures to reduce poverty and improve the economic empowerment of women, in particular rural women, Māori, Pacific, Asian, immigrant, migrant and refugee women, and women with disabilities.¹³³⁵ The Wellbeing Budget 2019 introduced a policy for mandatory annual

1324 NZ Government 2019. <https://www.beehive.govt.nz/release/nz-and-france-seek-end-use-social-media-acts-terrorism> (accessed 1 November 2019).

1325 NZ Companies Office. <https://www.companiesoffice.govt.nz/insights-and-articles/nz-takes-top-spot-for-ease-of-doing-business/> (accessed 2 November 2019).

1326 Stuff 2017. <https://www.stuff.co.nz/business/better-business/93972665/ecommerce-opens-door-for-ethnic-communities-alibaba> (accessed 2 November 2019).

1327 A/HRC/WG.6/32/NZL/1. Available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G18/338/73/PDF/G1833873.pdf?OpenElement>

1328 CRPD/C/NZL/2-3. Note.1245.

1329 E/C.12/NZL/CO/4. Available at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=E%2fc.12%2fNZL%2fCO%2f4&Lang=en

1330 Freedom House. Freedom in the World 2019. Note. 1138.

1331 Stats NZ 2019. <https://www.stats.govt.nz/news/unemployment-falls-to-11-year-low> (accessed 2 November 2019).

1332 A/HRC/WG.6/32/NZL/1. Note. 1285.

1333 Employment New Zealand 2019. <https://www.employment.govt.nz/about/news-and-updates/paid-parental-leave-extension-comes-into-effect/> (accessed 2 November 2019).

1334 CEDAW/C/NZL/CO/8. Note.1144.

1335 Ibid.

adjustments of main benefits by the percentage of any increase in net average weekly earnings.¹³³⁶ A Families Package aimed at low income families came into effect in July 2018 and was projected to reduce the number of children living in poverty by 41% by 2020.¹³³⁷

Right to health and education

New Zealand's 2018 UPR report stated that overall, it has a well-functioning public-funded health system with a legislative framework and strategies and policies designed to ensure the realisation of the right to health; however, health outcome disparities continue to exist, particularly for Māori, Pacific peoples, and people living in lower socioeconomic areas.¹³³⁸

New Zealand children experience high levels of hospitalisation for preventable conditions such as rheumatic fever and pneumonia. New Zealand's youth suicide rate was high, and the need for improved mental health services was said to have featured strongly during the government's UPR consultations.¹³³⁹ Other issues raised include the vulnerability of people with dementia, the government's intention to review abortion law, and sexual and reproductive health and rights, particularly for young people, women and Māori.¹³⁴⁰

A Government Inquiry into Mental Health and Addiction was established in 2018 to identify unmet needs and develop recommendations for a more cohesive approach. Reducing the disparity of Māori mental health outcomes was said to be a longstanding priority as Māori account for 27% of mental health service users, which is disproportional to the overall population.¹³⁴¹ In October 2018, the Law Commission issued recommendations on treating abortion as a health issue and not a crime.¹³⁴² The recommendations require legislative changes by Parliament. In August 2019, one party in the coalition government called for a referendum on an abortion law reform bill, however, the proposal was not expected to succeed as there was cross-party support for the bill.¹³⁴³

New Zealand's education system is said to reflect its diverse society by welcoming different abilities, religious beliefs, ethnic groups and income levels. Schooling is compulsory from age 6 to 16 years and free between the ages of 5 and 19 years in state schools. Early childhood education is not compulsory but is attended by 97% of children.¹³⁴⁴ The government subsidises early childhood education up to six hours per weekday, and a higher subsidy is available for 3 to 5-year olds for 20 hours per week. Since 2018, first-year tertiary students have paid no fees and there is a plan to increase funding to the first three years of tertiary study by 2024.¹³⁴⁵

In Māori-medium education, students are taught all or some curriculum subjects in *Te Reo Māori* (the Māori language) at least 51% of the time. The school curriculum is designed to protect against sexism, racism and discrimination. In 2018, the Minister of Education developed a comprehensive three-year work programme, including explicit consideration of the impact for Māori and Pacific learners, supporting Māori-medium education and students who have learning needs.¹³⁴⁶

Education-related issues were reported to have been raised in UPR consultations, including recommendations for compulsory teaching of *Te Reo Māori* and increased human rights education. Concerns raised include religious instruction in some state schools, bullying rates, and minimum qualification requirements for early childhood teachers and teacher aides.¹³⁴⁷

¹³³⁶ New Zealand Parliament. https://www.parliament.nz/en/pb/bills-and-laws/bills-proposed-laws/document/BILL_88136/social-assistance-legislation-budget-2019-welfare-package (accessed 1 November 2019).

¹³³⁷ NZ Herald 2018. https://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=12080323 (accessed 2 November 2019).

¹³³⁸ A/HRC/WG.6/32/NZL/1. Note. 1285.

¹³³⁹ Op cit.

¹³⁴⁰ A/HRC/WG.6/32/NZL/1. Note. 1285.

¹³⁴¹ Op cit.

¹³⁴² Law Commission. <https://www.lawcom.govt.nz/abortion> (accessed 2 November 2019).

¹³⁴³ NZ Herald 2019. https://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=12256174 (accessed 2 November 2019).

¹³⁴⁴ A/HRC/WG.6/32/NZL/1. Note. 1285.

¹³⁴⁵ Op cit.

¹³⁴⁶ Op cit.

¹³⁴⁷ Op cit.

Women's and children's rights

Women's representation amongst senior leaders in New Zealand's public service reached 47.9% in 2017; however, this remained lower than the proportion of women in the public service overall (60.5% in 2017).¹³⁴⁸ Women were under-represented in private sector leadership positions, making up only 20% of directors and 19% of chief executives and senior managers of all New Zealand Stock Exchange companies.¹³⁴⁹ The government's 2018 Gender Stocktake of State Sector Boards and Committees found that women's representation had increased to a record 47.4%.¹³⁵⁰ At the time of this situation analysis, both New Zealand's Prime Minister and Governor-General are women. New Zealand's Chief Justice is also the only woman head of the judiciary in the Pacific.

In August 2019, StatsNZ announced that the gender pay gap was 9.3%, noting that improvement had stalled in the last decade.¹³⁵¹ Eighty percent of the pay gap was reported to be driven by factors such as conscious and unconscious bias, which impacts negatively on women's recruitment and pay advancement, and differences in men's and women's choices and behaviours.¹³⁵² These differences can include men and women's willingness to negotiate pay and conditions, and whether employers may treat women differently from men when they do negotiate. Deeply held societal attitudes and beliefs were said to persist about the types of work that are appropriate for men and women, the relative importance of occupations where men or women dominate, and the allocation of unpaid work, like caring for children and housework.¹³⁵³

In December 2018, the Waitangi Tribunal started an inquiry into claims for Māori women, arising from Crown breaches of the Tiriti o Waitangi in both historical and contemporary times. The inquiry is set to look for opportunities to make early acknowledgements of problems and focus on what can be changed immediately and into the future to address injustice and inequality. Māori women continue to have poorer social, economic, educational, employment and health outcomes compared to non-Māori women.¹³⁵⁴

Levels of family violence are unacceptably high with one in three women having experienced physical, emotional or sexual violence from a partner in their lifetime. Māori women, queer women, transwomen, women with disabilities and young women experienced more violence and were more likely to be re-victimised.¹³⁵⁵ In 2018, New Zealand passed legislation allowing victims of family violence to take a new type of leave from their employment, separate from sick or annual leave, to help support them out of violent situations, the first such legislation in the world. New family violence legislation came into force in 2019, aimed at keeping victims safe, holding perpetrators accountable, and promoting consistent, collaborative responses to people experiencing family violence.¹³⁵⁶

Children and young people make up approximately 26% of New Zealand's population and the majority are said to grow up healthy and well-educated, although poverty was recognised as a persistent problem for too many people. Recent estimates of the number of children living in poverty range between 135,000 and 210,000 children.¹³⁵⁷ Interrelated issues were identified as child health, housing and education statistics, as well as crosscutting challenges in ensuring all children are free from violence, abuse and neglect. The rights of children were said to have been raised frequently during consultations for the UPR report in 2018, with calls for greater urgency in tackling child poverty, abuse and neglect, and to introduce a minimum employment age.¹³⁵⁸

¹³⁴⁸ A/HRC/WG.6/32/NZL/1. Note. 1285.

¹³⁴⁹ Op cit.

¹³⁵⁰ Ministry for Women 2019. <https://women.govt.nz/news/record-levels-women-state-sector-boards> (accessed 3 November 2019).

¹³⁵¹ Ministry of Women 2019. <https://women.govt.nz/work-skills/income/gender-pay-gap> (accessed 3 November 2019).

¹³⁵² Op cit.

¹³⁵³ Op cit.

¹³⁵⁴ Ministry for Women 2019. <https://women.govt.nz/news/mana-w%C4%81hine-claim-progressing> (accessed 3 November 2019).

¹³⁵⁵ A/HRC/41/4. Available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G19/087/77/PDF/G1908777.pdf?OpenElement>

¹³⁵⁶ Op cit.

¹³⁵⁷ A/HRC/WG.6/32/NZL/1. Note. 1285.

¹³⁵⁸ Ibid.

In 2017, a new stand-alone government department, Oranga Tamariki – Ministry for Children, became operational, aiming for a whole-of-sector, child-centred approach. The ministry is also working with young people who may have offended or are likely to offend, and managing adoption services. The ministry's work is guided by CRC.¹³⁵⁹ The Prime Minister became the first Minister for Child Poverty Reduction in 2017 and introduced child poverty reduction legislation to Parliament in January 2018.¹³⁶⁰ The Child Poverty Reduction Act came into effect in December 2018 and requires future governments to set three-year and ten-year targets to reduce child poverty. A national 'food in schools' free lunch programme was piloted in 2019.

Rights of persons with disabilities (PWD)

Information on disabilities was collected in the 2018 Census but was not available in 2019. The most reliable source of information is the 2013 Disability Survey. The survey found that 24% of the population identified as having a disability (516,000 males, 545,000 females) and people aged over 65 made up 59% of the population with disabilities. The rate for Māori was higher than the national average at 26%. The rate for Pacific people, at 19%, was lower than the national average but high when considering the population size. Physical limitations were the most common type of impairment for 64% of adults, and for children the most common impairment type, at 52%, was learning difficulty.¹³⁶¹ In June 2018, labour force participation for adults with disabilities was 25%, the employment rate was 22.3% and the unemployment rate was 10.6%.¹³⁶² The Disability Survey 2013 showed that on average, women with disabilities experience poorer economic and social outcomes than women without.¹³⁶³

The Human Rights Act 1993 and the Bill of Rights Act 1990 set out New Zealand's anti-discrimination framework protecting New Zealanders from discrimination in a number of areas, including disability. New Zealand's Disability Strategy 2016–2026 was supported with a Learning Support Action Plan 2019–2025. Consultations on the draft Disability Action Plan 2019–2022 were undertaken in 2019 and a draft report was expected by the end of 2019. The 2018 Budget announced an additional NZD 460 million (USD 295 million) four-year investment in disability services, supports and work programmes.¹³⁶⁴

A work programme to design an approach to achieve a fully accessible New Zealand was approved in December 2018, with the Ministry of Social Development and the Office for Disability Issues (ODI) tasked with leading the programme, and consultation with stakeholder groups were underway during 2019.¹³⁶⁵ The ODI had identified a list of legislation that appeared to contradict the CRPD and was in the process of evaluating that legislation.¹³⁶⁶ The government provided NZD 375,000 funding to the Disabled People's Organisations Coalition to contribute to the implementation and monitoring of the Disability Action Plan and monitoring of CRPD.¹³⁶⁷ Since 2018, an Enabling Good Lives approach was being trialled as part of the transformation of health service delivery. PWD and their families were to have more options and greater decision-making over what supports they needed to live the life they wanted, rather than their lives having to fit around the services on offer.¹³⁶⁸

During the 12 months ending 15 June 2018, the Human Rights Commission received 370 complaints of alleged unlawful disability discrimination, of which 35 were on multiple grounds. Disability discrimination coupled with age was recorded in seven complaints, a further seven complaints were on disability and family status, and six

¹³⁵⁹ Ibid.

¹³⁶⁰ Ibid.

¹³⁶¹ Statistics NZ. Disability Survey 2013 Key Facts. Available at: http://archive.stats.govt.nz/browse_for_stats/health/disabilities/DisabilitySurvey_HOTP2013/Tables.aspx (accessed 1 November 2019).

¹³⁶² Ibid.

¹³⁶³ CRPD/C/NZL/2-3. Note. 1245.

¹³⁶⁴ Ibid.

¹³⁶⁵ New Zealand Government 2018. <https://www.beehive.govt.nz/release/government-signs-major-accessibility-work-programme> (accessed 3 November 2019).

¹³⁶⁶ CRPD/C/NZL/2-3. Note. 1245.

¹³⁶⁷ Ibid.

¹³⁶⁸ Ibid.

complaints were on both gender and disability discrimination.¹³⁶⁹ Just over half of the complaints (50.5%) were received from women. There were four main themes: women's health, mothers and children, actions of the court, and matters relating to employment.¹³⁷⁰

Climate justice

New Zealand's UPR report in 2018 stated that New Zealanders enjoy a high environmental quality of life, although the environment and natural resources are under increasing pressure, in particular from climate change.¹³⁷¹ The UPR Working Group in 2019 reported that the government had introduced several policy initiatives to achieve its commitment of transitioning to a low emissions economy by 2050, including passing the Zero Carbon Act and establishing an independent Climate Change Commission. Around NZD 100 million (USD 64 million) has been earmarked for a Green Investment Fund, and actions were being taken to stimulate investments in low emissions projects. A similar measure entailed the planting of one billion trees by the year 2028.¹³⁷² New Zealand expressed commitment to taking collaborative action to support its Pacific neighbours, in acknowledgement that these countries are uniquely vulnerable.¹³⁷³ In 2018, the ESCR Committee recommended that climate change policies be developed and implemented in partnership with Māori.¹³⁷⁴

The CEDAW Committee in 2018 noted steps taken to improve the condition of rural women as well as the development of a National Climate Change Adaptation Plan but was concerned about the disproportionate impact of climate change on women and the absence of information on women's participation in decision-making on rural development within related policies and programmes.¹³⁷⁵ The government report to the CRPD Committee in 2019 stated that a new National Disaster Resilience Strategy, which has a specific focus on people with disabilities, would be directing progress towards the Sendai Framework's priorities and had engaged people with disabilities in its development.¹³⁷⁶ An Environmental Health Action Plan was reported to be under development in 2018 to provide strategic direction for environmental health activities in New Zealand.¹³⁷⁷ No progress on an overarching plan was evident in 2019, although an action plan for healthy waterways was announced in September 2019.¹³⁷⁸

¹³⁶⁹ Ibid.

¹³⁷⁰ Ibid.

¹³⁷¹ A/HRC/WG.6/32/NZL/1. Note 1285.

¹³⁷² A/HRC/41/4. Available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G19/087/77/PDF/G1908777.pdf?OpenElement>

¹³⁷³ Ibid.

¹³⁷⁴ E/C.12/NZL/CO/4. Available at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2fNZL%2fCO%2f4&Lang=en

¹³⁷⁵ CEDAW/C/NZL/CO/8. Note. 1144.

¹³⁷⁶ CRPD/C/NZL/2-3. Note. 1245.

¹³⁷⁷ A/HRC/WG.6/32/NZL/1. Note. 1285.

¹³⁷⁸ Scoop 2019. <http://www.scoop.co.nz/stories/AK1909/S00134/action-plan-for-healthy-waterways.htm> (accessed 3 November 2019).

The background features a large, abstract geometric pattern composed of blue and teal chevrons and diamonds, creating a sense of depth and motion.

COUNTRY CHAPTERS

NIUE

Niue

Key facts

Capital city	Alofi	Total land area	259 km ² ¹³⁷⁹
Population (year)	1615 (2019 est.) ¹³⁸⁰	Population growth % (year)	-0.31 (2019 est.) ¹³⁸¹
GDP per capita (year)	USD 12,945 (2012) ¹³⁸²	GNI per capita (Atlas method) (year)	USD N/A
Type of government	Self-governing parliamentary democracy in free association with New Zealand. ¹³⁸³		
Electoral system	First past the post system in 14 village constituencies and a Block Vote for 6 common roll, island-wide seats ¹³⁸⁴ , universal suffrage. ¹³⁸⁵		
Number of members of parliament (MPs): total/female (year)	20: 15 males/5 females (2019). ¹³⁸⁶ Percentage women 25%.		
Religions: by % of population (year)	Ekalesia Niue (Congressional Christian Church of Niue – a Protestant church founded by missionaries from the London Missionary Society) 67%, other Protestant 3% (includes SDA 1%, Presbyterian 1%, and Methodist 1%), Mormon 10%, Roman Catholic 10%, JW 2%, other 6%, none 2% (2011 est.) ¹³⁸⁷		
Ethnic groups: by % of population (year)	Niuean 66.5%, part–Niuean 13.4%, non–Niuean 20.1% (includes 12% European and Asian and 8% other Pacific Islanders) ¹³⁸⁸		
Languages: by % of population (year)	Niuean (official) 46%, Niuean and English 32%, English (official) 11%, Niuean and others 5%, other 6% (2011 est.) ¹³⁸⁹		
Life expectancy: male/female (year)	70.1 male/76.3 female (2011) ¹³⁹⁰	% youth aged 15–24 years: total male/female (year)	12.9% (2011) ¹³⁹¹
% disability: total male/female (year)	5% – 32 males, 37 females (2011) ¹³⁹²		

1379 Pacific Community. http://prism.spc.int/images/downloads/2015_Pocket-Statistical-Summary.pdf (accessed 22 June 2019).

1380 World Population Review. <http://worldpopulationreview.com/countries/niue-population/> (accessed 19 July 2019).

1381 Op cit.

1382 Pacific Community. Note 1337.

1383 CIA Factbook. <https://www.cia.gov/library/publications/the-world-factbook/geos/ne.html> (accessed 19 July 2019).

1384 Pacific Women in Politics. <https://www.pacwip.org/country-profiles/niue/> (accessed 22 June 2019).

1385 Niue's Government and Politics. <http://www.niuegov.com/> (accessed 19 July 2019).

1386 Pacific Women in Politics. <https://www.pacwip.org/women-mps/national-women-mps/> (accessed 22 June 2019).

1387 CIA World Factbook. <https://www.cia.gov/library/publications/the-world-factbook/geos/ne.html> (accessed 19 July 2019).

1388 Op cit.

1389 Op cit.

1390 Statistics Niue. https://niue.prism.spc.int/index.php?option=com_content&view=article&id=74:vital-statistics-summary-of-main-indicators&catid=53&Itemid=294 (accessed 22 June 2019).

1391 Statistics Niue 2012. Niue census of population and households 2011: Niue ke monuina, Numela ke taki aki. There was no gender break down for the total. Available at: http://prism.spc.int/images/census_reports/Niue_2011_Population_Households_Census.pdf (accessed 22 June 2019).

1392 Ibid.

International human rights treaty ratification and reporting obligations

Treaty ¹⁵	Date of signature (S) or ratification (R) or accession (a) ¹³⁹⁴	Reservations	Latest report submitted	Reporting status
ICESCR	28 December 1978 (R)			
ICCPR	28 December 1978 (R)			
ICERD	22 November 1972 (R)			
CEDAW	10 January 1985 (R)			
CRC	20 December 1995 (a)		Initial report 24 November 2010.	2 nd to 5 th periodic reports overdue since 18 Jan 2018.

Special Procedures: Niue is not a member of the United Nations (UN).

Country visits: Niue is not a member of the UN.

Universal Periodic Review: Niue is not reviewed under the UPR.

International Criminal Court: Niue has not signed the Rome Statute.

System of government

Niue became a self-governing parliamentary democracy in free association with New Zealand in 1974.¹³⁹⁵ As such, it is a constitutional monarchy, with the British monarch as the head of state, who is represented by the New Zealand Governor-General. The executive and the legislative assembly govern internal affairs, while the New Zealand government has responsibility for Niue's foreign affairs and defence on the delegated authority of the Niuean government.¹³⁹⁶ Niueans have New Zealand citizenship. In 1988, New Zealand recognised Niue's exclusive capacity to implement United Nations treaties in its own right.¹³⁹⁷

The Niue legislative assembly comprises 20 independent members of parliament elected by universal suffrage. Members are elected from 14 village constituencies, with the remaining six seats elected from the common roll.¹³⁹⁸ The Assembly then elects the Premier, who is Niue's head of government, for a three-year term. The Cabinet consists of the Premier and three ministers.¹³⁹⁹ The Justice Department is responsible for running general and village council elections. The 2017 general election saw women's representation at 25%, without the need for temporary special measures.¹⁴⁰⁰ Five female representatives were elected to the Fono Ekepule (Niue Assembly) out of a total of 10 female candidates.

1393 Initial report under the Convention on the Rights of the Child was due in 1998, but not submitted until 2010.

1394 On 10 November 1988, the Government of New Zealand lodged a Declaration with the Secretary-General of the United Nations recognising that Niue has exclusive competence to implement international treaties (United Nations General Assembly LE 222 New Zealand). Prior to this, Niue considered itself a party to international treaties by virtue of New Zealand's ratification. The Government of Niue now has the exclusive capacity to ratify or accede to treaties and may also be included as a party to a treaty ratified by New Zealand upon the express request of the Niuean government.

1395 Parliamentary Counsel Office. Niue Constitution Act (NZ) 1974, Section 3. Available at: <http://www.legislation.govt.nz/act/public/1974/0042/latest/DLM412793.html> (accessed 25 June 2019).

1396 Ibid, Section 6.

1397 1988 Declaration to the United Nations General Assembly LE 222 (New Zealand). Not available online.

1398 Parliamentary Counsel Office. Niue Constitution 1974, Section 16. Available at: <http://www.legislation.govt.nz/act/public/1974/0042/latest/DLM412793.html> (accessed 25 June 2019).

1399 Government of Niue. <http://www.paclii.org/nu/government.html> (accessed 20 August 2019).

1400 United Nations in the Pacific 2017. United Nations Pacific Strategy 2018–2022. Available at: https://www.unicef.org/about/execboard/files/Final_UNPS_2018-2022_Pacific.pdf

Judicial system and administration of justice

The 1974 Constitution is the supreme law of Niue. Section 4 of the Interpretation Act 2004 states that the sources of law for Niue are the constitution, Acts of the Niue Assembly, regulations, Niuean customs, insofar as it relates to land, and common law of Niue. Amendments to the constitution made in 1992 reduced overarching protections for human rights and fundamental freedoms. During the amendments process, the government considered whether to include human rights provisions but chose not to.¹⁴⁰¹

The Supreme Court of New Zealand is the highest judicial branch. The 1992 Constitutional Amendment Act saw the merging of the Land Court into the general section of the High Court of Niue. The High Court administers the law and has full civil and criminal jurisdiction to fulfil this mandate.¹⁴⁰² Appeals on substantial questions of law may be heard, with the leave of the High Court, in the Court of Appeal of New Zealand.¹⁴⁰³ The Land Court has jurisdiction to hear all matters related to land and property rights in Niue.¹⁴⁰⁴ The Land Appellate Court has the jurisdiction and powers to hear appeals from the Land Court.¹⁴⁰⁵

Access to justice and the right to remedy

Niueans have limited access to justice because there are few local lawyers and no legal aid system.¹⁴⁰⁶ Access to justice is also impacted by the Department of Justice's limited human resources due to difficulties finding appropriately qualified candidates, which effectively prevents the department from carrying out key aspects of its mandate.¹⁴⁰⁷ The High Court Annual Report 2013–2014, which is the most recent, identified that a decrease in the number of civil applications were filed and the report suggested that the existing court registry processes be improved to remove barriers to access to justice.¹⁴⁰⁸ The report also highlighted that the total number of criminal cases increased annually and that there need to be improvements in the court registry process due to the increasing case load. Identifying and removing all barriers for access to justice was also proposed.¹⁴⁰⁹

In 2013, the Committee on the Rights of the Child noted that a juvenile justice system was not in place, that there were no qualified public defenders available for young offenders, and that judges and police officers had not received training to effectively deal with juvenile offenders and child victims in a child-sensitive manner. The committee urged Niue to bring its juvenile justice system fully in line with the convention, especially in regard to the minimum age of criminal responsibility.¹⁴¹⁰

National Human Rights Institution (NHRI)

Niue does not have an NHRI. The New Zealand Human Rights Commission can provide assistance if requested by the government of Niue but does not have a statutory role in relation to the Realm Countries. The New Zealand commission has expertise on treaty reporting obligations and could assist Niue to report, if requested.¹⁴¹¹ The Committee on the Rights of the Child's concluding observations to the 2013 initial report on Niue make reference to General Comment No. 2 on the role of independent NRHIs in the protection and promotion of the rights of the child and recommends that Niue make all possible efforts to set up a mechanism to independently and impartially monitor the implementation of the convention and to receive and address complaints from children.¹⁴¹²

1401 New Zealand Human Rights Commission. <https://www.hrc.co.nz/files/8914/2398/5044/Commission-role-in-Pacific-realm-nations-for-web.pdf> (accessed 22 June 2019).

1402 Parliamentary Counsel Office. Niue Constitution, section 37. Available at: <http://www.legislation.govt.nz/act/public/1974/0042/latest/DLM412793.html> (accessed 25 June 2019).

1403 Ibid, section 51.

1404 Ibid, section 40.

1405 Ibid, section 43.

1406 Sisterson C. 2014. Bringing justice to Niue, Canterbury Tales, June 2014, 20 (5). Available at: <https://www.lawsociety.org.nz/law-society-services/law-society-branches/canterbury-westland/canterbury-tales/Canterbury-Tales-June14.pdf> (accessed 9 July 2019).

1407 Department of Justice, Lands and Survey, Government of Niue. Annual Report 2011–2012. Available at: <http://www.paclii.org/nu/court-annual-reports/2011-2012.htm> (accessed 9 July 2019).

1408 PACLII website. <http://www.paclii.org/nu/court-annual-reports/2013-2014-hcar.html> (accessed 27 June 2019).

1409 Ibid.

1410 CRC/C/NIU/CO/1. Available at: <https://undocs.org/en/CRC/C/NIU/CO/1>

1411 Ibid.

1412 CRC/C/NIU/CO/1. Available at: <https://undocs.org/en/CRC/C/NIU/CO/1>

Security sector

The 1966 Niue Act allows a police officer to use reasonable force to conduct a search. There is no law regulating the use of force by police.¹⁴¹³

Refugees and asylum seekers

The 1951 Refugee Convention relating to the Status of Refugees and its 1967 Protocol have not been ratified by Niue. There is an Immigration Act 2011, however, it does not recognise the rights of refugees and asylum seekers. There are currently no refugees or asylum seekers in Niue.

Migration

The Immigration Act 2011 grants rights to immigrants who intend to work or provide services in Niue.¹⁴¹⁴ Part 5 of the Act states that a person who is illegally staying in Niue will be deported at any time. The deportee can be arrested by an immigration officer and kept in prison or another place by the Chief Immigration Officer until deportation.¹⁴¹⁵

According to IOM, migration remains at -1 in Niue due to out-migration to Australia and New Zealand.¹⁴¹⁶ Niueans are New Zealand citizens and can work and study in New Zealand. About 24,000 Niueans lived in New Zealand at the time of the 2011 Census.¹⁴¹⁷ Some young people sent back to Niue from overseas by parents or guardians as part of a rehabilitation process for antisocial behaviour have been reported to display negative behaviours that can impact negatively on the community.¹⁴¹⁸ No information could be found on reintegration programmes.

Human Trafficking, Forced Labour, and Contemporary Forms of Slavery

There does not appear to have been recent cases of trafficking in Niue. The Committee on the Rights of the Child's concluding observations recommended that Niue provide adequate laws and regulations for all child victims and witnesses of crimes such as abuse, domestic violence, abduction and trafficking, and that victims of these crimes are provided with protection as outlined in the CRC.¹⁴¹⁹ Niuean law recognises the illegal act of trafficking through the Terrorism Suppression and Transnational Crimes Act 2006. Section 36 of the Act states that a person is liable for up to 14 years imprisonment for engaging in trafficking in persons. Section 37 recognises the offence of trafficking in children and persons found engaging in trafficking of children are liable for imprisonment of up to 20 years.¹⁴²⁰ Nonetheless, a US Department of Labour report found that Niue's trafficking provision does not clearly criminalise domestic trafficking or trafficking of children in the absence of force, fraud or coercion, and does not criminalise the use, procurement or offering of children for prostitution, pornography or pornographic performances, nor does Niue criminalise the use of children in illicit activities, particularly the production and trafficking of drugs.¹⁴²¹

¹⁴¹³ Law on Police use of Force Worldwide. <https://www.policinglaw.info/country/niue> (accessed 27 June 2019).

¹⁴¹⁴ Pacific Islands Legal Information Institute. http://www.paclii.org/nu/legis/num_act/ia2011138/ (accessed 20 July 2019).

¹⁴¹⁵ Niue Immigration Act 2011. Available at: <http://www.gov.nu/wb/media/Act%20309%20Immigration%20Act%202011.pdf> (accessed 28 June 2019).

¹⁴¹⁶ IOM 2017. IOM Pacific Strategy 2017–2020. Available at: https://publications.iom.int/system/files/pdf/iom_pacific_strategy.pdf (accessed 29 June 2019).

¹⁴¹⁷ Ministry of Foreign Affairs and Trade. <https://www.mfat.govt.nz/en/countries-and-regions/pacific/niue/>

¹⁴¹⁸ CRC/C/NIU/CO/1. Available at: <https://undocs.org/en/CRC/C/NIU/CO/1>

¹⁴¹⁹ Ibid.

¹⁴²⁰ Government of Niue. http://www.gov.nu/wb/pages/legislation/niue-acts.php?searchresult=1&sstring=terrorism#wb_39 (accessed 19 July 2019).

¹⁴²¹ US Department of Labour. https://www.dol.gov/sites/dolgov/files/ILAB/child_labor_reports/tda2017/Niue.pdf (19 July 2019).

Civil society and human rights defenders

Niue has two principal statutes regulating civil society: the Incorporated Societies Act 1908 and the Charitable Trusts Act 1957 of New Zealand, which are part of the laws of Niue by virtue of the Niue Amendment Act 1968.¹⁴²² Niue does not appear to have a vibrant civil society; however, the Niue Island Umbrella Association of NGOs (NIUANGO) is a member of the regional NGO network and is reported to have 20 member organisations.¹⁴²³ Only limited information can be found but NIUANGO appears to be active in the Pacific Climate Action Network and the International Union for Conservation of Nature.¹⁴²⁴ There is a National Council of Women and National Youth Council but information on these is scarce.

Domestic law and human rights

The Niue Constitution does not protect any fundamental rights, such as the right to life or non-discrimination,¹⁴²⁵ and there are few domestic laws that protect and promote human rights in Niue. There are no labour laws, although the Public Service Regulations 2004 contains employment guidelines for employees of the public service.¹⁴²⁶ The Race Relations Act 1972 prohibits discrimination on the basis of colour, race, or ethnic or national origins, and provides that any person who incites racial disharmony is liable to imprisonment.¹⁴²⁷ The Family Law Code 2007 provides a few references to special protection for minors but does not define what age a minor or child is. The Family Law Code combines all laws relating to family law and general family legislation but has remained unchanged since 2007, despite the urgings of the Committee on the Rights of the Child.¹⁴²⁸

Human rights policies

Despite a weak policy environment, Niue was one of only two PICs to have achieved all Millennium Development Goals (MDGs) by the 2015 deadline, the other being the Cook Islands. The government has adopted several policy and strategic development plans to support sustainable development in Niue, which may contribute to the achievement of some of the SDGs, but are weak on human rights. The Niue National Strategic Plan 2016–2026¹⁴²⁹ has a guiding principle of “Promoting gender equality and human rights through equal opportunities”, but there is no strategy for how this will be achieved. The Niue Food and Nutrition Security Policy 2015–2019¹⁴³⁰ recognises food security as a human right, while the Niue Strategic Energy Road Map 2015–2025¹⁴³¹ is silent on human rights. The Niue Health Strategic Plan 2011–2021 acknowledges that the health sector needs to develop and implement its services taking into account the international context, including human rights conventions, the CRC and CEDAW,¹⁴³² but there is no information on how this will be achieved. The Committee on the Rights of the Child noted the limited human, financial and technical resources available to develop human rights policies but encouraged the government to seek out assistance, including from relevant international, regional and bilateral partners to assist Niue in implementing the CRC.¹⁴³³

1422 ICNL 2008. Civil society organisations in the small island states: A review of the enabling legal framework in the Cook Islands and Niue. Available at: http://www.icnl.org/research/library/files/Niue/Cooks-Niue_Report.pdf

1423 PIANGO. <http://www.piango.org/> (accessed 21 July 2019).

1424 IUCN. <https://www.iucn.org/content/iucn-oceania-welcomes-new-member-representing-niue-ngos> (accessed 21 July 2019).

1425 Parliamentary Counsel Office. <http://www.legislation.govt.nz/act/public/1974/0042/latest/DLM412793.html> (accessed 25 June 2019).

1426 Pacific Islands Legal Information Institute. http://www.paclii.org/cgi-bin/sinodisp/nu/legis/consol_sub/psr2004261/psr2004261.html?stem=&synonyms=&query=public%20service (accessed 25 June 2019).

1427 Government of Niue. Volume 3, Race Relations Act 1972 (Niue) Sections 3-9, 19. Available at: <http://www.gov.nu/wb/pages/legislation/niue-laws.php> (accessed 25 June 2019).

1428 CRC/C/NIU/Q/1/Add.1. Available at: <https://undocs.org/en/CRC/C/NIU/CO/1>

1429 Pacific Environmental Portal. <https://pacific-data.sprep.org/dataset/niue-national-strategic-plan-2016-2026>

1430 The Government of Niue and Karen Fukofuka 2015. Niue Food and Nutrition Security Policy 2015-2019. Available at: http://www.fao.org/fileadmin/user_upload/sap/docs/Niue%20Food%20and%20Nutrition%20Security%20Policy%202015-2019.pdf (accessed 25 June 2019).

1431 The Government of Niue and the Secretariat of the Pacific Community 2015. Niue Strategic Energy Road Map 2015–2025. Available at: http://prdrse4all.spc.int/system/files/niue_strategic_energy_road_map_2015-2025_updated_3.pdf (accessed 25 June 2019).

1432 Government of Niue. Health Strategic Plan 2011–2021. Available at: http://www.nationalplanningcycles.org/sites/default/files/planning_cycle_repository/niue/niue_health_strategic_plan_2011-2021.pdf (accessed 4 July 2019).

1433 CRC/C/NIU/CO/1. Available at: <https://undocs.org/en/CRC/C/NIU/CO/1>

Right to life, liberty and security of person

The Constitution of Niue does not contain provisions on fundamental rights and freedoms, including guarantees of a range of rights with respect to the criminal process.¹⁴³⁴

Equality and non-discrimination

The Committee on the Rights of the Child expressed deep concern over the lack of explicit prohibition of discrimination in the constitution and other laws.¹⁴³⁵ The most recent Household Income and Expenditure Survey (HIES), which was undertaken in 2002, showed that while there is no evidence of absolute poverty in Niue, relative hardship exists amongst 20% of households and there is a degree of inequality between the highest and lowest spending households. The HIES also showed a gender disparity in households headed by women, which was 25% of all Niuean households at the time, with 38% of households in the lowest quintile headed by a female. Additionally, a higher number of children were living in lower spending households (37%) compared to children in higher spending households (28%).¹⁴³⁶ Location was also a factor.

New Zealand's anti-discrimination laws do not apply to its territories, which include Cook Islands, Tokelau and Niue.¹⁴³⁷ The fakafifine of Niue, those born male identifying as female, represent diverse gender identities that existed before colonialism and is ingrained in the culture.¹⁴³⁸ There is no legal recognition of the gender identities of people residing in Niue, however, the country does allow people to legally change their name. The Committee on the Rights of the Child was particularly concerned that girls, children born out of wedlock and adopted children do not have the same right to inherit family land as other children and that migrant children are often discriminated against in the enjoyment of their rights to education, health and social security. The committee urged the State party to explicitly prohibit all forms of discrimination and repeal all legislation in respect of discrimination against girls, children with disabilities, children born out of wedlock, adopted children and migrant children.¹⁴³⁹

Freedom of information (FOI)

Niue's current legislation for FOI is contained in the Niue Act 1966. Anyone found to breach the Niue Act by disclosing without proper authority any official information is liable to imprisonment of up to three years.¹⁴⁴⁰ Most of the media is government-owned, apart from an independent newspaper. There are no reports of suppression of existing media content; however, in 2013 the Pacific Media Assistance Scheme (PACMAS) reported that an application for a radio frequency had been repeatedly ignored by the government licencing body, implying limitations on media competition.¹⁴⁴¹ The government provides free public WIFI across the country and in 2013 it was estimated that 83% of households accessed the internet,¹⁴⁴² indicating that Niueans have access to alternative sources of information and are active on social media platforms.¹⁴⁴³

Freedom of expression, association and peaceful assembly

The constitution does not guarantee the right to freedom of expression; however, the Niue Act 1966 and Race Relations Act 1972 place restrictions on what can be said or published. Section 19 of the Race Relations Act

1434 Journal of the South Pacific Law. Available at: <http://www.paclii.org/journals/fJSPL/vol08no1/1.shtml> (accessed 26 April 2019).

1435 CRC/C/NIU/CO/1. Available at: <https://undocs.org/en/CRC/C/NIU/CO/1>

1436 UNICEF Pacific 2005. Niue: A situation analysis of children, women and youth. Available at: https://www.unicef.org/pacificislands/Niue_Sitan_Report_Latest_.pdf.pdf (accessed 16 July 2019).

1437 Kaleidoscope Trust 2015. Speaking out 2015: The rights of LGBTI people across the Commonwealth. Available at: https://kaleidoscopetrust.com/usr/library/documents/main/2015_speakingout_241115_web.pdf

1438 OHCHR 2015. Pacific Free and Equal, Information Sheet, 2015. Available at: https://www.ohchr.org/Documents/Publications/UNFE_PacificCampaignInfoSheet-Aug2015.pdf (accessed 10 July 2019).

1439 CRC/C/NIU/CO/1. Available at: <https://undocs.org/en/CRC/C/NIU/CO/1>

1440 Ibid.

1441 Tacchi J. et al. 2013. PACMAS: state of media and communication report: regional. Available at: <https://pdfs.semanticscholar.org/84b7/29d20f11df4a96d0ddfeaf53abf7882d3f7b.pdf> (accessed 26 July 2019).

1442 Ibid.

1443 Ibid.

states that anyone found inciting racial disharmony will be imprisoned for up to three months.¹⁴⁴⁴ Section 187 of the Niue Act states that anyone found making statements that are constituted as libel or slander will be imprisoned for up to six months.¹⁴⁴⁵ Freedom to associate with one another is deemed to be part of Niuean society, and thus legislation to support this customary right of free association and peaceful assembly is generally considered unnecessary.¹⁴⁴⁶

Economic rights

Niue is a signatory to the Pacific Agreement on Closer Economic Relations (PACER) Plus, with Australia and New Zealand as the main trading partners. PACER Plus opened for signature on 14 June 2017 and has been signed by Australia, New Zealand and nine Pacific Islands Countries: Cook Islands, Kiribati, Niue, Samoa, Solomon Islands, Tonga, Tuvalu and Vanuatu. It is a comprehensive free trade agreement covering goods, services and investment. Negotiations on PACER Plus commenced in 2009 and concluded in Brisbane on 20 April 2017.¹⁴⁴⁷

Niue's Food and Nutrition Security Policy 2015–2019 is the first policy to recognise food security as a human right. There are six key result areas under the food security policy, which include the production and consumption of local foods. The mission of Niue's National Strategic Plan 2016–2026 is: "...to build a prosperous Niue responsibly and sustainably, to meet social and economic needs and development aspirations while preserving Taoga Niue culture and heritage values and protecting our environment". One of the strategic plan's guiding values incorporates human rights and equal opportunity for women and men. The strategic plan has seven development pillars: finance and economic development, governance, infrastructure, social services, environment and climate change, Taoga Niue and private sector. Under its finance and economic development pillar there is a focus on macroeconomic policy and investment which states that Niue will promote a strategic economic development agenda, focusing on Niue's exports of tourism, fisheries and agriculture. The infrastructure pillar identifies the development of quality, affordable and reliable ICT as an essential component of Niue's connection with the world.¹⁴⁴⁸

Right to health and education

Education is compulsory and free from the age of 5 to 16 years,¹⁴⁴⁹ with 100% enrolment and high retention rates. One of Niue's National Strategic Plan 2016–2026 seven development pillars is social services, which aims to foster good health through, "Healthy lifestyle choices with well supported health services, and food and nutrition security that is sufficient, safe, affordable and accessible", and education by providing, "Quality, nurturing education services for happy, healthy and vibrant children."¹⁴⁵⁰

Corporal punishment is legal in Niue, and according to the Global Initiative to End All Corporal Punishment of Children, Article 238 of the Niue Act 1966 states that common law applies, meaning that reasonable chastisement is an acceptable defence. The initiative also called for specific legislation to be enacted, prohibiting corporal punishment of children in all settings and by any adult.¹⁴⁵¹ The Committee on the Rights of the Child reported that the Education Act makes no reference to corporal punishment and corporal punishment is permitted in both primary and secondary schools.¹⁴⁵²

¹⁴⁴⁴ PACLII. http://www.paclii.org/cgi-bin/sinodisp/nu/legis/consol_act/rra1972148/rra1972148.html?stem=&synonyms=&query=race%20relations%20act (accessed 11 July 2019).

¹⁴⁴⁵ Ibid.

¹⁴⁴⁶ CRC/C/NIU/CO/1. Available at: <https://undocs.org/en/CRC/C/NIU/CO/1>

¹⁴⁴⁷ Department of Foreign Affairs and Trade. <https://dfat.gov.au/trade/agreements/not-yet-in-force/pacer/Pages/pacific-agreement-on-closer-economic-relations-pacer-plus.aspx> (accessed 4 July 2019).

¹⁴⁴⁸ Government of Niue. National Strategic Plan. Available at: <http://www.gov.nu/wb/> (accessed 25 July 2019).

¹⁴⁴⁹ Government of Niue. Volume 2, Education Act 1989 (Niue), Sections 24,19. Available at: <http://www.gov.nu/wb/pages/legislation/niue-laws.php> (accessed 5 July 2019).

¹⁴⁵⁰ Government of Niue. National Strategic Plan. Available at: <http://www.gov.nu/wb/> (accessed 5 July 2019)

¹⁴⁵¹ Global Initiative to End all Corporal Punishment of Children. <https://endcorporalpunishment.org/reports-on-every-state-and-territory/niue/> (accessed 10 July 2019).

¹⁴⁵² CRC/C/NIU/CO/1. Available at: <https://undocs.org/en/CRC/C/NIU/CO/1>

The vision of Niue's Health Strategic Plan 2011–2021 is "a healthy population, well supported by quality health services."¹⁴⁵³ A core target of the strategic plan is to reduce the rate of NCDs by at least 10% per annum. According to WHO, Niue's rate of NCDs has increased since 2013, including diabetes, stroke, cancers, and high rates of obesity (61%), hypertension (33.5%) and hyperglycaemia (38.4%).¹⁴⁵⁴ The Committee on the Rights of the Child in 2013 noted that there was an allocation of resources for free education and health for children; however, there was a lack of information on the allocation of resources for the implementation of the CRC, as well as a lack of monitoring and assessment on the impact of resources for the CRC. The committee recommended that Niue adopt a child-rights approach in the budget and allocate adequate budgetary resources towards education, in accordance with Article 4 of the CRC.¹⁴⁵⁵

Women's and children's rights

Niue's last general election was in May 2017 and 10 women stood for the common roll seats out of a total of 23 candidates. Out of the 10, five were elected into the Niuean Assembly, which at 25% of total seats and at the same percentage as the Cook Islands, is also the highest ratio for women in politics in the Pacific.¹⁴⁵⁶ This was an increase for women's representation in politics since the previous election when three women were elected to Parliament.

When New Zealand ratified CEDAW in 1985, the UN recognised Niue as a party to the treaty; however, in 1994 the UN recognised Niue as an independent treaty-making body, and according to Article 36 of the Niue Constitution Act 1974, no New Zealand legislation including international treaties apply to Niue unless the Niuean Assembly agrees. Since then, Niue has not ratified CEDAW due to gaps in Niuean legislation, including the lack of constitutional protection against discrimination based on sex or gender.¹⁴⁵⁷

According to the International Centre for Advocates Against Discrimination (ICAAD), the prevalence of domestic violence is high in Niue and intervention from police and teachers is lacking because it is considered to be a family matter.¹⁴⁵⁸ There is no data on prevalence because no cases have been reported to police since 2004.¹⁴⁵⁹ ICAAD reported that interviews with government officials and the police department suggested that intimate partner violence was more common than non-partner violence.¹⁴⁶⁰ Interviews also showed that gender bias, cultural practices and shame were factors preventing survivors from seeking help or a legal remedy.¹⁴⁶¹ Legislation was drafted to deal with family protection in 2012, and later, the Family Law Code 2007 and Family Protection Bill were combined to address outdated legislation from the Niue Act of 1966. The new bill awaits approval by the Niuean Assembly and has been under revision since at least 2017.¹⁴⁶²

In early 2016, SPC, Crosspower New Zealand and the Government of Niue developed a project to address youth employment and create opportunities to develop career paths for Niuean youth. Called Youth@Work, the initiative began in April 2016 with the aim to build young people's skills to run their own businesses and create vocational choices. The initiative was funded by the Queen's Young Leader's Programme in the United Kingdom.¹⁴⁶³

¹⁴⁵³ World Health Organization 2017. Niue-WHO Country Cooperation Strategy 2018–2022, WPRO/2017/DPM/016. Available at: <https://apps.who.int/iris/rest/bitstreams/1096368/retrieve> (accessed 10 July 2019).

¹⁴⁵⁴ Ibid.

¹⁴⁵⁵ CRC/C/NIU/CO/1. Available at: <https://undocs.org/en/CRC/C/NIU/CO/1>

¹⁴⁵⁶ Pacific Women in Politics. <https://www.pacwip.org/country-profiles/niue/> (accessed 13 July 2019).

¹⁴⁵⁷ Thomas E. (2017). Assessing gender-based violence in Niue. Available at <https://icaad.ngo/womens-rights/promote-access-to-justice/combatting-vaw-in-pics-reports/assessing-gender-based-violence-niue/> (accessed 26 July 2019).

¹⁴⁵⁸ Ibid.

¹⁴⁵⁹ Ibid.

¹⁴⁶⁰ Ibid.

¹⁴⁶¹ Ibid.

¹⁴⁶² Ibid.

¹⁴⁶³ Scoop Media. <http://www.scoop.co.nz/stories/WO1603/S00071/popular-youthwork-initiative-expands-to-niue.htm> (accessed 26 July 2019).

The Committee on the Rights of the Child in its concluding observations on the 2013 initial report of Niue noted that the Family Law Code incorporated all child-related laws,¹⁴⁶⁴ however, it was concerned with the delay of the review of the code to conform with CRC.¹⁴⁶⁵ The committee recommended that Niue develop a comprehensive National Policy on Children which would address children's issues and list all sectoral plans that cover children's issues.¹⁴⁶⁶ The committee noted the work of the National Coordinating Committee for the Convention on the Rights of the Child (NCCCRC) established in 1998 and made up of representatives from the government and communities; however, it noted a lack of information on the mandate and budget of the NCCCRC, which works on an ad hoc basis.¹⁴⁶⁷

Rights of persons with disabilities (PWDs)

Niue has not ratified CRPD. However, the Committee on the Rights of the Child welcomed the adoption of the Niue National Policy on Disability 2011, which expired in 2017, and noted the services for children with physical disabilities available in New Zealand as well as welfare benefits, although it expressed concern about several issues for children with disabilities. These were that the Niue Act uses derogatory language against girls with disabilities, identifying them as "idiots, imbeciles or of unsound mind" and the lack of professional support for children with disabilities, among others. The committee urged Niue to: adopt a human rights-based approach to disability and review all disability-related laws and policies to ensure protection for the rights of children with disabilities; repeal legal provisions that provide for lower sanctions for sexual crimes committed against children; and seek technical assistance from WHO and UNICEF to train professionals who work with children with disabilities, especially intellectual and learning disabilities.¹⁴⁶⁸ The Niue National Strategic Plan 2016–2026, under its social services pillar, recognises PWDs under the National, Sector and Village Development component, restating the importance of family and community to Niuean society, which includes support provided to PWDs.¹⁴⁶⁹

Climate justice

Pillar 5 of the Niue National Strategic Plan 2016–2026 is Environment and Climate Change and states that the government will work with all sectors of society to create sustainable development and ensure that all groups face the challenges of climate change in a coordinated manner.¹⁴⁷⁰ Pillar 5 also recognises that living sustainably begins at home and all Niueans are responsible for the sustainable use of the environment and natural resources.¹⁴⁷¹

According to Niue's Food and Nutrition Security Policy 2015–2019, the government acknowledges Niue's vulnerability to climate change. Furthermore, the Food Security Plan identified that when local crops in Niue were harvested using traditional methods, the crops were resilient in times of drought; however, traditional harvesting methods are no longer being used, undermining resilience to climate change, and so the preservation of traditional knowledge is required to ensure food security. Restoring traditional knowledge is included as a strategy.¹⁴⁷²

¹⁴⁶⁴ CRC/C/NIU/CO/1. Available at: <https://undocs.org/en/CRC/C/NIU/CO/1>

¹⁴⁶⁵ Ibid.

¹⁴⁶⁶ Ibid.

¹⁴⁶⁷ Ibid.

¹⁴⁶⁸ Ibid.

¹⁴⁶⁹ Government of Niue. National Strategic Plan. Available at: <http://www.gov.nu/wb/> (accessed 9 July 2019).

¹⁴⁷⁰ Ibid.

¹⁴⁷¹ Ibid.

¹⁴⁷² FAO 2015. Niue Food and Nutrition Security Policy 2015–2019. Available at: http://www.fao.org/fileadmin/user_upload/sap/docs/Niue%20Food%20and%20Nutrition%20Security%20Policy%202015-2019.pdf (accessed 11 July 2019).

The background features a large, abstract geometric pattern composed of blue and teal chevrons and diamonds, creating a sunburst effect.

COUNTRY CHAPTERS

PALAU

Palau

Key fact¹⁴⁷³

Capital city	Melekeok	Total land area	444 km2
Population (year)	21,516 (July 2018 est.) ¹⁴⁷⁴	Population growth % (year)	0.8 (2018) ¹⁴⁷⁵
GDP per capita (year)	USD 14,700 (2017 est.) ¹⁴⁷⁶	GNI per capita (Atlas method) (year)	USD 15,500 (2017) ¹⁴⁷⁷
Type of government	Constitutional government in free association with the United States with the President as head of state and head of government.		
Electoral system	First past the post. Democratic republic with directly elected executive and bicameral legislative branches.		
Number of members of parliament (MPs): total/female (year)	29 total/4 female MPs (2019). ¹⁴⁷⁸ Ratio of women 13.8%.		
Religions: by % of population (year)	Roman Catholic 49%; Protestant 23%; Modekngei 9% (indigenous to Palau); the Seventh Day Adventist (5%); and several smaller denominations (2018). ¹⁴⁷⁹		
Ethnic groups: by % of population (year)	Palauan (Micronesian with Malayan and Melanesian admixtures) 73%, Carolinian 2%, Asian 21.7%, Caucasian 1.2%, other 2.1% (2015 est.)		
Languages: by % of population (year)	Palauan (official on most islands) 65.2%, other Micronesian 1.9%, English (official) 19.1%, Filipino 9.9%, Chinese 1.2%, other 2.8% (2015 est.) Note: Sonsorlese is official in Sonsoral; Tobian is official in Tobi; Angaur is official in Angaur		
Life expectancy: male/female (year)	73.6 years male: 70.4 years female: 77 years (2018 est.) ¹⁴⁸⁰	% youth aged 15–24 years: total male/female (year)	16.4%: male 1768 / female 1760 (2018 est.) ¹⁴⁸¹
% disability: total male/female (year)	7.8% (2015) ¹⁴⁸²		

1473 Unless otherwise specified, basic facts are taken from: <https://www.spc.int/our-members>

1474 CIA World Factbook. <https://www.cia.gov/library/publications/resources/the-world-factbook/geos/ps.html> (accessed 21 August 2019).

1475 UN Data. <http://data.un.org/en/iso/pw.html> (accessed 21 August 2019).

1476 CIA World Factbook. Note. 1432.

1477 The World Bank Data. <https://data.worldbank.org/indicator/NY.GNP.PCAP.CD?end=2018&locations=PW&start=2002&view=chart> (accessed 21 August 2019).

1478 Pacific Women in Politics. <https://www.pacwip.org/country-profiles/palau/> (accessed 21 August 2019).

1479 CRPD/C/PLW/1. Available at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRPD%2FC%2FPLW%2F1&Lang=en

1480 CIA World Factbook. Note. 1432.

1481 Ibid.

1482 7.8% (1279) of the population aged 5 and over are classified as having some disability. Disaggregation of the 'some disability' category is not provided; however, more are female and a majority of those are over 50 years of age. UNICEF Pacific, Office of Planning & Statistics and Pacific Community 2017. 2017 Palau disability report: An analysis of 2015 Census of population, housing and agriculture. Available at: https://www.unicef.org/pacificislands/Palau_Disability_Report.pdf

International human rights treaty ratification and reporting obligations

Treaty	Date of signature (S) or ratification (R)	Reservations	Latest report submitted	Reporting status
ICESCR	20 September 2011 (S)			
ICCP	20 September 2011 (S)			
ICERD	20 September 2011 (S)			
CEDAW	20 September 2011 (S)			
CAT	20 September 2011 (S)			
CRC	4 August 1995 (R)		1 st and 2 nd combined report 27 July 2016.	3 rd to 7 th combined reports due 3 Sep 2022.
ICMW	20 September 2011 (S)			
CRPD	11 June 2013 (R)		1 st report 2 Feb. 2018.	Due to appear 2020.
CPED	20 September 2011 (S)			
OP-CRPD	11 June 2013 (R)			

Special Procedures:

Standing invitation issued 3 May 2011.¹⁴⁸⁴

Country visits:

No visits by Special Procedures of the Human Rights Council until July 2019.

Universal Periodic Review:

1st cycle: November 2011; 2nd cycle: January 2016; 3rd cycle: 2021.

International Criminal Court (ICC):

Not a State Party to the Rome Statute of the ICC.¹⁴⁸⁵

System of government

The Republic of Palau (Belau in local language) approved its constitution in 1981 and is a democratic republic with an elected executive and bicameral legislative branches. Palau is a constitutional government in free association with the US. The Compact of Free Association was entered into with the US on 1 October 1994, marking Palau's emergence from trusteeship to independence.¹⁴⁸⁶ Palau has three branches of government: the executive, the legislature and the judiciary. The President is both the head of state and the head of government and serves a four-year term.

The *Olbiil Era Kelulau*, Palau's national legislative body, is a bicameral National Congress made up of the House of Delegates and the Senate. Both houses are given equal standing under the constitution, although the Senate is accorded the authority of advice and consent to presidential appointments. There are 29 members of the *Olbiil Era Kelulau*, with 16 delegates representing the 16 states of Palau, 13 senators representing the residential population, and each member serving a four year term.¹⁴⁸⁷ The Council of Chiefs, which is comprised of the highest traditional chiefs from each of the 16 states and acts as an advisory body to the President, is consulted on matters concerning traditional laws and customs¹⁴⁸⁸ and exercises informal influence over government policy, which is widely seen as a positive check on potential mismanagement or abuse of power by elected officials.¹⁴⁸⁹

1484 OHCHR. Standing invitations. https://spinternet.ohchr.org/_layouts/15/SpecialProceduresInternet/StandingInvitations.aspx (accessed 21 June 2019).

1485 The State Parties to the Rome Statute. https://asp.icc-cpi.int/en_menus/asp/states%20parties/Pages/the%20states%20parties%20to%20the%20rome%20statute.aspx#P (accessed 21 June 2019).

1486 CRPD/C/PLW/1. Note. 1437.

1487 Government of Palau. <https://www.palaugov.pw/about-palau/constitution/> (accessed 21 August 2019).

1488 CRPD/C/PLW/1. Note. 1437.

1489 Freedom House. Freedom in the World 2018. <https://freedomhouse.org/report/freedom-world/2018/palau> (accessed 21 June 2019).

Every eight years a reapportionment commission reviews the size of the Senate and electoral system.¹⁴⁹⁰ In 2016, in response to a citizen petition, the Supreme Court ruled that due to a population decrease, the number of senators should be reduced from 13 to 11; however, the court restored the original number after an appeal in October of that year.¹⁴⁹¹

At the 2016 election, four women were successful; two in the Senate and two in the House of Delegates.¹⁴⁹² Historically, women's representation in the National Congress has been limited and prior to 2008 there were no female members of Congress.¹⁴⁹³ The overall ratio of women to men is 13.8%, with 12.5% in the House of Delegates and 22% in the Senate. Members of the Cabinet are appointed by the President with the advice and consent of the Senate and serve at the will of the President (Article VIII [Section 5] of the Constitution).

Judicial system and administration of justice

The judiciary is comprised of the Supreme Court and its Appellate Division, the National Court, the Court of Common Pleas and the Land Court. The Supreme Court has a Chief Justice and three associate justices. Judges are appointed to life terms by the President with approval of the National Congress. Each of Palau's 16 states also elects its own governor and legislature.¹⁴⁹⁴ The judiciary is independent of the executive and legislative branches.

The Palau Constitution is the supreme law of the country. It establishes the fundamental rights of every citizen and the powers of government, ensures checks and balances among the three separate independent branches so that government power will not exceed its jurisdiction, and gives recognition to traditional rights. Any law, act or agreement to which the government is a party shall not conflict with the constitution and shall be invalid to the extent of such conflict.¹⁴⁹⁵ Two UN Treaties, CRC and CRPD, have been ratified but have not been fully incorporated into the Palau National Code.¹⁴⁹⁶ In 2018, the Committee on the Rights of the Child recommended that the government expeditiously bring existing legislation, such as the Juveniles Act, into conformity with the CRC.¹⁴⁹⁷

Access to justice and the right to remedy

The Office of the Ombudsman assists individuals with grievances regarding services, programmes or activities of the government.¹⁴⁹⁸ The Ombudsman's Office has reportedly asked for a clearer legal mandate with greater independence as it currently operates as part of the President's Office under an executive order.¹⁴⁹⁹ The Attorney-General (AG) is appointed by the President as the Chief Legal Officer for Palau. The Office of the AG is under the Ministry of Justice and is mandated by law to provide legal services to the Republic.¹⁵⁰⁰

The Micronesian Legal Services Corporation (MLSC) provides equal access to justice and free civil legal assistance to qualifying low-income people. MLSC was established in 1970 and has offices throughout Micronesia with its central headquarters in the Commonwealth of the Northern Mariana Islands. The office in Palau provides legal services for child support, marriage, divorce, probation, contracts, land matters, small claims and wills.¹⁵⁰¹

¹⁴⁹⁰ Ibid.

¹⁴⁹¹ Ibid.

¹⁴⁹² Pacific Women in Politics. <https://www.pacwip.org/country-profiles/palau/> (accessed 21 August 2019).

¹⁴⁹³ Op cit.

¹⁴⁹⁴ Government of Palau. <https://www.palaugov.pw/about-palau/> (accessed 21 August 2019).

¹⁴⁹⁵ CRPD/C/PLW/1. Note. 1437.

¹⁴⁹⁶ A/HRC/WG.6/24/PLW/1. Available at: <https://undocs.org/A/HRC/WG.6/24/PLW/1>

¹⁴⁹⁷ CRC/C/PLW/CO/2. Available at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC/C/PLW/CO/2&Lang=En

¹⁴⁹⁸ A/HRC/WG.6/24/PLW/1. Available at <https://undocs.org/A/HRC/WG.6/24/PLW/1>

¹⁴⁹⁹ Freedom House. Freedom in the World 2018 website. Note. 1446.

¹⁵⁰⁰ A/HRC/WG.6/24/PLW/1. Available at: <https://undocs.org/A/HRC/WG.6/24/PLW/1>

¹⁵⁰¹ Ibid.

In 2016, MLSC represented 11 individuals against two employers in their labour claims, which included human trafficking elements.¹⁵⁰² The Office of the Public Defender is placed under the Ministry of State. The Public Defender is mandated by the constitution to represent all indigent persons charged with a crime. The Public Defender's Office also takes a limited number of civil and family law cases, resources permitting.¹⁵⁰³

National human rights institution (NHRI)

The Office of the Ombudsman was established by Executive Order 203 and although it does not have decision-making authority, it reviews grievances and provides reports to the President thereon.¹⁵⁰⁴ Executive Order 368 created a Reporting Committee on UN Conventions on Human Rights. The duties of the committee are limited to compliance with the reporting obligations under international treaties.

Recommendations for the establishment of an NHRI were made to Palau during the UPR cycles and it was acknowledged by the 9th Olbiil Era Kelulau (2013–2017) that a focussed and permanent office to handle human rights was needed. The Committee on the Rights of the Child in 2018 recommended that Palau ensure that either the national human rights committee or the Office of the Ombudsman has a specific mechanism for monitoring children's rights that can receive, investigate and address complaints concerning and made by children, and ensure independence of those institutions in full compliance with the Paris Principles.¹⁵⁰⁵

Security sector

Article IV, Section 4 of the Palau Constitution establishes that: "Every person has the right to be secure in his person, house, papers and effects against entry, search and seizure." Furthermore, pursuant to Article IV of the Constitution, the government shall take positive action to protect the safety and security of persons and property. The Ministry of Justice includes divisions for public security, police functions and maritime law enforcement.¹⁵⁰⁶

Law enforcement agencies maintain internal order and instances of abuse or impunity are rare, although overcrowding in the country's limited detention facilities is a problem.¹⁵⁰⁷ Authorities generally uphold legal safeguards against arbitrary arrest and detention, and trial proceedings ensure due process.¹⁵⁰⁸ The Law on Police Use of Force Worldwide organisation recommends that Palau should amend national law on police use of force to comply with international law, incorporating a duty to use only proportionate force.¹⁵⁰⁹ Current provisions for the use of deadly force are more permissive than international law allows and there is no independent civilian police oversight body.¹⁵¹⁰ Military defence is ceded to the US government as part of the Compact of Free Association.

Refugees and asylum seekers

Palau has not acceded to the 1951 Convention relating to the status of Refugees and its 1967 Protocol, nor is it a State party to the 1954 Convention relating to the Status of Stateless Persons or to the 1961 Convention on the Reduction of Statelessness. In relation to nationality, the Committee on the Rights of the Child in 2018 was concerned about the requirement that, in order to obtain citizenship, children born in Palau must have at least one parent of recognised Palauan ancestry because this may lead to some children born to non-Palauan parents becoming stateless.¹⁵¹¹

¹⁵⁰² UN Women 2019. Republic of Palau National Review Beijing +25. Available at: <https://www.unwomen.org/-/media/headquarters/attachments/sections/csw/64/national-reviews/palau.pdf?la=en&vs=4055> (accessed 10 August 2019).

¹⁵⁰³ A/HRC/WG.6/24/PLW/1. Available at: <https://undocs.org/A/HRC/WG.6/24/PLW/1>

¹⁵⁰⁴ Ibid.

¹⁵⁰⁵ CRC/C/PLW/CO/2. Note. 1454.

¹⁵⁰⁶ CIA World Factbook. Note. 1432.

¹⁵⁰⁷ Freedom House. Freedom in the World 2018. Note. 1446.

¹⁵⁰⁸ Ibid.

¹⁵⁰⁹ The Law on Police Use of Force Worldwide. <https://www.policinglaw.info/country/palau> (accessed 10 September 2019).

¹⁵¹⁰ Op cit.

¹⁵¹¹ CRC/C/PLW/CO/2. Note. 1454.

Migration

In 2018, 79.9% of the population lived in urban areas and the rate of urbanisation was estimated to be 1.77% annually,¹⁵¹² driven mostly by movement of people from remote areas in search of access to services and employment. Climate issues such as droughts have also driven internal migration.

Roughly a third of the population are foreign nationals who do not have political rights in Palau as there are no provisions for naturalisation.¹⁵¹³ Foreign nationals sometimes face discrimination regarding employment, education and other matters.¹⁵¹⁴ In 2013, 4569 people migrated to Palau and 5390 people left Palau. Arrivals were likely to be for employment. Most migrants were from the Philippines (2997), followed by China (519), FSM (439), US (355) and Guam (259). Departures were to the US (2966), Guam (1447), Northern Marianas (630), Vietnam (207) and FSM (140).¹⁵¹⁵ More recent information could not be found.

Through the Compact, Palauans can travel freely to the US and other US territories, and citizens of those countries can travel freely to Palau for indefinite periods. Palauans migrate to the US for employment opportunities and education. It is commonly estimated that around a third of the Palauan population lives in the diaspora. In 2017, 14 Palauans were deported from the US for having criminal convictions.¹⁵¹⁶

At the 2016 UPR, Palau acknowledged the importance of ratifying the CRMW, noting that progress had been made towards migrant workers' rights, such as the increase in minimum wage and its universal application.¹⁵¹⁷ The UN considers that Palau's increased involvement at the regional and international levels will contribute to incorporating and harmonising regional efforts to safeguard national and border security, manage migration and ensure international standards of refugee protection.¹⁵¹⁸

Human Trafficking, Forced Labour, and Contemporary Forms of Slavery

Palau has adopted legal measures and enforcement strategies to combat human trafficking in the Penal Code, which includes trafficking and smuggling offences, as well as child exploitation offences. Palau has been encouraged to ratify the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organised Crime.¹⁵¹⁹ The Palau National Code Annotated (PNCA) identifies and defines crimes that fall under exploitation, violence and abuse, along with applicable punitive measures. Sexual and trafficking offences are explicitly laid out in the PNCA.

The 2019 Trafficking in Persons Report rated Palau as a US State Department ranked Tier 2 country because the government does not fully meet the minimum standards for the elimination of trafficking, although overall it is increasing its efforts compared to the previous reporting period.¹⁵²⁰ These include: the national action plan; funding an assessment of the trafficking situation in Palau and the government's anti-trafficking infrastructure; creating a temporary shelter for victims; and establishing a trafficking hotline. Only one trafficker was convicted and subsequently sentenced to 25 years' imprisonment, which represents a departure from previous cases in which courts had imposed fully suspended sentences. Key areas where minimum standards had not been met were a lack of standard operating procedures for victim identification and referral to services, insufficient protection services, lack of basic services, such as medical and psychological care, and not investigating indicators of trafficking in labour recruitment and contract violations experienced by many foreign workers.¹⁵²¹

¹⁵¹² CIA World Factbook. Note. 1432.

¹⁵¹³ Freedom House. Freedom in the World 2018. Note. 1446.

¹⁵¹⁴ Ibid.

¹⁵¹⁵ United Nations. <https://esa.un.org/miggmgprofiles/indicators/files/Palau.pdf> (accessed 10 September 2019).

¹⁵¹⁶ Department of Homeland Security. <https://www.dhs.gov/immigration-statistics/yearbook/2017/table41> (accessed 10 September 2019).

¹⁵¹⁷ A/HRC/32/11. Available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/076/66/PDF/G1607666.pdf?OpenElement>

¹⁵¹⁸ A/HRC/WG.6/24/PLW/2. Available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G15/265/80/PDF/G1526580.pdf?OpenElement>

¹⁵¹⁹ OHCHR. https://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/32/11

¹⁵²⁰ US Department of State 2019. Trafficking in persons report June 2019. Available at: <https://www.state.gov/wp-content/uploads/2019/06/2019-Trafficking-in-Persons-Report.pdf> (accessed 10 August 2019).

¹⁵²¹ Op cit.

The Ministry of Justice's anti-trafficking office investigated 11 potential cases of labour trafficking and exploitation of a trafficked person, one of which was investigated for soliciting sex acts from a sex trafficking victim, compared with 14 potential trafficking case investigations in 2017 and none in 2016. Five of the cases were referred to the AG's Office and all remained under review at the end of the reporting period.¹⁵²² The AG's Office did not initiate prosecutions or secure convictions of complicit officials during the year.¹⁵²³ Palau also established a subcommittee of the national human rights task force focusing on human trafficking cases and addressing child protection issues.¹⁵²⁴

Domestic law and human rights

The Palau Family Protection Act 2012 was reviewed in 2017 and an implementation plan is being actioned. A Maternity Leave Bill passed its second reading in 2019.¹⁵²⁵ Also in 2019, child protection legislation was drafted and is currently under review by relevant ministry and partners,¹⁵²⁶ and a review of labour laws to align with ILO Conventions was underway.¹⁵²⁷

On 17 February 2016, the President signed the Republic of Palau Public Law 9–57, which allocates 10% of the revenues derived from import tax on alcoholic beverages and excise tax on tobacco to pay for the healthcare coverage subscription costs of non-working citizens who are either over the age of 60 or PWD. Additionally, the law allocates 10% of revenues acquired from this tax to fund the newly established NCD Fund.¹⁵²⁸ Various Acts support disability rights including the Social Security Act, Access to Government Buildings for Persons with Disabilities and the Labour Disabled Persons Anti-Discrimination Act.¹⁵²⁹ The government report to the CRPD Committee in 2018 noted inconsistencies in defining the term disabilities in existing law and policies, and that revision is needed to ensure that the definition is consistent to that stated in the National Disability Inclusive Policy 2017.¹⁵³⁰

Human rights policies

A number of human-rights related policies and strategies have been established. The Gender Mainstreaming Policy came into force in April 2018. An action plan is being implemented for the Palau National Youth Policy, and a public-school policy allows pregnant students to remain in school. A Child Protection Action Plan is being implemented, and there is a Non-Communicable Disease Prevention and Control Strategic Plan of Action 2015–2020. The Climate Change Policy has a five-year Action Plan 2015–2020 and a Water Shed Alliance Action Plan 2018–2022 was developed.¹⁵³¹ Along with the National Disability Inclusive Policy 2017, there are social assistance programmes for persons with disabilities who are unable to work to support themselves, and free health insurance is available for citizens over 60 years old including those with disabilities.¹⁵³²

Right to life, liberty and security of person

Article IV (Section 6) of the Constitution of Palau declares the right of anyone to life, liberty and security; however, protections under Article IV do not appear to reflect practice.

¹⁵²² Ibid.

¹⁵²³ Ibid.

¹⁵²⁴ CRC/C/PLW/CO/2. Note. 1454.

¹⁵²⁵ UN Women 2019. Republic of Palau National Review Beijing +25. Note. 1459.

¹⁵²⁶ Ibid.

¹⁵²⁷ Ibid.

¹⁵²⁸ CRPD/C/PLW/1. Note. 1437.

¹⁵²⁹ UNICEF Pacific, Office of Planning & Statistics and Pacific Community 2017. 2017 Palau disability report: An analysis of 2015 Census of population, housing and agriculture. Available at: https://www.unicef.org/pacificislands/Palau_Disability_Report.pdf

¹⁵³⁰ CRPD/C/PLW/1, para 46. Note. 1437.

¹⁵³¹ UN Women 2019. Republic of Palau National Review Beijing+25. Note. 1459.

¹⁵³² UNICEF Pacific, Office of Planning & Statistics and Pacific Community 2017. Note. 1486.

A 2017 UNICEF situation analysis reported that traditional gender roles support and facilitate violence against women, girls and marginalised groups, including children with disabilities.¹⁵³³ The situation analysis found that existing safeguards for children in conflict with the law fall short of Palau's obligations under the CRC and international standards.¹⁵³⁴ There are no limits on arrest, police custody and use of force or for pre-trial diversion of children, no explicit statement of the principle of deprivation of liberty as a last resort and for the shortest appropriate period, a limited range of non-custodial alternatives at the pre-trial stage and after conviction, and children's right to be separated from adult prisoners in places of detention is not absolute.¹⁵³⁵ A Juvenile Justice Office is established within the Ministry of Justice, but there are no specialised police or courts to handle cases involving children in conflict with the law or child victims and witnesses.¹⁵³⁶ The Ministry of Health has a Victims of Crime Assistance programme which provides assistance to children who are physically and sexually abused or without parental care, but it has only two staff members.¹⁵³⁷ The situation analysis went on to say that at its 2016 State Party Report to the Committee on the Rights of the Child, Palau advised that there is no effective referral system for child protection cases.¹⁵³⁸ According to the report, the lack of data on several key child protection issues, including child marriage, child labour and child exploitation, means that these critical issues are not fully understood.¹⁵³⁹

Equality and non-discrimination

Under the Constitution of Palau, women are afforded equality of opportunity with men; however, the government acknowledged inequalities in practice at the UPR review in 2016, asserting that while Palau had yet to ratify CEDAW, many positive steps had been taken. For example, Palau has been exploring ways to improve services for victims of gender-based violence and support for women in leadership positions has increased with a number of advocacy programmes and the establishment of the Centre for Women Empowered Belau.¹⁵⁴⁰

Consensual same-sex sexual activity for females has never been illegal but only became legal for males in 2014. Comments by the President in July 2019, where he appeared to support overturning his country's 2008 ban on same-sex marriage, were welcomed by Pacific LGBTI activists.¹⁵⁴¹

The Disabled Persons Anti-Discrimination Act defines disability as "a physical or mental impairment that substantially limits one or more person's major life activities."¹⁵⁴² The Act prohibits employment discrimination, and also provides for the initiation of affirmative action practices for persons with disabilities seeking employment in the National Public Service System.¹⁵⁴³ Implementation of the Act has been challenging due to the lack of awareness of the legislation.¹⁵⁴⁴ The Palau National Disability Inclusive Policy 2015–2020 focuses on inclusion and equality for persons with disabilities.

The Committee on the Rights of the Child in 2018 was concerned that the constitution does not explicitly prohibit discrimination based on sexual orientation and gender identity, and that girls, children with disabilities, and children of non-Palauan descent are subject to discrimination and are more exposed to exclusion.

1533 United Nations Children's Fund (UNICEF), Pacific Office Situational Analysis of Children in the Pacific Island Countries 2017 available at <https://www.unicef.org/pacificislands/media/661/file/Situation-Analysis-Pacific-Island-Countries.pdf>

1534 Ibid.

1535 Op cit.

1536 Ibid.

1537 Ibid.

1538 Op cit.

1539 Ibid.

1540 A/HRC/32/11. Available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/076/66/PDF/G1607666.pdf?OpenElement>

1541 ABC 2019. Available at: <https://www.abc.net.au/radio-australia/programs/pacificbeat/lgbtq-leader-welcomes-palau-president-stance-on-samesex-marriage/11355172> (accessed 10 September 2019).

1542 Disabled Person's Anti-Discrimination Act. Available at: <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2FPPRiCAqhKb7yhsmWDdGv%2BXHi0XaVRqwVfFATT6m8Htdbe%2FYWAPFFgVOB057LX4w1VuVD1DneqNOVzbYf1EkzmXUMrhikt3WA8I%2F2S4KVhKrJCLEiS766b%2Fuq> (accessed 21 June 2019).

1543 Ibid.

1544 CRPD/C/PLW/1. Note. 1437.

The committee recommended that Palau revise the constitution to explicitly prohibit discrimination on the basis of sexual orientation and gender identity and align other laws in that regard to ensure that discrimination on those grounds is prohibited.¹⁵⁴⁵

Freedom of information, expression, association and peaceful assembly

Freedom of assembly is reportedly protected by the constitution and respected in practice.¹⁵⁴⁶ A 2014 Open Government Act provides for public access to official documents and hearings.¹⁵⁴⁷ Union membership and activity are low; however, workers can freely organise and bargain collectively, although there are no laws specifically regulating trade unions or strikes, or prohibiting anti-union discrimination.¹⁵⁴⁸

Constitutional guarantees of religious freedom are upheld in practice, although religious organisations are required to register as non-profit organisations and foreign missionaries are required to obtain a permit.¹⁵⁴⁹ Freedom of the press is respected. There are several independent news outlets, including newspapers and broadcasters, which often struggle financially. Regional and international news services are also available. Internet access has been hampered by high costs and lack of connectivity outside the main islands.¹⁵⁵⁰ There are no constraints on political discussion and the government does not monitor personal communications.¹⁵⁵¹

Economic rights

The Beijing+25 report highlighted that Palauan women perceive inequality in the workplace based on lower overall salaries of women compared to men, and that male domination of key decision-making positions was a barrier. Palauan women make up 66% of the professional occupations, such as health and education sector roles, business administrators, and almost a third of managerial positions; however, the 2014 Household Income and Expenditure Survey found that women earn 18% less than men, in part because teaching and nursing are lower paid jobs compared to engineers, architects and lawyers.¹⁵⁵² The highest income gap was in rural areas, where 30% of households were headed by women.¹⁵⁵³ Palau has macroeconomic policies to address the needs of women and girls living in poverty, such as low interest loans for development in fisheries, agriculture and small businesses, although there is no specific strategy or action plan for implementation.¹⁵⁵⁴

A 2017 Asian Development Bank (ADB) report made a number of recommendations for improving women's economic empowerment, such as: developing legislation that mandates women's and men's equal access to employment, decent work and control of economic resources; legislation to protect women from harassment in the workplace; business training for women entrepreneurs; training to assist women to obtain finance; and increasing awareness on the damaging impacts of domestic violence and its economic implications.¹⁵⁵⁵

The Palau Chamber of Commerce supports women's economic empowerment and the Small Business Development Centre provides training and mentoring to women entrepreneurs. Seniors and vulnerable individuals have access to an economic empowerment programme at the Bureau of Aging, Disability and Gender, and protections are said to be in place for pregnant women, breastfeeding women, women on maternity leave, women with disabilities, women working in the informal economy and women migrant workers.¹⁵⁵⁶

1545 CRC/C/PLW/CO/2. Note. 1454.

1546 Freedom House. Freedom in the World 2018 website. Note. 1446.

1547 Ibid.

1548 Ibid.

1549 Ibid.

1550 Ibid.

1551 Ibid.

1552 UN Women 2019. Republic of Palau National Review Beijing+25. Note. 1459.

1553 Ibid

1554 Ibid.

1555 Ibid.

1556 UN Women 2019. Republic of Palau National Review Beijing +25. Note. 1459.

Palau's social security system ensures a measure of security for persons in their old age or during disability including a monthly benefit of a cash transfer.¹⁵⁵⁷

Palau has achieved seven of the eight MDGs and plays a leadership role in safeguarding the environment for future generations.¹⁵⁵⁸ Other achievements include universal access to quality health care and education, reduction of poverty amidst a growing economy, a sustainably financed nationwide network of protected areas, and enduring regional and global partnerships.¹⁵⁵⁹ Nonetheless, challenges remain due to vulnerabilities as a small island developing state, global economic forces and climate change. Palau has embraced the SDGs at the highest political level. After mapping global targets and indicators against domestic priorities, Palau identified 95 targets that comprise the national SDGs framework. There are many SDG targets that Palau is on track to realise, although additional effort will be needed to maintain good progress.¹⁵⁶⁰

Right to health and education

Palau developed the Non-Communicable Disease (NCD) Strategic Plan 2015–2020 to address the occurrence of such diseases and their effects on communities. In 2015, Executive Order No. 379 was signed, which authorised the establishment of a coordination mechanism for NCDs.¹⁵⁶¹ NCDs cause over 70% of deaths and have lowered Palauans' life expectancy. In the 25 to 64 years age bracket, 55% of women and 61% of men have been diagnosed with three to five risk factors. Cost-effective interventions encompass policy and environmental changes, healthy lifestyle promotion, early detection and treatment, advocacy and community outreach, and reliable surveillance and data collection.¹⁵⁶² Having achieved basic services, Palau now strives to improve quality. No one goes hungry, but many do not enjoy a nutritionally optimal diet, and as a country, Palau is overly dependent on food imports, resulting in dangerous insecurities.¹⁵⁶³

In 2016, it was recommended the health system be more responsive to gender-based violence, which would include more relevant and sensitive data collection and patient information systems, the development of service guidelines and protocols, the allocation and development of dedicated health staff, and enhanced advocacy and awareness at the community level.¹⁵⁶⁴ A 2014 prevalence study found that one in four (27%) Palauan women have experienced physical or sexual violence by their partner in their lifetime, with nearly half of those sustaining injuries.¹⁵⁶⁵

Palau's budget allocations for the social, health and education sectors increased between 2013 and 2015; however, respective budget allocations do not seem to adequately target children in vulnerable situations, in particular children with disabilities.¹⁵⁶⁶ A Ministry of Health survey reported the following issues with a lack of information on mental health policy, related action plans and the number of staff specialising in child mental health issues; a high rate of suicide among adolescents, especially girls; and a correlation between adolescent sexual behaviour, depression and suicide.¹⁵⁶⁷ There is very little quantitative data on mental health, but a 2013 National Health Profile found that since 2003, suicides accounted for an average of 2.4% of all annual deaths. This is roughly equivalent to 21.7 suicides per 100,000 people, which is among the highest suicide rates in

¹⁵⁵⁷ CRPD/C/PLW/1. Note. 1437.

¹⁵⁵⁸ UN Sustainable Development Goals Knowledge Platform 2019. <https://sustainabledevelopment.un.org/index.php?page=view&type=30022&nr=1229&menu=3170>

¹⁵⁵⁹ Ibid.

¹⁵⁶⁰ UN Sustainable Development Goals Knowledge Platform 2019. 1st Voluntary National Review on the SDGs, Republic of Palau: Pathway to 2030 – Progressing with our past toward a resilient, sustainable, and equitable future. Available at: <https://sustainabledevelopment.un.org/memberstates/palau>

¹⁵⁶¹ A/HRC/WG.6/24/PLW/2. Available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G15/265/80/PDF/G1526580.pdf?OpenElement>

¹⁵⁶² UN Women 2019. Republic of Palau National Review Beijing +25. Note. 1459.

¹⁵⁶³ UN Sustainable Development Goals Knowledge Platform 2019. 1st Voluntary National Review on the SDGs, Republic of Palau: Pathway to 2030 – Progressing with our past toward a resilient, sustainable, and equitable future. Available at: <https://sustainabledevelopment.un.org/memberstates/palau> (accessed 21 August 2019).

¹⁵⁶⁴ A/HRC/WG.6/24/PLW/2. Available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G15/265/80/PDF/G1526580.pdf?OpenElement>

¹⁵⁶⁵ UN Women 2019. Republic of Palau National Review Beijing +25. Note. 1459.

¹⁵⁶⁶ CRC/C/PLW/CO/2. Note. 1454.

¹⁵⁶⁷ Ibid.

the world.¹⁵⁶⁸ Abortion is a criminal offence without exception and this prohibition might lead teenage girls to undergo unsafe abortions, with consequent risk to their life and health.¹⁵⁶⁹ Adolescent girls may have only limited access to safe reproductive and sexual health services, birth control methods and related information.¹⁵⁷⁰

Palau's Constitution provides for free and compulsory education for all children (Art. VI), but not all children go to school and the dropout rate is a concern for the government. More support is needed to ensure quality education for a globalised future.¹⁵⁷¹ A UNICEF Situation Analysis found that data on primary and secondary survival rates are not adequate to assess Palau's progress towards achieving SDG 4.1. In 2005, 93% of children entering grade 1 of primary school reached grade 7, the final year of primary education. There was little gender disparity in the primary gross enrolment rates (GER), although the percentage of boys enrolled in primary school was slightly higher than that of girls. The Gender Parity Index for the GER was 97% in 2016; overall this was a slight decrease from the 100% Gender Parity Index recorded in 2014.¹⁵⁷² At secondary level, a higher percentage of girls were enrolled in 2016 than boys. The report commented that up-to-date disaggregated net enrolment and progression rates are needed to conduct a more comprehensive analysis of any gender disparity in primary and secondary education.¹⁵⁷³ Low teacher salaries were identified as a contributing factor to the shortfall of qualified teachers and the quality of education is hampered by a lack of funding allocated for school supplies and materials for students, which has been decreasing due to the reduction in US federal grants allocated to this area.¹⁵⁷⁴

In its 2018 report, the Committee on the Rights of the Child recognised that Palau had implemented a student tracking system to address school dropouts, provided funding for teacher education, promoted physical health through healthy food and sports activities, and the draft Education Master Plan 2017–2026.¹⁵⁷⁵

Children with disabilities are also guaranteed the right to free and appropriate public education by the Individuals with Disabilities Education Act 2004. Palau has approximately 300 children with special needs registered with the health department, of whom 189 receive special education services and 15 are severely disabled, requiring either service in their homes or in a specialised education facility.¹⁵⁷⁶

Women's and children's rights

Under the Constitution of Palau, women are afforded equality of opportunity with men, although the Beijing+25 report¹⁵⁷⁷ identifies numerous inequalities in political, economic, social and cultural rights, with the prevalence of domestic violence just one of many measures of inequality. Major achievements for women include the passage of a Gender Mainstreaming Policy in April 2018, and the establishment of an office for the Bureau of Aging, Disability, and Gender, which is staffed by a Bureau Director, Chief of Gender, Chief of Aging, a Gender Analyst, a Coordinator for the Family Protection Act, and additional Bureau staff.¹⁵⁷⁸ Major challenges were identified as the crisis of NCDs, the lack of a comprehensive gender disaggregated data collection and reporting process, the lack of effective enforcement of existing protective legislation on human trafficking, prostitution and domestic violence, and the impacts of climate change across all sectors.¹⁵⁷⁹

Palau signed CEDAW but is one of only two PICs, along with Tonga, that has yet to ratify it.

1568 UNICEF Pacific 2017. Situation analysis of children in Palau. Note. 1490.

1569 CRC/C/PLW/CO/2. Note. 1454.

1570 Ibid.

1571 UN Sustainable Development Goals Knowledge Platform 2019. 1st Voluntary National Review on the SDGs, Republic of Palau: Pathway to 2030 – Progressing with our past toward a resilient, sustainable, and equitable future. Available at: <https://sustainabledevelopment.un.org/memberstates/palau> (accessed 21 August 2019).

1572 Ibid.

1573 UNICEF Pacific 2017. Situation analysis of children in Palau. Note. 1490.

1574 Ibid.

1575 CRC/C/PLW/CO/2. Note. 1454.

1576 UNICEF Pacific 2017. Situation analysis of children in Palau. Note. 1490.

1577 UN Women 2019. Republic of Palau National Review Beijing +25. Note. 1459.

1578 Ibid.

1579 Ibid.



Section 5 of Constitution of the Republic of Palau prohibits discrimination on the grounds of sex and place of origin, and provides for protective measures of those who are physically or mentally handicapped. However, girls, children with disabilities and children of non-Palauan descent continue to experience discrimination and exclusion.¹⁵⁸⁰

The National Youth Congress is the umbrella organisation for youth groups in each of the 16 states of Palau. A National Youth Policy has been developed to assist youth in addressing challenges related to unemployment, substance and alcohol abuse, and external influences.¹⁵⁸¹ The Committee on the Rights of the Child urged the government to amend legislation, in particular the National Code and the Penal Code, to explicitly prohibit corporal punishment in all settings.¹⁵⁸² There is no legislation specifically addressing the exploitation of children via sexually explicit videos, photographs or electronic images.¹⁵⁸³

In 2018, the Committee on the Rights of the Child recalled its previous concluding observations and recommended that the State party take legislative measures to ensure that children of non-Palauan parentage, including children of immigrant families and children adopted through intercountry adoptions, are afforded the same rights and access to health, education and social services as Palauan children.¹⁵⁸⁴ Further, the committee welcomed the creation of a national gender mainstreaming policy, the National Youth Policy and the National Framework on Early Childhood of 2009; however, it was noted that there is no comprehensive national strategy or plan of action for children.¹⁵⁸⁵ Concerns remain that the minimum age for marriage is set at 16 years for boys and girls under the National Code.¹⁵⁸⁶

The Constitution of Palau, Section 11, stipulates that the government will protect children from exploitation. Child protection in Palau includes safeguards against abuse, neglect, exploitation, drugs and pornography, and should be given special consideration by the justice system, in the workplace and in times of war. Children with special needs have the right to receive special care. Palau has yet to fully domesticate CRC.

Rights of persons with disabilities (PWD)

In 2013 the government ratified CRPD. The initial report was submitted by the government in February 2018 and was awaiting review by the CRPD Committee.

Palau currently has specific legislation on the promotion and protection of PWD in the areas of education and employment. The Programmes and Services for Handicapped Children's Act of 1989 states that it is the obligation of the national government to provide educational services to all children of Palau, including those with disabilities.¹⁵⁸⁷ The Disabled Person's Anti-Discrimination Act defines disability as "a physical or mental impairment that substantially limits one or more person's major life activities."¹⁵⁸⁸ The Act prohibits discrimination in employment and provides for the initiation of affirmative action practices for PWD seeking employment in the national public service system.¹⁵⁸⁹ The government developed the National Disability Inclusive Policy 2015–2020 in order to: provide guidance and recommendations for an implementation matrix for all government departments, NGOs, DPOs, individuals, families and communities throughout Palau; address and engage in the needs and services of persons and families with disabilities; and build a more inclusive society for all persons in Palau.¹⁵⁹⁰ Omekesang is the only DPO in Palau and represents Palau in PDF. It is a member of the Human Rights Working Group and works closely with Palau Parent Empowered and government agencies, and plays a key role in UN reporting.¹⁵⁹¹

¹⁵⁸⁰ CRC/C/PLW/CO/2. Note. 1454.

¹⁵⁸¹ Ibid.

¹⁵⁸² CRC/C/PLW/CO/2. Note. 1454.

¹⁵⁸³ Ibid.

¹⁵⁸⁴ Ibid.

¹⁵⁸⁵ Ibid.

¹⁵⁸⁶ Ibid.

¹⁵⁸⁷ CRPD/C/PLW/1. Note. 1437.

¹⁵⁸⁸ Ibid.

¹⁵⁸⁹ Ibid.

¹⁵⁹⁰ Ibid.

¹⁵⁹¹ Ibid.

Challenges identified in the government report to the CRPD Committee in 2018 include a lack of assistive devices, rehabilitation centres and provision of hearing aids, which limits accessibility and access to information, particularly in braille, sign language interpretation and accessible formats. It was stated that without access to transportation, information, communication and other services, PWDs would not have equal opportunities for participation in society.¹⁵⁹²

The Committee on the Rights of the Child was concerned about the lack of information on mental health policy and related action plans, and the number of staff specialising in child mental health issues. It was also concerned about the high rate of suicide among adolescents, especially girls, and the correlation between adolescent sexual behaviour, depression and suicide reported in a Ministry of Health survey.¹⁵⁹³

Climate justice

Palau's challenges continue in the areas of climate change and environmental degradation. The government created a national human rights task force and adopted a climate change policy, the Palau Climate Change Policy for Climate and Disaster Resilient Low Emissions Development.¹⁵⁹⁴ The policy advocates strengthening technical cooperation with relevant agencies and stakeholders in order to prevent the adverse impact of climate change, and supports the government's leading international efforts to tackle global warming, including by reminding developed countries and other major emitting states of their obligation to limit warming by reducing greenhouse gas emissions.¹⁵⁹⁵

The National Disaster Risk Management Framework guarantees that: "Effective disaster preparedness activities are designed to ensure that vulnerable communities have the knowledge and understanding of the hazards and risks, to which they may be exposed, in order to take appropriate actions to save lives, protect properties and the environment."¹⁵⁹⁶

Palau has identified its commitments to sustainable development and the SDGs through the four pillars of people, prosperity, planet and partnerships, which its national report then links to various SDGs.¹⁵⁹⁷ The Committee on the Rights of the Child recommended that Palau include climate change adaptation and disaster risk reduction in the school curriculum and establish school-based programmes, such as early warning systems and training on what to do in the event of a natural disaster. Additionally, the committee urged Palau to: develop a comprehensive disaster-sensitive social protection system, ensuring that the special vulnerabilities and needs of children, as well as their views, are taken into account; increase children's awareness of and preparedness for climate change and natural disasters; and increase the physical safety and resilience of school buildings and infrastructure.¹⁵⁹⁸

The governments SDG report stated that climate change, and the associated disaster risks, impact all aspects of life, and without climate-informed development, are threats to Palau's health, culture, economy, infrastructure and environment. Adapting to new climate realities, including climate-proofing, infrastructure, relocating communities where necessary and building human capital for life in a climate-altered world, is imperative to safeguard people.¹⁵⁹⁹

¹⁵⁹² Ibid.

¹⁵⁹³ Ibid.

¹⁵⁹⁴ CRC/C/PLW/CO/2. Note. 1454.

¹⁵⁹⁵ A/HRCWG.6/24/PLW/1. Available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G15/265/80/PDF/G1526580.pdf?OpenElement>

¹⁵⁹⁶ CRPD/C/PLW/1. Note. 1437.

¹⁵⁹⁷ UN Sustainable Development Goals Knowledge Platform 2019. 1st Voluntary National Review on the SDGs, Republic of Palau: Pathway to 2030 – Progressing with our past toward a resilient, sustainable, and equitable future. Available at <https://sustainabledevelopment.un.org/memberstates/palau> (accessed 21 August 2019).

¹⁵⁹⁸ CRC/C/PLW/CO/2. Note 1454.

¹⁵⁹⁹ UN Sustainable Development Goals Knowledge Platform 2019. 1st Voluntary National Review on the SDGs, Republic of Palau: Pathway to 2030 – Progressing with our past toward a resilient, sustainable, and equitable future. Available at <https://sustainabledevelopment.un.org/memberstates/palau> (accessed 21 August 2019).



COUNTRY CHAPTERS

**PAPUA NEW
GUINEA**



Papua New Guinea

Key facts

Capital city	Port Moresby	Total land area	462,840 sq. km
Population (year)	8.78 million (2019) ¹⁵⁹⁹	Population growth % (year)	1.97% (2019) ¹⁶⁰⁰
GDP per capita (year)	USD 2400 (2018) ¹⁶⁰¹	GNI per capita (Atlas method) (year)	USD 2530 (2018) ¹⁶⁰²
Type of government	Westminster parliamentary democracy under a constitutional monarchy ¹⁶⁰³		
Electoral system	Preferential voting		
Number of members of parliament (MPs): total/female (year)	111, currently no females		
Religions: by % of population (year)	Roman Catholic (26%), Evangelical Lutheran (18%), Seventh Day Adventist (13%), Pentecostal (10.4%), United Church (10.3%), Other Christian (9.7%), Evangelical Alliance (5.9%), Anglican (3.2%), Baptist (2.8%) (2011) ¹⁶⁰⁴		
Ethnic groups: by % of population (year)	Melanesian, Polynesian, Micronesian (% not available)		
Languages: by % of population (year)	English 49%, Tok Pisin 57%, Hiri Motu 5%, approximately 860 indigenous spoken languages (2011) ¹⁶⁰⁵		
Life expectancy: male/female (year)	67.5 years male 65.3/female 69.8 (2018) ¹⁶⁰⁶	% youth aged 15-24 years: total male/female (year)	19.68%: 51.49% male/48.51% female ¹⁶⁰⁷
% disability: total male/female (year)	15% (international est.) ¹⁶⁰⁸		

1599 Worldometers 2019. <https://www.worldometers.info/world-population/papua-new-guinea-population/> (accessed 28 August 2019).

1600 Op cit.

1601 Trade Economics. <https://tradingeconomics.com/papua-new-guinea/gdp-per-capita> (accessed 28 August 2019).

1602 World Bank Data. <https://data.worldbank.org/indicator/ny.gnp.pcap.cd> (accessed 28 August 2019).

1603 CIA World Factbook. <https://www.cia.gov/library/publications/the-world-factbook/geos/pp.html> (accessed 28 August 2019).

1604 National Statistical Office, Papua New Guinea 2011. National Report. Available at: <https://actnowpng.org/sites/default/files/2011%20Census%20National%20Report.pdf> (accessed 28 August 2019).

1605 Ibid.

1606 CIA World Factbook. <https://www.cia.gov/library/publications/the-world-factbook/geos/pp.htm> (accessed 28 August 2019).

1607 Worldometers. Note. 1557.

1608 NDRAC. <http://ndrac.weebly.com/disability-in-png.html> (accessed 28 August 2019).

International human rights treaty ratification and reporting obligations

Treaty	Date of signature (S) or ratification (R)	Reservations	Latest report submitted	Reporting status
ICESCR	21 July 2008 (a)			Initial report overdue since 21 October 2009
ICCPR	21 July 2008 (a)			Initial report overdue since 1 July 2010
ICERD	27 January 1982 (a)		2 nd report 1992	3 rd and subsequent reports overdue since 1994.
CEDAW	12 January 1995 (a)		Combined initial, 2 nd , 3 rd report 20 May 2009.	4 th report overdue since 1 July 2014.
CRC	2 March 1993 (R)		Initial report 23 April 2002.	2 nd and 3 rd report overdue since 2008.
CRPD	26 September 2013 (R)			Initial report overdue since Oct. 2015.

Special Procedures: Standing invitation issued on 11 May 2011.

Country visits:¹⁶⁰⁹

- Working group (WG) on arbitrary detention. Requested 2001; reminded 1 January 2008.
- Special Rapporteur on the right to education: requested 2005.
- Special Rapporteur on torture and other cruel, inhuman, or degrading treatment or punishment: completed and reported – visit from 15 May 2010 to 30 May 2010.
- Independent Expert on the effects of foreign debt: requested 23 June 2010.
- Special Rapporteur on summary, arbitrary, or extrajudicial killings: completed and reported – visit from 3 to 14 March 2014.
- Special Rapporteur on violence against women: completed and reported – visit from 18 March 2012 to 26 March 2012. New request – 21 May 2019, accepted August 2019, dates to be finalised.
- Working Group on the use of mercenaries: requested 26 October 2006; reminded 17 July 2013 and 4 May 2015.
- Special Rapporteur on indigenous persons rights: requested 18 October 2016.
- Working Group on the discrimination against women and girls in law and practice: requested 9 August 2016.
- Special Rapporteur on the human rights of migrants: requested 21 January 2016.
- Working group on Business and Human Rights: requested 4 June 2012; Reminded 12 February 2019.¹⁶¹⁰

Universal Periodic Review: 1st reporting cycle 11 May 2011; 2nd cycle 6 May 2016; next cycle 2021.

International Criminal Court: Not a party to the Rome Statute.

¹⁶⁰⁹ OHCHR. https://spinternet.ohchr.org/_layouts/15/SpecialProceduresInternet/ViewCountryVisits.aspx?Lang=en&country=PNG

¹⁶¹⁰ The PNG Human Rights Adviser's Unit advised that it does not have a copy of the original request or reminder.

System of government

Papua New Guinea (PNG) gained political independence from Australia on 16 September 1975. Under a Westminster system of government, PNG is a constitutional monarchy. The head of state is the British monarch, represented by the Governor-General. There are three levels of government: national, provincial and local. The National Parliament comprises 111 members, including four from the Autonomous Region of Bougainville, 89 of whom are from open electorates while the remaining 22 are governors elected from provincial electorates. Members of Parliament are elected by universal suffrage for five-year terms. After an election, the Governor-General invites the political party with the highest number of elected seats to form the government.

Since independence, all governments have been formed by a coalition of parties because no party has won enough seats to form a government on its own.¹⁶¹¹ The Governor-General appoints the Prime Minister, as proposed by Parliament, and the National Executive Council is appointed by the Governor-General on advice of the Prime Minister.¹⁶¹² The most recent election was held in 2017. Parliament can only hold votes of no confidence in the Prime Minister when more than 18 months have elapsed since an election and there are at least 12 months before a new election is due.¹⁶¹³ In 2019, Prime Minister Peter O’Neil was removed in a vote of no confidence and James Marape was elected Prime Minister by Parliament. No women were elected in 2017 for the first time since independence in 1975. Only seven women have ever been elected to PNG’s National Parliament.¹⁶¹⁴

On 23 November 2019, the Autonomous Region of Bougainville held a referendum on independence from Papua New Guinea in accordance with the Bougainville Peace Agreement 2001, which was signed after a ten-year civil war with the PNG mainland ended in 1998.¹⁶¹⁵ The Bougainvillean voters overwhelmingly voted in favour of independence, which is non-binding and requires ratification by the national parliament.

Judicial system and administration of justice

The administration of justice in PNG is carried out by the judicial system, the minister responsible for National Justice Administration and the law officers of Papua New Guinea.¹⁶¹⁶ The judicial system is independent and made up of the Supreme Court, the National Court, the District and Village Courts, the Coroners Court, the Local Land Court and the Provincial land court, and a range of tribunals and quasi-judicial bodies¹⁶¹⁷. The Supreme Court is the final court of appeal and has inherent power to review all judicial acts of the National Court, where the National Court has inherent power to review any exercise of judicial authority. The judiciary has been tested in the past with high-profile constitutional cases challenging parliamentary processes, legality of the detention of refugees and asylum seekers, the suspension of constitutional post-holders and various investigations of high-ranking government officials.¹⁶¹⁸

Access to justice and the right to remedy

The constitution provides for the equal protection of the law to all persons within the country. Access to justice is a significant challenge for many persons, especially those who live in remote communities. Barriers to the full enjoyment of this right include the geographic isolation of many communities, limited pro bono legal services, limited human resources, high costs associated with court action, low rates of formal education, little awareness

1611 National Parliament of PNG. . <http://www.parliament.gov.pg/about/parliament> (accessed 23 March 2019).

1612 Commonwealth Network. http://www.commonwealthofnations.org/sectors-papua_new_guinea/government/prime_minister/ (accessed 20 August 2019).

1613 The Commonwealth. <https://thecommonwealth.org/our-member-countries/papua-new-guinea/constitution-politics> (accessed 20 August 2019).

1614 Pacific Women in Politics. <https://www.pacwip.org/country-profiles/papua-new-guinea/> (accessed 20 August 2019).

1615 Reuters 2019. <https://www.reuters.com/article/us-papua-bougainville/bougainville-agrees-with-png-to-delay-independence-vote-till-november-idUSKCN1UV0QK> (accessed 28 August 2019).

1616 National Parliament of Papua New Guinea. <http://www.parliament.gov.pg/constitution-of-the-independent-state-of-papua-new-guinea> (accessed 20 August 2019).

1617 Pacific Islands Legal Information Institute. <http://www.paclii.org/countries/pg.html> (accessed 20 August 2019).

1618 Pacific Human Rights Digest, volume 5. <https://rrrt.spc.int/resources/publications/pacific-human-rights-law-digest-vol5> (accessed 23 March 2019). Examples are: Namah v Pato [2016] PISC 13 (April 26, 2016); ONeil v Klapat, SCM No 13 of 2014 PGSC 13; and others.

of either human rights or national laws,¹⁶¹⁹ and widespread corruption and impunity within the Royal Papua New Guinea Constabulary.¹⁶²⁰

The Office of the Public Solicitor (OPS) provides free legal assistance with respect to civil and criminal matters to those who are unable to afford a private lawyer. In 2017, the OPS had 65 lawyers and was based in 19 provinces, with only Jiwaka, Western Highlands and Hela Provinces serviced through monthly circuits from Port Moresby-based lawyers. In 2017, the OPS created a new division that deals directly with family legal issues, such as maintenance, custody, divorce and family protection orders, due to the demand for legal aid services.¹⁶²¹ These services were previously provided under general civil cases; however, under the new division, a specialised team deals directly with family law issues, providing equal access to justice for people living with disabilities, survivors and victims of all forms of discrimination, including persons living with HIV and AIDS, and family sexual violence. The OPS also developed pamphlets and posters in braille for the visually impaired on the services it provides.

The National Human Rights Track was established in 2011 by Justice Cannings to create a user-friendly fast track for human rights cases to be filed through the courts, allowing for cases to be filed at any district courthouse, although in 2019, knowledge of the existence of this avenue remained relatively low amongst the general public and the track was underutilised.

National human rights institution (NHRI)

PNG does not have an NHRI. In 2015, a draft bill to establish a Human Rights Commission was presented to the National Executive Council. The same year, the Cabinet instructed that the draft enabling legislation be converted from ordinary law to a Constitutional Amendment bill to give the body constitutional status to an ordinary Act of Parliament,¹⁶²² and this work is still underway. PNG accepted recommendations for the establishment of an NHRI at both its UPR cycles.

In lieu of an NHRI, in 2018 and 2019, the Minister of Justice, who is also the Attorney General, took steps to establish a Human Rights Secretariat within the Department of Justice and Attorney General to coordinate the government's human rights obligations, including implementing and reporting on its human rights obligations under the conventions it has ratified. However, the secretariat has not yet been functional.

Security sector

At the time of taking office in 2015, the former Commissioner of Police declared 2015 to 2017 as the years of discipline for the Royal Papua New Guinea Constabulary, with 250 police officers dismissed over the three-year period for disciplinary matters and corruption.¹⁶²³ This was in an effort to deal with an apparent lack of command and control, declaring that his administration would take a zero tolerance approach to abuse, ill-discipline and other conducts unbecoming of police personnel, including dealing with senior officers found to be covering up or facilitating such breaches of conduct.¹⁶²⁴

Police brutality and impunity continue to be an ongoing concern in PNG. The treatment of detainees in police custody and places of detention across PNG further threatens the integrity of several constitutionally protected human rights, including the rights to life and liberty, and freedom from cruel or degrading treatment or punishment. In 2019, it was reported that police brutality topped the list of cases brought against the State and stands at PGK 131 million (USD 37.6 million) in litigation matters dating as far back as 1992, with over 8000

¹⁶¹⁹ A/HRC/WG.6/11/PNG/1. Available at: https://lib.ohchr.org/HRBodies/UPR/Documents/session11/PG/A_HRC_WG.6_11_PNG_1_E.pdf

¹⁶²⁰ A/HRC/16/52/Add.5. Available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G11/106/08/PDF/G1110608.pdf?OpenElement>

¹⁶²¹ PNG Loop 2017. <http://www.looppng.com/png-news/public-solicitor%20%99s-office-creates-new-division-70603> (accessed 20 August 2019).

¹⁶²² National Executive Council, Papua New Guinea, National Executive Council Decision 62/2012.

¹⁶²³ Post-Courier 2018. <https://postcourier.com.pg/huafolo-no-place-corrupt-police/>

¹⁶²⁴ PNG Loop 2016. <http://www.looppng.com/content/baki-2016-year-police-discipline>

cases reported to the police internal affairs directorate.¹⁶²⁵ Police violations of constitutional rights was the second highest offence in litigation matters brought against the State.¹⁶²⁶

The Ombudsman Commission is mandated to investigate allegations of human rights abuse by the police, correctional service and other law enforcement agencies. The investigation is then referred to the concerned agency, such as the Police Internal Affairs Unit and other disciplinary forces for further action.¹⁶²⁷ Investigations and reports by the Ombudsman Commission are often significantly delayed. For instance, the report of the Ombudsman Commission's investigation of the police opening fire on University of Papua New Guinea (UPNG) students in April 2016 during an unarmed march to Parliament had yet to be tabled in July 2019, over three years later.

Physical conditions and abuses within places of detention continue to be a concern. In January 2019, a 15-year old girl was allegedly raped by two officers on duty on consecutive occasions over a weekend while held in custody at a police station in Port Moresby. The two officers were released on bail for PGK 1000 (USD 300) each a few days after arrest, prior to the continuation of proceedings. In 2017, a human rights application against the State lodged on behalf of all detainees at the country's largest prison, Bomana Correctional Institute, was upheld, ordering the State to provide a varied and balanced diet to prisoners in line with the Correctional Services Act. The prisoners maintained that being given the same food each day with little variation failed to comply with the minimum dietary requirements imposed by law by being unbalanced and non-nutritious, which led to poor health and illness for many detainees.¹⁶²⁸

Refugees and asylum seekers

Of approximately 1300 refugees and asylum seekers brought to PNG under the Regional Resettlement Arrangement between PNG and Australia to process the refugee claims of asylum seekers arriving to Australia by boat, fewer than 500 remain, mostly on Manus Island and in Port Moresby. Under a 2016 deal between former US President Barrack Obama and former Australian Prime Minister, Malcolm Turnbull, some refugees were resettled in the US between 2017 to 2019, after being subjected to extreme vetting by US officials. There remain no durable solutions for persons not eligible for resettlement in the US, and for those who have not been granted refugee status and are ineligible for return to their countries of origin. In August 2019, 50 men who were denied refugee status were detained in an immigration detention centre in Port Moresby. They were released from the detention in early 2020.¹⁶²⁹

Following the April 2016 PNG Supreme Court decision that the detention of asylum seekers at Manus Island was unconstitutional because it violated the right to personal liberty, the Regional Processing Centre on Manus Island was decommissioned, with services withdrawn on 1 November 2017. A three-week standoff ensued among the over 300 refugees, asylum seekers, and other related categories of persons in the centre who refused to move to alternate facilities.¹⁶³⁰ Persons remaining at the centre were left without access to power, clean water, sanitation services, food, shelter and healthcare services for three weeks, until they were forcibly moved to new facilities in Lorengau township by law enforcement authorities.¹⁶³¹ The mental health of the majority of refugees and asylum seekers under the Regional Resettlement Arrangement continues to deteriorate after five years without firm solutions and limited access to quality health care services, particularly mental health and trauma counselling services. There continue to be reports of self-harm and suicide attempts

¹⁶²⁵ Post-Courier 2019. <https://postcourier.com.pg/police-brutality-tops-litigation-list-state/> (accessed 30 August 2019).

¹⁶²⁶ Op cit.

¹⁶²⁷ A/HRC/WG.6/25/PNG/1. Available at: <https://www.ohchr.org/EN/HRBodies/UPR/Pages/PGIndex.aspx>

¹⁶²⁸ PACLI. Yasause v Keko [2017] PGNC 183; N6853 (18 August 2017). Available at: <http://www.paclii.org/pg/cases/PGNC/2017/183.html> (accessed 20 August 2019).

¹⁶²⁹ The Guardian 2019. <https://www.theguardian.com/australia-news/2019/aug/12/asylum-seekers-moved-to-a-prison-complex-in-png> (accessed 20 August 2019).

¹⁶³⁰ The Guardian 2017. <https://www.theguardian.com/australia-news/2017/nov/24/manus-detention-centre-cleared-of-all-refugees-and-asylum-seekers> (accessed 20 August 2019).

¹⁶³¹ Ibid.



by the population, including four persons dying in 2016 and 2018, with three out of the four allegedly due to self-harm and untreated mental illness.¹⁶³²

PNG also hosts an estimated 10,000 West Papuan refugees who have fled from the neighbouring Indonesian province. In 2017, the government continued efforts to formalise the refugees' status so that they can apply for PNG citizenship and have full rights and access to public services.¹⁶³³

Migration

The national legislative framework regulating migration and asylum in Papua New Guinea is set out in the Migration Act of 1980 and the Migration Regulation of 1979. Section 3 of the 1980 Migration Act prohibits any foreigner from entering the country, unless he/she holds an entry permit. Section 7 of the Act states that entrance without a valid permit makes the presence of a foreigner in the country unlawful. A person entering or remaining in the country in contravention of the Migration Act is guilty of an offence and may be punished with a fine or imprisonment for a term not exceeding six months.¹⁶³⁴ The Papua New Guinea Immigration and Citizenship Authority (ICA) is responsible for managing Papua New Guinea's borders in relation to the movement of persons into and out of the country.¹⁶³⁵

Displacement in PNG occurs largely as a result of natural disasters, tribal conflict over land or the economic situations of families.¹⁶³⁶ Tribal conflict over land is common and driven by the complexity of tenure relationships, overlapping land claims, migration due to economic or environmental factors, and cultural differences.¹⁶³⁷ Displacement in PNG appears to be protracted, with households living in temporary living situations for more than a year.¹⁶³⁸ These populations are more vulnerable and have reduced access to basic services, security and protection, increasing the risk of poverty and violence.¹⁶³⁹ Displaced women and girls are especially susceptible to abuse, from both within their communities and beyond.¹⁶⁴⁰ In the absence of policy, legislation or services to accommodate the specific needs of internally displaced persons, the burden is absorbed by host communities who sometimes react violently to displaced populations competing for resources and land.¹⁶⁴¹ A significant proportion of internally displaced persons in PNG continue to experience challenges, including limited access to livelihoods, and lack of adequate standard of living, safety, security and freedom of movement.¹⁶⁴²

Around 9,000 persons displaced from a volcanic eruption on Manam Island, Madang Province in 2005 have remained in three principal care centres on the north coast of Madang Province for over a decade. No emergency preparedness plans were in place for evacuation or resettlement, which has posed economic and social problems for the displaced population and created tensions with local landowners over the use of resources, water, materials and food.¹⁶⁴³ As populations in the care centres have grown, quality of life has deteriorated for both for the displaced and local population.¹⁶⁴⁴ Uncertainty, lack of political will and the absence of a government policy on internally displaced persons have hindered attempts to provide definitive and lasting solutions.¹⁶⁴⁵

¹⁶³² Ibid.

¹⁶³³ Radio New Zealand 2017. <https://www.rnz.co.nz/international/pacific-news/343298/west-papuan-refugees-in-png-urged-to-register> (accessed 28 August 2019).

¹⁶³⁴ Migration Act 1980, Section 16.

¹⁶³⁵ Immigration and Citizenship Authority. <https://ica.gov.pg/what-we-do> (accessed 21 August 2020).

¹⁶³⁶ IOM in collaboration with the Government of PNG 2017. Profiling internally displaced persons in PNG. Available at: <https://displacement.iom.int/system/tdf/reports/Profiling%20IDPs%20in%20PNG%2C%202017.pdf?file=1&type=node&id=2840>

¹⁶³⁷ Ibid.

¹⁶³⁸ Ibid.

¹⁶³⁹ Ibid.

¹⁶⁴⁰ Ibid.

¹⁶⁴¹ Ibid.

¹⁶⁴² Ibid.

¹⁶⁴³ Connell J. and Lutkehaus N. 2016. Another Manam? The forced migration of the population of Manam Island, Papua New Guinea, due to volcanic eruptions 2004–2005. Available at: <https://reliefweb.int/report/papua-new-guinea/another-manam-forced-migration-population-manam-island-papua-new-guinea-due>

¹⁶⁴⁴ Ibid.

¹⁶⁴⁵ Ibid.

Human Trafficking, Forced Labour, and Contemporary Forms of Slavery

On 6 August 2013, the governments of Papua New Guinea and Australia signed a Memorandum of Understanding “supporting the Regional Resettlement Arrangement between Australia and Papua New Guinea on Further Bilateral Cooperation to Combat People Smuggling”.¹⁶⁴⁶ An amendment to the Criminal Code 1975 was passed by Parliament in 2014, which criminalised trafficking in persons and people smuggling. After being classified as a Tier 2 Watch List country by the US State Department in 2016, PNG was downgraded to a Tier 3 country in 2017 and remained at that level in 2019 as the government does not fully meet the minimum standards for the elimination of trafficking and is not making significant efforts to do so.¹⁶⁴⁷

According to the 2019 Trafficking in Persons report, research conducted by an international NGO found that approximately 30% of Papua New Guinean sex trafficking victims were children under the age of 18, with some as young as 10 years old.¹⁶⁴⁸ Immediate family or tribe members reportedly subject children to sex trafficking or forced labour, and some parents were said to force children to beg or sell goods on the street, or sell or force their daughters into marriage or prostitution to settle debts, resolve disputes between communities, or support their families.¹⁶⁴⁹

The government has taken some limited steps to address trafficking, including initiating the first investigation of a government official under the country’s anti-trafficking law.¹⁶⁵⁰ Court proceedings also commenced in 2018 for a sex trafficking case that had been awaiting trial since 2016, and continued at the end of the reporting period. Despite having initiated several prosecutions in recent years, the government has never secured a conviction in a trafficking case.¹⁶⁵¹ Additionally, the government reportedly did not provide or fund protective services for victims, did not systematically implement its victim identification procedures, and did not identify any trafficking victims in 2017. Endemic corruption among officials, particularly in the logging sector, was reported to be facilitating vulnerability to sex trafficking and forced labour among foreign and local populations. An acute lack of financial and human resources dedicated to anti-trafficking hindered progress, along with very low awareness among both government officials and the public.¹⁶⁵²

Civil society and human rights defenders

PNG has many NGOs involved in all sectors of national development, including human rights. Civil society plays a key role in PNG’s development strategy¹⁶⁵³ and provides critical services to vulnerable populations, such as survivors of violence, including domestic violence, gender-based violence, sorcery accusation-related violence and policy brutality. Human rights defenders have been threatened with harm, attacked and intimidated by authorities as well as by members of their own community.¹⁶⁵⁴

The Highlands Women Human Rights Defenders Network provides coordination and support to community-based organisations, human rights defenders and those providing support and protection services to survivors of violence and injustice, with a coordination desk supported by Oxfam PNG. In 2019, the Human Rights Defenders Association, which is comprised of human rights defenders, was launched in the National Capital District.

¹⁶⁴⁶ Memorandum of Understanding between the Government of the Independent State of Papua New Guinea and the Government of Australia, relating to the transfer to, and assessment and settlement in, Papua New Guinea of certain persons, and related issues (2013) p.1.

¹⁶⁴⁷ US Department of State 2019. Trafficking in persons report June 2019. Available at: <https://www.state.gov/wp-content/uploads/2019/06/2019-Trafficking-in-Persons-Report.pdf> (accessed 10 August 2019).

¹⁶⁴⁸ Ibid.

¹⁶⁴⁹ Ibid.

¹⁶⁵⁰ Ibid.

¹⁶⁵¹ Ibid.

¹⁶⁵² Op cit.

¹⁶⁵³ Commonwealth Network. http://www.commonwealthofnations.org/sectors-papua_new_guinea/civil_society/national_ngos_civil_society/ (accessed 20 August 2019).

¹⁶⁵⁴ Ibid.



Domestic law and human rights

The constitution protects a variety of civil, political and economic rights; notably, the right to life, freedom from inhuman treatment, freedom of expression, and the equality of all citizens are protected. Domestic legislation gives effect to some of these rights.¹⁶⁵⁵

While the government tends to accept the majority of recommendations made by treaty bodies, eight Special Procedure mandate-holders have requested fact-finding visits to the country which have not yet been accepted. Progress toward the full domestication of each convention and the implementation of treaty body recommendations have been slow. All periodic reports are overdue for the six core human rights treaties ratified by the government. The last treaty body to review the government was CEDAW in 2009.

Some positive advancements have been made through the introduction of new domestic legislation and policies; however, adequate resourcing and enforcement have limited implementation and progress. Following the criminalisation of domestic violence through the passage of the Family Protection Act in 2013, the National Executive Council endorsed the PNG National Strategy to Prevent and Respond to Gender-Based Violence 2016–2025 in December 2016.¹⁶⁵⁶ The strategy seeks to institutionalise, strengthen and harmonise multi-sectoral and multi-level coordination across national and provincial level government entities and stakeholders. The four objectives of the strategy are to strengthen governance and institutional structures on GBV, standardise and institutionalise data collection and evidence-based research, ensure quality and sustainable referral pathways for survivors, and scale-up and standardise awareness-raising on GBV at all levels of society.¹⁶⁵⁷ The strategy also provides for the establishment of a National Gender-Based Violence Secretariat to ensure high-level coordination, accountability and to strengthen quality services for survivors.¹⁶⁵⁸ Due to a lack of resources and weak political support, the GBV Secretariat was yet to be established in July 2019 and the implementation of the policy remains ad hoc.

The Lukautim Pikinini (Child Protection) Act 2015 was certified in March 2016 and provides a framework on the protection of children; however, implementation remains a challenge and knowledge of the provisions by critical service providers remains low.

In March 2017, a working committee was established to execute and implement the Juvenile Justice Act of 2014, known as the Provincial Juvenile Justice Committee. The committee is comprised of the Police, Correctional Services and the Juvenile Justice Courts. The Juvenile Justice Act provides guidelines on how to assist juveniles, which refers to persons under the age of 18 years old, when they are accused of a crime. In PNG, children under the age of 18 are often prosecuted as adults in a District or National Court. This committee was established to properly prosecute juveniles in a separate court in order to protect the reputation and welfare of the juvenile; however, enforcement of the Act remains limited. Assaults by police against children in lock-ups continue and children are still imprisoned with adults, partly due to limited separate facilities for juveniles. In August 2018, a video showing two police officers brutally assaulting and humiliating a teenage boy in West New Britain Province went viral after being posted on social media. The two officers alleged to have committed the offence were arrested and charged with one count each of assault occasioning actual bodily harm,¹⁶⁵⁹ charged administratively with four serious disciplinary charges under the Police Force Act and suspended from active duties.¹⁶⁶⁰

¹⁶⁵⁵ A/HRC/WG.6/11/PNG/1. A/HRC/WG.6/25/PNG/1. Available at: <https://www.ohchr.org/EN/HRBodies/UPR/Pages/PGindex.aspx>

¹⁶⁵⁶ PNG Loop 2016. <http://www.looppng.com/png-news/national-gbv-strategy-endorsed-nec-48447> (accessed 20 August 2019).

¹⁶⁵⁷ Government of PNG 2017. PNG national strategy to prevent and respond to gender-based violence 2016–2025. Available at http://www.femilipng.org/wp-content/uploads/2018/10/PNG-GBV_Strategy-2016-2025_150816.pdf (accessed 30 August 2019).

¹⁶⁵⁸ Ibid.

¹⁶⁵⁹ The National 2018. <https://www.thenational.com.pg/policemen-charged-with-assault-of-13-year-old-boy-in-west-new-britain/> (accessed 30 August 2019).

¹⁶⁶⁰ Radio New Zealand 2018. <https://www.rnz.co.nz/international/pacific-news/364606/two-png-policemen-charged-over-assault-of-teenager> (accessed 30 August 2019).

Human rights policies

PNG does not have a National Human Rights Plan of Action.¹⁶⁶¹ There are, however, a variety of plans in place to support the implementation of human rights in special fields, such as the advancement of women's rights, child protection, the rights of people with disabilities, and law and order.¹⁶⁶²

In July 2018, the Department of Justice and Attorney General launched the Cross-Cutting Issues and Workplace Sexual Harassment policies for its department to combat sexual harassment within its organisation, formulated from the Gender Equity and Social Inclusion policy within the department. The policy's purpose is to uphold the rule of law, equity and fairness, the custom-founded justice system, transparency, corporate integrity and excellence in service. Discussions are underway to draft workplace sexual harassment and cross-cutting issues policies for all law enforcement agencies.¹⁶⁶³

Over the past few years, in response to critical needs in the areas of violence against children – a daily reality for many women and children in PNG – as well as securing access to justice for child offenders, witnesses and victims, the government has enacted critical legislation and accompanying regulations, national and provincial plans, and operational guidelines and policy frameworks for the protection of children and toward upholding international standards for children in contact with the law. At the policy level, the National Executive Council endorsed the first National Child Protection Policy (2017–2020) as well as an Implementation Regulation for the Child Protection Act (2017). In addition, the National Juvenile Justice Action Plan 2018–2022 has been enacted. This legal and policy framework goes towards realising one of the key priorities and outcomes of the government's Mid-Term Development Strategy and Vision 2050, which aims to achieve "a safe, secure and stable environment for all people in PNG" and for "protecting women and girls and boys from all forms of violence, abuse, exploitation and discrimination."

Right to life, liberty and security of person

PNG's constitution protects the rights to freedom, life, liberty of the person and freedom from inhuman treatment. There are exceptions – in law and in practice – to the full enjoyment of each of these rights. PNG maintains the death penalty in the Criminal Code but has not utilised it since the country gained independence in 1975.¹⁶⁶⁴ There are currently 16 people on death row in PNG.¹⁶⁶⁵ In December 2017, two persons, a father and a son, who had spent ten years in incarceration on death row, were acquitted of their charges and set free.¹⁶⁶⁶ In 2018, eight people were sentenced to death in a case of sorcery accusation-related violence and killings committed in 2004, in which 88 people were also sentenced to life imprisonment.¹⁶⁶⁷

In December 2017, the Supreme Court upheld a stay order on all executions irrespective of whether their appeal and review rights had been exhausted, due to a failure over an extended period on the part of the national government, particularly the National Executive Council, to facilitate appointments of members to the Advisory Committee on the Power of Mercy, which infringes on the full protection of the human rights of prisoners sentenced to death¹⁶⁶⁸ in Enforcement of Basic Rights under Section 57 of the Constitution.¹⁶⁶⁹

UNICEF is supporting the Department of Justice and Attorney General with a key element of the juvenile justice system by shifting the focus placed on diversion of juveniles in contact with the law away from the criminal law system.

1661 A/HRC/WG.6/25/PNG/2. Available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/043/35/PDF/G1604335.pdf?OpenElement>

1662 A/HRC/WG.6/11/PNG/2. Available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G11/109/29/PDF/G1110929.pdf?OpenElement>

1663 Legend FM 2018. <https://www.legendfm.net/blog/djag-launches-cci-wsh-policy> (accessed 30 August 2019).

1664 A/HRC/16/52/Add.5. Available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G11/106/08/PDF/G1110608.pdf?OpenElement>

1665 Human Rights Watch 2019. <https://www.hrw.org/news/2019/07/11/papua-new-guinea-massacre-doesnt-justify-death-penalty> (accessed 20 August 2019).

1666 The National 2017. <https://www.thenational.com.pg/prison-term-agony/> (20 August 2019).

1667 ABC News 2018. <https://www.abc.net.au/news/2018-07-26/papua-new-guinea-sorcery-murders-death-sentence/10038442> (accessed 20 August 2019).

1668 PACLI. <http://www.paclii.org/pg/cases/PGNC/2017/266.html> (accessed 30 August 2019).

1669 Ibid.

Diversion, in addition to the evidenced-based benefits of reconciliation, as well as acknowledgement and repair of harm caused to the victim and community and accountability by the child, also prevents adverse consequences flowing from the juvenile being subject to the criminal justice system. This includes stigmatisation, a criminal record, risks of violence, and abuse and harm associated with any deprivation of liberty. UNICEF continues to support interventions designed to operationalise the diversion. In addition, in 2017 the new Police Policy and Protocols on Juvenile Justice were developed and approved by the Police Commissioner, and the Rules of Court on the Lukautim Pikinini Act 2015 (LPA) were approved by the Chief Magistrate and endorsed by the Judiciary Legal Services.

In October 2018, the National Council for Child and Family Services was officially launched, a significant step towards effectively protecting PNG's children. The council is a legally established body mandated to coordinate and oversee implementation of the Child Protection Act (CPA) 2015 and National Child Protection Policy (2017–2027).¹⁶⁷⁰ UNICEF has worked closely with the mandated child protection bodies to ensure intersectoral linkages to facilitate the delivery of justice for children.

Equality and non-discrimination

PNG has not reported to the CERD Committee since 1984.

Consensual sexual relations between men is criminalised under Section 210 of the Criminal Code 1974, with a penalty of up to 14 years imprisonment, and attempts to commit the offence are subject to a penalty of up to seven years imprisonment. Gross indecency between men is also criminalised by Section 212 of the Criminal Code 1974, with a penalty up to three years of imprisonment. There have not been any reports of prosecutions against LGBTI people in recent years,¹⁶⁷¹ and few men who have sex with men (MSM) and transgender (TG) persons have ever been arrested because of their sexual practices or gender identity,¹⁶⁷² however, this provision in law underpins discrimination and societal violence against LGBTI persons, making them vulnerable to societal stigmatisation. During its second UPR cycle in 2016, PNG noted recommendations received to decriminalise sexual relations between consenting adults of the same sex and to protect and not discriminate against persons on the basis of their sexual orientation and gender identity.¹⁶⁷³

In 2016, UNAIDS distributed information, education and communication materials to Parliament with a bill submission for the law repeal for legalising sex work in PNG; the submission was still pending tabling in 2018.¹⁶⁷⁴ According to UNAIDS, the country has made great progress in increasing treatment for people living with HIV.¹⁶⁷⁵ In 2018, the coverage of treatment was 55%, with 25,100 out of an estimated 48,000 people on treatment. This is a 3% increase from 2016, when the antiretroviral therapy coverage was 52%. The antiretroviral programme has been rolled out in all 22 provinces with 120 health facilities providing access to populations.¹⁶⁷⁶

Stigma in healthcare settings is a problem for women and girls who sell and exchange sex. The 2018 key population integrated bio-behavioural survey revealed that when accessing health services, almost one in two (45.2%) female sex workers (FSWs) in Port Moresby, over one in five (23%) in Lae and one in four (25%) in Mount Hagen felt the need to hide that they sell or exchange sex.¹⁶⁷⁷ Over one in five FSW experienced some form of blackmail because they sell or exchange sex.¹⁶⁷⁸ Around one in three MSM and TG in Port Moresby

1670 UNICEF 2018. https://www.unicef.org/about/annualreport/files/Papua_New_Guinea_2018_COAR.pdf (accessed 30 August 2019).

1671 US Department of State. Human Rights Report 2017. <https://www.state.gov/reports/2017-country-reports-on-human-rights-practices/papua-new-guinea/> (accessed 20 August 2019).

1672 Kelly-Hanku, A. et al. 2018. Kauntim mi tu: Multi-site summary report from the key population integrated bio-behavioural survey, Papua New Guinea. Available at https://www.aidsdatahub.org/sites/default/files/publication/PNG_Kauntim_mi_tu_Multi-Site_Summary_Report_from_the_Key_Population_IBBS_2018.pdf

1673 A/HRC/33/10/Add.1. Available at: <https://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session33/Pages>ListReports.aspx>

1674 Global AIDS monitoring 2018. Country progress report – Papua New Guinea. Available at: https://www.unaids.org/sites/default/files/country/documents/PNG_2018_countryreport.pdf (accessed 30 August 2019).

1675 Ibid.

1676 Ibid.

1677 Kelly-Hanku, A., et al. 2018. Note. 1627.

1678 Ibid.

(32.7%) and Lae (29.8%) felt ashamed of their sexual practices or gender identity. Almost one in two MSM and TG in Port Moresby (48%) and Lae (44.9%) felt the need to hide their sexual practices or gender identity when accessing sexual health services. In Port Moresby 13.6% and in Lae 8.7% of MSM and TG people reported being blackmailed by someone because of their sexual practices or gender identity.¹⁶⁷⁹ More than half of FSW in Port Moresby, Lae and Mount Hagen (57.3%, 72.9% and 69.1% respectively) have experienced physical violence, where 20.7% in Port Moresby, 21.3% in Lae and 36.2% in Mount Hagen of these survivors believed that the first time it happened was directly related to them selling or exchanging sex.¹⁶⁸⁰ Three in four MSM and TG persons in Lae (75.8%) and nearly three in five in Port Moresby (58.5%) had experienced physical violence. Among those who had ever experienced violence, more than one in two MSM and TG in Port Moresby (53.8%) and more than one in four (28.5%) in Lae experienced physical violence in the last 12 months and of those, very few believed that the physical violence was associated with their sexual practices and or gender identity.¹⁶⁸¹

Freedom of information (FOI)

Access to information online is limited due to expensive and inadequate internet service provision and network coverage. In 2016, Parliament passed the Cybercrime Act as part of a general drive within the Pacific region to reform and develop ICT laws. The law applies to defamation, cybersecurity, spam, hacking, forgery and computer fraud. The passage of the legislation attracted controversy and criticism from the public due to its alleged lack of consultation on the content of the bill. The timing of the bill also occurred prior to the 2017 elections, amidst growing discontent against the government expressed on social media, calling for the then Prime Minister to step down, which resulted in the UPNG student protests and shooting.

In January 2017, the National Information and Communication Technology Authority CEO said the Cybercrime Act would not be a form of censorship on mainstream and social media. “We respect freedom of information and speech as provided for under the Constitution but let me also specify that those freedom are referred to by law as qualified rights, meaning that people should not abuse those freedom to commit (crimes) against other people”, the CEO said.¹⁶⁸² Section 51 of the Constitution provides for the Right to Freedom of Information and Section 46 to Freedom of Expression.

Freedom of expression, association and peaceful assembly

In February 2018, a journalist in Lae was assaulted by personnel from the Morobe Governor’s office while on assignment.¹⁶⁸³ Other media reported that while perpetrating the attack, the assailants allegedly said there were a lot of negative reports being made about the Morobe Governor. Four men, including the Governor’s Chief of Staff, were arrested and charged with assault and drunk and disorderly behaviour.¹⁶⁸⁴

In November 2018, a journalist renowned for investigative reporting was suspended from his job at a prominent state-owned TV station, allegedly for critical reporting during the country’s hosting of the Asia Pacific Economic Cooperation Forum meetings. The suspensions remained outside of public knowledge for one week before being leaked via social media. Following public outcry on social media, a statement by the PNG Media Council, and a joint statement by the UN and the US Embassy calling for reinstatement of the journalist and respect for freedom of the press, the journalist was reinstated to his position.¹⁶⁸⁵ The television station was recently acquired by the State, after over 30 years as a Fijian-owned company.

1679 Ibid.

1680 Ibid.

1681 Ibid.

1682 PNG Loop 2017. <http://www.looppng.com/tags/national-cybercrime-act-2016> (accessed 30 August 2019).

1683 PNG Loop 2018. <http://www.looppng.com/png-news/suspects-journo%E2%80%99s-assault-charged-73643> (accessed 20 August 2019).

1684 Ibid.

1685 Post-Courier 2018. <https://postcourier.com.pg/journalist-reinstated-suspension/> (accessed 30 September 2019).

Economic rights

PNG's overall economic growth performance has been consistent with real GDP per capita, averaging 4% since the mid-2000s. However, as revenues continue to face challenges arising from lower global commodity prices, good macroeconomic management and more efficient service delivery is necessary to ensure development benefits reach a greater number of Papua New Guineans.¹⁶⁸⁶

PNG's population is young and growing, while the country's growth trajectory and abundant resource potential provide a strong platform for greater economic engagement with Asia and further abroad.¹⁶⁸⁷ PNG's economy remains dominated by two broad sectors: the agricultural, forestry and fishing sector, which engages most of PNG's labour force (the majority informally); and the minerals and energy extraction sector, which accounts for the majority of export earnings and GDP.¹⁶⁸⁸

There are limited formal job opportunities for the growing employment-age population and other risks include environmental management, population growth, political fragmentation, inequalities in PNG's resource-dominated economy and social exclusion of some groups.¹⁶⁸⁹ However, an eight-year Microfinance and Employment Project, supported by ADB and the Government of Australia, has helped lay the foundations for a flourishing microfinance sector in the country.¹⁶⁹⁰ Moreover, ADB's USD 24.06 million Microfinance Expansion Project launched in 2012 includes a seven-year programme to deliver financial literacy training to more than 120,000 people in inaccessible areas of the country, with at least 40% of the trainees being women.¹⁶⁹¹ This has led to the creation of Women's Microbank. Licensed in August 2014, it is the first bank in the Pacific established specifically to serve women. It provides savings products and loan facilities and conducts financial literacy training. It emerged from a non-governmental institution, PNG Women in Business, which has provided it with almost 10,000 customers, and is opening many new accounts.¹⁶⁹² In his maiden speech since becoming Prime Minister, James Marape pledged to make PNG the "richest black Christian nation."¹⁶⁹³

Right to health and education

Education in PNG is of concern within the context of the SDGs as retention and youth literacy rates continue to be low. Overall, student enrolment increased at all levels of the general education sector in line with funding for education; however, despite these successes, significant challenges remain in improving opportunities for all eligible school-age children, especially for girls to enrol in school, and thereby meet international and national targets, including gross enrolment and retention targets.¹⁶⁹⁴

The Department of Education's 2017 PNG Education at a Glance report revealed that the net enrolment rate for basic education (prep to grade eight) was 64.51%. Access to education is still an issue for children in both remote locations and urban settlements. The same report further suggests a transition rate of 56.42% from grade eight to nine. Delivering an education service in PNG is highly cost-intensive given the country's geographic diversity.¹⁶⁹⁵

Successive governments have made genuine commitments to ensure eligible school-age children rightly receive their general education. In 2012 the PNG government introduced the Tuition Fee Free policy, which effectively eliminated tuition fees for students in elementary school up to Grade 10. The policy put into action the government's Universal Basic Education plan (2010–2019), which aims to ensure that "all school-aged

1686 World Bank 2019. <https://www.worldbank.org/en/country/png/overview> (accessed 30 September 2019).

1687 Ibid.

1688 Ibid.

1689 Ibid.

1690 ADB 2015. <https://www.adb.org/results/banking-unbanked-papua-new-guinea> (accessed 20 August 2019).

1691 Ibid.

1692 Ibid.

1693 Reuters. <https://www.reuters.com/article/us-papua-politics-parliament/new-png-leader-taking-back-economy-puts-resources-firms-on-notice-idUSKCN1SZ30B> (Accessed 20 August 2019).

1694 Department of Education. National Education Plan 2015–2019. Available at: http://www.education.gov.pg/documents/NEP_2015-2019_DoE.pdf (accessed 20 August 2019).

1695 Information provided by OHCHR. The report is not available online.

children have equal access to quality basic education in order to contribute to the development of the country". The current education policies and plans developed to achieve Education for All and the SDGs aim to reduce the number of children out of school. In PNG this includes the National Education Plan (NEP) 2015-2019, Gender Equity in Education Policy 2009, Inclusive Education Policy 2001, Universal Basic Education Plan 2010-2019 and the Higher Education (General Provisions) Act 2014. The National Education Plan (2015-2019) Addendum was endorsed in 2018, paving the way for a successful Global Partnership for Education application for an Education Sector Plan Implementation Grant of USD 7.4 million for science, technology, engineering and mathematics pre- and in-service education. The government's allocation of expenditure to the education sector for 2018 was 8.8% of the total budget, which was an increase of 13.3% from the 2017 Supplementary Budget.¹⁶⁹⁶ In the 2018 budget, the health sector was allocated 10.2% of the total budget, an increase of 14% from the 2017 Supplementary Budget.¹⁶⁹⁷ Financing of the health sector has increased significantly over the last five years and a focus on improving the infrastructure of the national and regional referral hospitals and provincial hospitals are critical national functions.¹⁶⁹⁸

The Demographic and Health Survey (DHS) 2016-2018¹⁶⁹⁹ preliminary results reveal slight improvements in the health indicators relevant to the SDGs for the country: there is a slight reduction in the total fertility rate,¹⁷⁰⁰ from 4.4% in 2006 to 4.3%; the family planning contraceptive prevalence rate is 37% overall; and 59% of family planning needs are being met.¹⁷⁰¹ Teenage pregnancy rates are steady at 13% for rural teenagers and 10% for urban teenagers. In the five years preceding the survey, the under-5 mortality rate was 49 deaths per 1000 live births.¹⁷⁰² The national immunisation coverage rate continues to remain low at 35%.¹⁷⁰³ Antenatal care coverage has greatly improved to 76%, with 89% high coverage in urban areas and 75% coverage in rural areas.¹⁷⁰⁴ Supervised births have increased remarkably to 56% overall, with 87% in the urban areas and 53% in rural areas.¹⁷⁰⁵ Work has commenced on a new National Health Plan 2021–2030, which will align with PNG Vision 2050, PNG Development Strategic Plan 2010–2030, international treaties and the SDGs. The health sector has transitioned to a new National Health System, where Provincial Health Authorities assume the service needs of their communities.

Women's and children's rights

Despite having record numbers of women candidates campaigning for election, the 2017 National General Election was the first in PNG to elect a parliament without any female members, a reduction from the three elected in the previous election in 2012.

The number and severity of violent incidents resulting from accusations of sorcery have escalated in recent years, further threatening the rights and security of women and girls.¹⁷⁰⁶ In 2013, Parliament repealed the Sorcery Act 1971, which provided a reduced sentence for murder or assault committed against any person alleged to have practiced sorcery.¹⁷⁰⁷ In addition, the Criminal Code was amended to make sorcery-related killings punishable

1696 PNG Government Treasury. https://www.treasury.gov.pg/html/national_budget/files/2018/2018%20Budget%20Speech.pdf (accessed 20 August 2019).

1697 Op cit.

1698 Ibid.

1699 National Statistical Office PNG and ICF2019. Papua New Guinea Demographic and Health Survey 2016-18: Key Indicators Report. Available at: http://www.nso.gov.pg/images/DHS2016_2018/PNG_DHS2016-2018_KIR.pdf.

1700 Ibid.

1701 Ibid.

1702 Ibid.

1703 Ibid.

1704 Ibid.

1705 Ibid.

1706 Auka R. et al 2015. Sorcery and witchcraft related killings in Papua New Guinea: The Criminal Justice system response. In: Forsyth M. and Eves R. (eds). Talking it through: Responses to sorcery and witchcraft beliefs and practices in Melanesia. Canberra: ANU Press. Available at: <http://press-files.anu.edu.au/downloads/press/p316611/pdf/13.-Sorcery-and-Witchcraft-Related-Killings-in-Papua-New-Guinea-The-Criminal-Justice-System-Response.pdf>

1707 Amnesty International 2015. <https://www.amnesty.org/en/latest/news/2015/05/papua-new-guinea-vicious-sorcery-killing-leaves-two-more-women-at-imminent-risk/> (accessed 23 March 2019).

by the death penalty.¹⁷⁰⁸ In July 2018, 97 men were convicted of wilful murder for their involvement in the killing of seven people, including two children, whom they accused of practicing sorcery. 89 of the men were sentenced to life imprisonment and eight sentenced to death.¹⁷⁰⁹ While these legal amendments are evidence of the government's commitment to ending sorcery-related violence, violent attacks against women accused of practicing sorcery, especially in remote regions of PNG, continue to be reported.¹⁷¹⁰

In 2017, PNG was ranked 159 out of 160 countries in the Gender Inequality Index,¹⁷¹¹ which measures disparity across three dimensions: reproductive health, empowerment through political participation and formal education, and economic activity. The equality of all persons is a constitutional right in PNG; however, it has been acknowledged by the government that systemic gender inequality and discriminatory customary practices continue to prevent the full and equal participation of women in key areas of political, economic and social life.¹⁷¹²

In terms of economic activity, female participation in the labour market was measured at 69%, compared to 70.8% for men in 2017.¹⁷¹³ Despite this relatively high rate of participation, Human Rights Watch has recognised that many women, especially those in the Highlands, remain financially dependent on their male partners.¹⁷¹⁴ Women's life expectancy at birth is impacted by poorer nutrition and health, high rates of pregnancy and maternal mortality, and high rates of family violence.¹⁷¹⁵ Women and girls also experience poorer health outcomes, including an alarmingly high rate of HIV/AIDS infection in female sex workers, children and youths, largely attributable to low use of family planning and condoms, and low access to reproductive health services and resources in regional and remote provinces.¹⁷¹⁶ A lack of relevant data makes it difficult to track whether these indicators have improved, stalled or worsened in recent years. There is also anecdotal evidence of the discriminatory effects of customary practices, including the payment of bride price, polygamy and violence against those accused of sorcery.¹⁷¹⁷ Each of these practices, when coupled with the under-representation of women in key areas of public life, reinforces pervasive gender inequality in PNG.

In its effort to address violence against women, PNG's Parliament passed the Family Protection Act in 2013, which outlines penalties for perpetrators of domestic violence. According to the Key Indicators Report of the Demographic and Health Survey (DHS) 2016–2018, there remains a high prevalence of violence against women and girls in PNG, perpetuated by family members, intimate partners and unrelated individuals. According to the DHS report, 31% of women aged 15–49 years have experienced physical violence, while 3% have experienced sexual violence,¹⁷¹⁸ and a quarter have experienced both physical and sexual violence.¹⁷¹⁹ Overall, 59% of women aged 15–49 years have experienced either physical or sexual violence.¹⁷²⁰ The proportion of women who have experienced physical or sexual violence increases from 43% among those aged 15–19 years to 65% among those aged 30–39 before declining to 62% among those aged 40–49.¹⁷²¹ Seeking help from a social work organisation, lawyer or from medical personnel is not common as the majority of women tend to seek assistance from

1708 Criminal Code (Amendment) Act 2013 (Papua New Guinea). Available at: <http://www.parliament.gov.pg/index.php/bills-and-legislation/view/criminal-code-amendment-act-2013> (accessed 20 September 2019).

1709 ABC News 2018. <https://www.abc.net.au/news/2018-07-26/papua-new-guinea-sorcery-murders-death-sentence/10038442> (accessed 20 August 2019).

1710 Amnesty International 2015. <https://www.amnesty.org/en/latest/news/2015/05/papua-new-guinea-vicious-sorcery-killing-leaves-two-more-women-at-imminent-risk/> (accessed 23 March 2019).

1711 UNDP 2018. Human Development Indices and Indicators: 2018 Statistical Update: Papua New Guinea. Available at: http://hdr.undp.org/sites/all/themes/hdr_theme/country-notes/PNG.pdf (accessed 28 August 2019).

1712 CEDAW/C/PNG/3. Available at: <https://www2.ohchr.org/english/bodies/cedaw/docs/CEDAW.C.PNG.3.pdf>

1713 UNDP 2018. Human Development Indices and Indicators: 2018 Statistical Update: Papua New Guinea. Note. 1666.

1714 Human Rights Watch 2015. <https://www.hrw.org/report/2015/11/04/bashed/family-violence-papua-new-guinea> (accessed 29 August 2019).

1715 Ibid.

1716 Radio New Zealand 2017. <https://www.rnz.co.nz/international/pacific-news/326821/hiv-remains-critical-threat-in-papua-new-guinea> (accessed 28 August 2019).

1717 Human Rights Watch. Note. 1669.

1718 National Statistical Office PNG and ICF (2019). PNG Demographic and Health Survey 2016–18. Note. 1654.

1719 Ibid.

1720 Ibid.

1721 Ibid.

their own family members instead.¹⁷²² According to the DHS report, 72% of women who experienced either physical or sexual violence¹⁷²³ sought help from family members and only 10% of women who experienced either physical or sexual violence sought help from the police.¹⁷²⁴

The 2012 Tuition Fee Free education policy has improved access to education, especially for disadvantaged and marginalised children, and increased enrolment in schools; however, disparities still exist across the country and in 2016, it was estimated that almost half a million children were out of school.¹⁷²⁵ The Department of Education has integrated child-friendly school indicators into its National Quality School Standard Framework for use by school inspectors.¹⁷²⁶

The LPA strengthened child protection but does not explicitly prohibit corporal punishment. The Criminal Code provides for the use of such force as is reasonable under the circumstances by parents and schoolteachers.¹⁷²⁷

The National Executive Council has endorsed the first National Child Protection Policy (2017–2020) and an Implementation Regulation for the Child Protection Act (2017). In response to malnutrition, a National Nutrition Policy and a nutrition strategic plan and budget have been completed.

Rights of persons with disabilities (PWDs)

PNG ratified CRPD in 2013 but has yet to report to the committee on its progress in implementing the convention. Statutory responsibility for disability is with the Department for Community Development. Under a 2015 decision of the National Executive Council, a disability bill which would establish a Disability Authority was drafted by the Department of Justice and Attorney General, the Constitutional Law Reform Commission and the Department for Community Development and Religion, and submitted to the National Parliament for endorsement. In 2015, the government launched the National Policy on Disability 2015–2025, a 10-year national strategy and plan of action for the disability sector to meet PNG's obligations under CRPD. The Inclusive Education Policy (IEP) is currently under review by the National Department of Education, with technical support from Callan Services National Unit and the Christian Blind Mission. The IEP consultation process included national, provincial and local stakeholders, and donor agencies to ensure broad ownership and to mobilise resources to implement the IEP. There is also a National Advisory Council on Disability that links the government and civil society in the implementation of the National Disability Policy.

In the 2016 UPR, stakeholders submitting reports noted that progress was being made on disability rights by the government, but there were concerns that as many as 90% of children with disabilities were still not properly registered in one of the special education resource centres or in mainstream schools. Further, many children with disabilities face abuse, discrimination, exclusion, lack of accessibility and a wide-range of barriers to education, and both female and male children with disabilities usually did not benefit from health treatments. Women and girls with disabilities are more at risk of being excluded from education.¹⁷²⁸

PNG has one psychiatric hospital, located outside the capital city. A few provincial hospitals have small psychiatric units but most have none and can only offer outpatient mental health care provided by psychiatric nurses. In 2015, there were nine psychiatrists serving the whole population.¹⁷²⁹ Social, cultural, economic and infrastructural factors have been reported as challenges that hinder the adequate provision of, and access to, psychiatric services.¹⁷³⁰

¹⁷²² Ibid.

¹⁷²³ Ibid.

¹⁷²⁴ Ibid.

¹⁷²⁵ A/HRC/WG.6/25/PNG/2. Available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/043/35/PDF/G1604335.pdf?OpenElement>

¹⁷²⁶ UNICEF 2017. Annual Report 2017: Papua New Guinea. Note. 1625.

¹⁷²⁷ Ibid.

¹⁷²⁸ A/HRC/WG.6/25/PNG/3. Available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/017/50/PDF/G1601750.pdf?OpenElement>

¹⁷²⁹ Muga F. 2015. Rich country, poor people: the challenges of providing psychiatric services in the public and the private sectors in Papua New Guinea. *Australasian Psychiatry* 6:29-31. <https://doi.org/10.1177/1039856215608293>

¹⁷³⁰ Ibid.



Climate justice

The government is committed to supporting responsible and sustainable development, as outlined in the PNG Strategy for Sustainable and Responsible Development and other strategic documents. A key element of the strategy involves how action can be taken to both address the country's vulnerability to climate change and minimise the country's greenhouse gas emissions.¹⁷³¹ PNG's Vision 2050 sets out goals for action including a 50% reduction in emissions by 2030 and carbon neutrality by 2050, with further details of proposed approaches to achieving these goals included within the PNG Climate Compatible Management Policy.¹⁷³²

The Climate Change and Development Authority together with the Department of National Planning and Monitoring are leading the process through the development of a number of strategic documents that will help inform and guide PNG's approach. These include: development of a Roadmap for the Implementation of PNG's Nationally Determined Contributions under the UNFCCC; development of a Roadmap to Achieve SDG 13 – Action on Climate Change within the context of PNG; and finalisation of a National REDD+ Finance and Investment Plan to support the implementation of PNG's National REDD+ Strategy 2017–2027. These actions are considered to be critical for effective national, sector and subnational planning activities, and to providing tools to present PNG's climate action globally and to help mobilise international support.¹⁷³³

A July 2019 DevPolicy Blog commentary reported that climate change is already having significant effects on communities in PNG, and projections made by the Pacific Climate Change Science Programme suggest further negative consequences, including increasing intensity of cyclones, rising temperatures, changing rainfall patterns, sea level rise, increasing ocean acidification and pressures on food security.¹⁷³⁴

Information gathered from a series of community workshops held in various parts of PNG included the fact that changes in rainfall and rising temperatures were considered to be the most important climate variables impacting people and the environment.¹⁷³⁵ Additional hot days were limiting the number of hours that women reported working in the food garden and there were concerns about the potential for wildfires, particularly in community forest conservation areas. Flow-on effects to food security, and human and ecological health and function were also concerning.¹⁷³⁶ Women and children emerged as the most disadvantaged by local environmental change. Displacement was identified through the migration of highlanders to coastal centres seeking employment, which was viewed as contributing to the loss of local ecosystem services.¹⁷³⁷ Challenges identified include a lack of resources (financial, knowledge and equipment) to implement the plans and weaknesses in local and provincial governments to take effective action.¹⁷³⁸

During a 2019 official visit to Australia, PNG Prime Minister James Marape said that the voices of smaller island nations must be listened to: "As big countries in the Pacific – Papua New Guinea, Australia, New Zealand – we have a sense of responsibility to the smaller island countries because displacement of these smaller communities will first and foremost be our neighbourhood responsibility."¹⁷³⁹ The Prime Minister went on to express the need to leave the planet to the next generation in a better form than the form inherited, saying that "if the government didn't get the balance right, future generations would blame them."¹⁷⁴⁰

¹⁷³¹ Climate Change and Development Authority 2019. <http://www.ccda.gov.pg/PDFs/Media%20Release%20Leadership%20Forum%20on%20SDG%20Roadmap.pdf> (accessed 20 August 2019).

¹⁷³² Op cit.

¹⁷³³ Op cit.

¹⁷³⁴ DevPolicy Blog 3 July 2019. Community responses to the effects of climate change in PNG. Available at <https://devpolicy.org/community-responses-to-the-effects-of-climate-change-in-png-20190703/> (accessed 20 August 2019).

¹⁷³⁵ Op cit.

¹⁷³⁶ Op cit.

¹⁷³⁷ Ibid.

¹⁷³⁸ Ibid.

¹⁷³⁹ Guardian Newspaper 2019. <https://www.theguardian.com/world/2019/jul/27/australia-must-help-protect-pacific-from-climate-change-png-prime-minister-says> (accessed 28 August 2019).

¹⁷⁴⁰ Op cit.



COUNTRY CHAPTERS

SAMOA

Samoa

Key facts

Capital city	Apia	Total land area	2934sq. km ¹⁷⁴¹
Population (year)	196,700 (2018 est.) ¹⁷⁴²	Population growth % (year)	0.7% (2018 est.) ¹⁷⁴³
GDP per capita (year)	USD 4208 (2016 est.) ¹⁷⁴⁴	GNI per capita (Atlas method) (year)	USD 4190 (2018) ¹⁷⁴⁵
Type of government	Parliamentary republic ¹⁷⁴⁶ with the Prime Minister as the head of government and the O le Ao o le Malo as the head of state (similar to a presidential role).		
Electoral system	Plurality voting system in single-member and multi-member constituencies ¹⁷⁴⁷		
Number of members of parliament (MPs): total/female (year)	50 total / female 5 (2018) ¹⁷⁴⁸ Ratio of women 10%.		
Religions: by % of population (year)	Protestant 52.6% (Congregationalist 29%, Methodist 12.4%, AoG: 6.8%, SDA: 4.4%), Roman Catholic 18.8%, Mormon 16.9%, Worship Centre 2.8%, other Christian 6.3%, other Protestant 2.4%, other 2.4% (includes Baha'i, Muslim), none 0.2% (2016 est.). ¹⁷⁴⁹		
Ethnic groups: by % of population (year)	Samoan 96%, Samoan/New Zealander 2%, other 1.9% (2011 est.) ¹⁷⁵⁰		
Languages: by % of population (year)	Samoan (Polynesian) (official) 91.1%, Samoan/English 6.7%, English (official) 0.5%, other 0.2%, unspecified 1.6% (2006 est.). ¹⁷⁵¹		
Life expectancy: male/female (year)	Male: 71.3 years Female: 77.3 years (2018 est.) ¹⁷⁵²	% youth aged 15–24 years: total male/female (year)	19.76% male 20,413 /female 19,357 (2018 est.) ¹⁷⁵³
% disability: total male/female (year)	7.1% (2016) with at least some difficulty (not disaggregated) ¹⁷⁵⁴		

1741 SPC Statistics Division. <https://sdd.spc.int/ws> (accessed 28 August 2019).

1742 Ibid.

1743 Ibid.

1744 Ibid.

1745 The World Bank Data. <https://data.worldbank.org/indicator/NY.GNP.PCAP.CD> (accessed 28 August 2019).

1746 CIA World Factbook. Available at <https://www.cia.gov/library/publications/the-world-factbook/geos/ws.html> (accessed 28 August 2019).

1747 Election Guide. <http://www.electionguide.org/countries/id/186/> (accessed 28 August 2019).

1748 Pacific Women in Politics. <https://www.pacwip.org/country-profiles/samoa/> (accessed 28 August 2019).

1749 CIA World Factbook. Note. 1701.

1750 Ibid.

1751 Ibid.

1752 Ibid.

1753 Ibid.

1754 Samoa Bureau of Statistics, Ministry of Women, Community and Social Development, Pacific Community and UNICEF Pacific 2018. 2018 Samoa disability report: An analysis of 2016 Census of Population and Housing. Available at https://www.unicef.org/pacificislands/2018_Samoa_Disability_Monograph.pdf

International human rights treaty ratification and reporting obligations¹⁷⁵⁵

Treaty	Date of signature (S) ratification (R) accession (a)	Reservations	Latest report submitted	Reporting status
ICCPR	15 February 2008 (a)			Overdue since 15 May 2009.
CEDAW	25 September 1992 (a)		6 th report submitted 26 July 2017.	7 th report due 09 November 2022.
CAT	28 March 2019 (a)			1 st report due 27 April 2020.
CRC	29 November 1994 (R)		2 nd to 4 th report submitted 23 April 2014.	5 th and 6 th report due 28 December 2021.
CED	27 November 2012 (R)			Overdue since 27 Dec 2014.
CRPD	02 December 2016 (R)			Overdue since 1 Jan 2019.
OP-CRC-AC	17 May 2016 (a)		N/A	
OP-CRC-IC	29 April 2016 (a)		N/A	
OP-CRC-SC	29 April 2016 (a)		N/A	

Special Procedures:

Standing invitation since 14 February 2011; Visit request by Special Rapporteur on the right to development since 10 November 2017.¹⁷⁵⁶

Country visits:

Working Group on discrimination against women 8 – 18 August 2017. Report completed 14 May 2018.¹⁷⁵⁷

Universal Periodic Review:

1st cycle: 9 May 2011; 2nd cycle: 3 May 2016; next cycle: 2021.

International Criminal Court (ICC): Signatory to the Rome Statute: 17 July 1998 (S); 16 September 2002 (R); Acceded to Agreement on the Privileges and Immunities of the ICC 8 April 2016.¹⁷⁵⁸

System of government

Samoa has a constitutional legal system which incorporates common law and customary laws, with the constitution as the supreme law.¹⁷⁵⁹ The Executive Government is headed by the Prime Minister, who is supported by Cabinet Ministers. The Executive Government is responsible for the day-to-day management of the State, including the enforcement of the laws of Samoa.¹⁷⁶⁰ The head of state is elected by the Legislative Assembly to serve a five-year term, with a two-term limit. Parliamentary elections were last held in 2016 with the next to be held in 2021. Following parliamentary elections, the leader of the majority party is usually appointed Prime Minister by the head of state, approved by the Legislative Assembly.¹⁷⁶¹ Four women were successfully elected to Parliament, which meant that the special measures amendment to the Constitution

1755 OHCHR. https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=190&Lang=EN (accessed 28 August 2019).

1756 Ibid.

1757 Op cit.

1758 United Nations Treaty Collection. https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-13&chapter=18&lang=en (accessed 28 August 2019).

1759 PACLI Institute. <http://www.paclii.org/ws/government.html> (accessed 29 August 2019).

1760 Government of Samoa. <http://www.samoagovt.ws/about-government/> (accessed 29 August 2019).

1761 CIA World Factbook. Note. 1701.

(2013) for a 10% minimum quota for women representatives was activated, and the next highest-polling woman candidate was also elected.¹⁷⁶²

Only citizens with matai status (chiefs or family heads) are allowed to stand as candidates, which can act as a barrier to many women's eligibility to run for office.¹⁷⁶³ In 2018 only 11% of matai were women and 36 villages did not allow women to hold a matai title.¹⁷⁶⁴ The CEDAW Committee in 2018 expressed concern about the lack of measures taken to remove the matai condition for women because of the low number of women holding the title and the ban on female matai by some villages.¹⁷⁶⁵

Judicial system and administration of justice

The judiciary interprets the law, ensures that the rule of law prevails and is the guardian of the constitution as the supreme law of Samoa. Article 66 of the Constitution lays down the establishment of the Supreme Court, which consists of the Chief Justice, who is also the principal judicial officer and responsible for its administration, and a number of Supreme Court Judges presiding in the Supreme Court.¹⁷⁶⁶ The Court of Appeal has jurisdiction to hear and determine all appeals from any judgment, decree or order of the Supreme Court, whether civil or criminal, and touches on matters involving a substantial question of law as to the interpretation or effect of the constitution.¹⁷⁶⁷ In 2014, a Family Court was established as a division of the District Court to provide protection and recourse for victims of family violence.¹⁷⁶⁸ In 2018, the CEDAW Committee expressed concern over the mandatory use of mediation in situations of violence, without full risk assessments, and recommended that mediation not be mandatory in cases of violence against women and girls, including domestic violence, and that victims have access to effective remedies and redress.¹⁷⁶⁹

Access to justice and the right to remedy

Under the constitution, every Samoan has a fundamental right to a fair and public hearing within a reasonable time by an independent and impartial tribunal. One of Samoa's key outcomes for the next four years under the Law and Justice Sector Plan is improving access to justice through fairer and more responsive justice systems.¹⁷⁷⁰ In 2018, authorities generally observed due process safeguards against arbitrary arrest and detention, and the courts provided defendants with the conditions necessary for a fair trial; however, due process standards vary in village councils where many disputes are settled.¹⁷⁷¹

The Community Law Centre Act was enacted in 2015 and provided for the functions, duties and powers of a Community Law Centre for individuals and communities to access justice services, including resources, legal information and fair representation in order to have their rights respected and upheld.¹⁷⁷² The CEDAW Committee in 2018 noted the lack of implementation of the Community Law Centre Act and recommended the establishment of community law centres to enhance access to justice for women, particularly in rural areas,

1762 Pacific Women in Politics. <https://www.pacwip.org/country-profiles/samoa/> (accessed 28 August 2019).

1763 Freedom House. <https://freedomhouse.org/report/freedom-world/2018/samoa> (accessed 31 August 2019).

1764 Samoa Office of the Ombudsman 2018. State of human rights report June 2018: National public inquiry into family violence in Samoa. Available at https://ombudsman.gov.ws/wp-content/uploads/2019/01/2018_-_SHRR-2018-National-Public-Inquiry-into-Family-Violence_-English.pdf

1765 CEDAW/C/WSM/CO/6. Available at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fWSM%2fCO%2f6&Lang=en

1766 Constitution of the Independent State Of Samoa. Available at: <http://www.samoagovt.ws/wp-content/uploads/2014/07/Constitution-of-the-Independent-State-of-Samoa-1960.pdf> (accessed 7 October 2019).

1767 Ibid.

1768 CEDAW/C/WSM//CO/6. Note. 1720.

1769 Ibid.

1770 Samoa Ministry of Justice and Courts Administration. Samoa Law and Justice Sector Plan 2016/2017 – 2019/2020: Promoting a safe, fair and just Samoa. Available at: https://www.mjca.gov.ws/images/Law_Justice_Sector/Law--Justice-Sector-Plan-2016-2020-English.pdf (accessed 30 August 2019).

1771 Freedom House. Note. 1718.

1772 Samoa Ministry of Justice and Courts Administration, Samoa Law and Justice Sector Plan 2016/2017 – 2019/2020: Note 1725.

taking into account the needs of disadvantaged groups.¹⁷⁷³ The Committee on the Rights of the Child in 2016 urged Samoa to bring its juvenile justice system fully in line with the convention and other relevant standards by: raising the minimum age of criminal responsibility in accordance with international standards; ensuring that children are not imprisoned with adults and do not share accommodation with prison staff, and that detention conditions are compliant with international standards including with regard to access to education, health services, water, sanitation and food; prohibiting forced labour for juvenile detainees; and promoting alternative measures to detention, such as diversion, probation and counselling.¹⁷⁷⁴

National human rights institution (NHRI)

The Samoa NHRI was established in the already existing Office of the Ombudsman under the Ombudsman Act 2013, and in 2016, the office was awarded A status by GANHRI.¹⁷⁷⁵ A-status accreditation, the highest level, reflects international recognition of the independence of the office and its record in effectively promoting and protecting human rights in Samoa since its establishment in 2013. It is currently the only NHRI to hold this status among the Pacific Island countries.¹⁷⁷⁶ The CEDAW Committee in 2018 recommended an increase to the capacity and resources of the NHRI to carry out and monitor its work effectively.¹⁷⁷⁷

Security sector

While Samoa does not have a standing army, the Samoa Police Service is responsible for the safety and security of Samoa and its people from internal and external security threats.¹⁷⁷⁸

As of 2018, police officers were occasionally accused of physical abuse. Prisons are under-resourced, resulting in poor conditions for prisoners, including overcrowding as well as occasional difficulties keeping the facilities themselves secure. In early 2018, there was a spate of escapes from the national prison.¹⁷⁷⁹ A new multi-million dollar, high-security prison was opened early in 2019 and an enquiry is underway into how two prisoners escaped in October. A breach of duty by a prison officer is being investigated.¹⁷⁸⁰

In June 2019, the Guardian newspaper reported on an investigation into drug trafficking in the Pacific. The investigation found that trade through the Pacific is causing grave social harm in countries like Fiji, Samoa and Tonga, which now have domestic markets for the drugs and are suffering from addiction, corruption and violence.¹⁷⁸¹ In July 2019, the Samoa Police recovered drugs worth WST 400,000 (USD 144,000).¹⁷⁸²

Refugees and asylum seekers

Samoa acceded to the 1951 Convention relating to the Status of Refugees in 1988 and its 1967 Protocol in 1994; however, Samoa is not a State party to the 1954 Convention relating to the Status of Stateless Persons or the 1961 Convention on the Reduction of Statelessness.¹⁷⁸³ In view of the small number of individual cases and more pressing domestic issues, asylum seekers, refugees, stateless persons and internally displaced persons are not prominent concerns in Samoa.¹⁷⁸⁴ In 2017, the High Commissioner for Refugees noted that despite Samoa having no refugees, the Samoan government has been praised for their “eagerness to understand what

¹⁷⁷³ CEDAW/C/WSM/CO/6. Note. 1720.

¹⁷⁷⁴ CRC/C/WSM/CO/2-4. Available at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fWSM%2fCO%2f2-4&Lang=en

¹⁷⁷⁵ Samoa Office of the Ombudsman 2018. State of human rights report June 2018: National public inquiry into family violence in Samoa. Available at: https://ombudsman.gov.ws/wp-content/uploads/2019/01/2018_SHRR-2018-National-Public-Inquiry-into-Family-Violence_English.pdf

¹⁷⁷⁶ Ibid.

¹⁷⁷⁷ CEDAW/C/WSM/CO/6. Note. 1720.

¹⁷⁷⁸ Samoa Police Services. <https://www.samoa.police.ws/about/> (Accessed: 29 August 2019).

¹⁷⁷⁹ Freedom House. Note. 1718.

¹⁷⁸⁰ Radio New Zealand 2019. <https://www.rnz.co.nz/news/pacific/400585/samoa-prison-escape-prisons-commissioner-suspended> (accessed 10 August 2019).

¹⁷⁸¹ The Guardian 2019. <https://www.theguardian.com/world/2019/jun/26/australia-and-new-zealand-urged-to-step-up-fight-against-pacific-drug-trade> (accessed 10 September 2019).

¹⁷⁸² Samoa Observer 2019. <https://www.samoaobserver.ws/category/editorial/46164> (accessed 10 September 2019).

¹⁷⁸³ UNHCR. <https://www.refworld.org/pdfid/4ccfe12f2.pdf> (accessed 30 August 2019).

¹⁷⁸⁴ Ibid.

asylum and refugees is all about.”¹⁷⁸⁵ In 2018, 13 Samoans had initiated or continued applications for refugee status in Australia. No determinations were reported.¹⁷⁸⁶

Migration

A 2017 UNICEF Situation Analysis reported that Samoa has experienced growing unplanned urbanisation owing to high rates of migration of persons from rural to urban areas in recent years.¹⁷⁸⁷ Due to a lack of adequate housing and low incomes, internal migrants often live in informal settlements with poor water and sanitation services.¹⁷⁸⁸ Traditional social support systems are diminishing as a result of monetisation and increasing rural-urban and overseas migration.¹⁷⁸⁹

Samoa has one of the largest overseas diaspora groups in the Pacific, with the UN Population Division estimating the number of Samoa-born living overseas in 2013 to total 129,150, including 65,000 in New Zealand, 31,900 in American Samoa, just under 20,000 in Australia and 12,400 in the USA. The New Zealand Census of Population and Dwellings in 2013 recorded just under 50,700 Samoa-born as usually resident in the country.¹⁷⁹⁰ In 2015, a total of 4929 migrants who were born in another country lived permanently in Samoa.¹⁷⁹¹ Most migrants come from American Samoa and New Zealand.¹⁷⁹² It is unclear if they are offspring of earlier immigrants to the diaspora. Each year up to 1100 Samoan citizens are selected by ballot to be considered for residence in New Zealand under the Pacific Access Category.¹⁷⁹³ At the beginning of 2019, 2400 Samoans were participating in seasonal worker schemes in Australia and New Zealand.¹⁷⁹⁴ In 2018, a number of Samoans were deported from the US due to criminal convictions,¹⁷⁹⁵ the most recent in a history of deportations. The Samoa Returnees Charitable Trust helps rehabilitate the returnees and offers some reassurance to the public that they will not recommit crimes in Samoa.¹⁷⁹⁶

Human Trafficking, Forced Labour, and Contemporary Forms of Slavery

Samoa hosted the Pacific Immigration Development Community (PIDC) Secretariat seminar in February 2019 on tackling human trafficking and people smuggling in the Pacific Islands. The Head of the PIDC Secretariat, Maumalo Ioane Alama, informed the media that “We’ve seen quite a lot of discussion around the exploitation of fishermen, so we’ve also discussed a number of cases of sexual exploitation. Also, potential sex crimes against children in remote areas and had number of cases reported from across the Pacific. But that’s definitely something we are looking at trying to develop some proper response, and how to manage the threat at the border and make sure we can support police in undertaking their investigations.”¹⁷⁹⁷

In December 2018, a Samoan man resident in New Zealand was arrested for illegally bringing 10 Samoan nationals to New Zealand to work for him in the horticultural industry and using them as slaves. The arrest resulted from a two-year investigation into the activities of the accused, who is believed to have been operating in this way since the 1990s.¹⁷⁹⁸ The case was ongoing as at the time of this report.

1785 Samoa Observer 2017. <https://www.samoaobserver.ws/category/samoa/33527> (accessed 30 August 2019).

1786 WorldData.info. <https://www.worlddata.info/oceania/samoa/asylum.php> (accessed 30 August 2019).

1787 UNICEF Pacific 201). Situation Analysis of Children in Samoa. Available at: https://www.unicef.org/pacificislands/10_Situation_Analysis_of_Children_Samoa.pdf

1788 Ibid.

1789 Ibid.

1790 ILO 2015. https://www.ilo.org/suva/areas-of-work/WCMS_407378/lang--en/index.htm (accessed 20 August 2019).

1791 WorldData.info. <https://www.worlddata.info/oceania/samoa/asylum.php> (accessed 30 August 2019).

1792 UNICEF Samoa Migration Profiles fact sheet. <https://esa.un.org/miggmgprofiles/indicators/files/Samoa.pdf> (accessed 30 August 2019).

1793 New Zealand Immigration. <https://www.immigration.govt.nz/about-us/media-centre/media-releases/2019-pacific-quota-registrations-open> (accessed 10 September 2019).

1794 Samoa Observer 2019. <https://www.samoaobserver.ws/category/samoa/37988> (accessed 30 September 2019).

1795 Radio New Zealand 2018. <https://www.rnz.co.nz/international/pacific-news/352744/deported-from-the-us-returned-samoans-learn-a-new-way-of-life> (accessed 10 September 2019).

1796 Op cit.

1797 Samoa Observer 2019. <https://www.samoaobserver.ws/category/samoa/13923> (accessed 30 September 2019).

1798 Radio New Zealand 2018. <https://www.rnz.co.nz/news/national/378426/man-arrested-for-human-trafficking-slavery-after-targeting-vulnerable-workers> (accessed 30 August 2019).

The 2019 Trafficking in Persons report commented that media reports indicated that Samoa is a country of origin for victims of trafficking. Information on the anti-trafficking efforts of the government and the nature and scope of trafficking in persons in the country were reportedly insufficient to achieve a full assessment for the 2019 report. Information will be gathered during the coming year to assess what, if any, reporting is appropriate for the 2020 Report.¹⁷⁹⁹

Civil society and human rights defenders

The constitution protects several fundamental civil and political rights, including freedoms of speech, assembly, association and movement, and the right to a fair trial.¹⁸⁰⁰ The Samoa umbrella organisation for NGOs co-ordinates all national, civil-based NGOs, providing closer networking and access to information in support of strengthening the respective organisations to achieve their goals. Samoan civil society is particularly active in health matters, gender rights and environmental conservation.¹⁸⁰¹ A Civil Society Support Programme, funded by the government with support from donors, has been operating since 2010. The programme aims to improve the social and economic well-being of the people of Samoa by strengthening CSOs at the local and national level. Phase II of the programme will run from 2016 to 2020¹⁸⁰² and a third phase is being planned.

Domestic law and human rights

The constitution recognises some civil, political and social rights, including the right to life, freedom of speech, property rights and freedom from inhuman treatment.¹⁸⁰³ While equality before the law is mandated by the constitution, there is no constitutional guarantee against discrimination on the basis of sexuality or disability.¹⁸⁰⁴ A range of new laws were passed in line with recommendations made during Samoa's first UPR. These include those that established the NHRI,¹⁸⁰⁵ a Special Investigations Unit,¹⁸⁰⁶ a Community Law Centre,¹⁸⁰⁷ anti-corruption measures,¹⁸⁰⁸ the criminalisation of corporal punishment in schools,¹⁸⁰⁹ and a range of new measures intended to assist survivors of domestic violence.¹⁸¹⁰

Human rights policies

Under the current Samoa National Policy for Gender 2016–2020, the main policy areas focus on: peaceful families and communities; healthy women and girls; equal economic opportunities for women; increased access to education; enhanced gender equality approaches to community resilience and disaster preparedness; and enhanced institutional mechanisms for the promotion of gender equality.¹⁸¹¹ In the Strategy for the Development of Samoa 2016/17 – 2019/20, the government committed to “improve quality of life for all” by giving priority to

¹⁷⁹⁹ US Department of State 2019. Trafficking in persons report June 2019. Available at: <https://www.state.gov/wp-content/uploads/2019/06/2019-Trafficking-in-Persons-Report.pdf> (accessed 10 August 2019).

¹⁸⁰⁰ Constitution of the Independent State of Samoa 1960, Sections 9, 13. Available at: <http://www.palemene.ws/new/wp-content/uploads/Document/2016-Constitution-of-Samoa-Eng.pdf> (accessed 20 August 2019).

¹⁸⁰¹ Commonwealth Network. http://www.commonwealthofnations.org/sectors-samoa/civil_society/national_ngos_civil_society/ (accessed 30 August 2019).

¹⁸⁰² Samoa Civil Society Support Programme. <http://www.cssp.gov.ws/tender/highlights/civil-society-support-programme-phase-i/> (accessed 30 August 2019).

¹⁸⁰³ Constitution of the Independent State of Samoa 1960, Sections 4–15.

¹⁸⁰⁴ Samoan Constitution, Sections 15(1), 15(2).

¹⁸⁰⁵ Ombudsman Act 2013. Available at: <https://ombudsman.gov.ws/legislation/> (accessed 20 August 2019).

¹⁸⁰⁶ Ombudsman (Special Investigations Unit) Regulations 2015. Available at: <https://ombudsman.gov.ws/legislation/>

¹⁸⁰⁷ Community Law Centre Act 2015. Available at: <http://www.palemene.ws/new/wp-content/uploads//01.Acts/Acts%202015/Community-Law-Centre-Act-2015-Eng.pdf> (accessed 20 August 2019).

¹⁸⁰⁸ Crimes Act 2013. Available at: http://www.palemene.ws/new/wp-content/uploads//01.Acts/Acts%202013/Crimes_Act_2013_-_Eng.pdf (accessed 20 August 2019).

¹⁸⁰⁹ Education Act 2009, Section 23. Available at: http://www.palemene.ws/new/wp-content/uploads//01.Acts/Acts%202009/Education_Act_2009_-_Eng.pdf (accessed 20 August 2019).

¹⁸¹⁰ Family Safety Act 2013. Available at: https://tbinternet.ohchr.org/Treaties/CRC/Shared%20Documents/WSM/INT_CRC_ADR_WSM_17103_E.pdf (accessed 20 August 2019).

¹⁸¹¹ Samoa National Policy for Gender Equality 2016–2020. Available at: <http://www.mwcsd.gov.ws/images/2017/Documents/DFSD/Samoa-gender-policy.pdf> (accessed 30 August 2019).

the mainstreaming of gender, children, youth and disability in policy development.¹⁸¹² Samoa is committed to integrating policies on gender equality and women's empowerment across all areas of government, including national climate resilience and disaster prevention, and response policies and operations.¹⁸¹³ The government continues its commitment to compulsory access to education by creating a supportive environment through law and policy to keep young girls in school, regardless of their circumstances,¹⁸¹⁴ although hidden costs, such as books, term fees and uniforms are a challenge for families wanting to access the education system.¹⁸¹⁵

Right to life, liberty and security of person

The Constitution of Samoa provides for and protects the rights to life and liberty, and freedom from torture and inhuman or degrading treatment or punishment;¹⁸¹⁶ however, the protections are not applied evenly to women, children and PWDs. The 2018 public inquiry into family violence found that nine out of ten children experience violence in their lifetime, physical discipline is often extreme in nature, going way beyond what is considered reasonable punishment under Samoan law, and sexual abuse of children and incest levels have reached epidemic proportions in Samoa.¹⁸¹⁷ A 2017 UNICEF report commented that child abuse and exploitation occurs in several contexts, including within the home, in schools and in the community.¹⁸¹⁸

The CEDAW Committee in 2018 expressed concern that women, in particular those living in rural areas, are exposed to gender-based violence and harassment and have limited access to justice and support services, including shelter and psychosocial services.¹⁸¹⁹ Further concern was expressed about: the lack of mechanisms to monitor and curb the influence of churches in perpetuating discriminatory gender stereotypes and gender-based violence against women and girls; the low rates of issuance and enforcement of protection orders by the police; the lenient penalties imposed on the perpetrators of violence against women and girls; and the lack of data, disaggregated by age and other relevant factors, on the number of cases of sexual violence in schools and on the sanctions imposed on the perpetrators, amongst other areas.¹⁸²⁰

In the 2016 UPR Cycle, Samoa submitted that the Office of the Ombudsman continuously works hand-in-hand with the Samoan Prison and Corrections Services on certain areas currently of much concern, including the need to meet the universal human rights of prisoners whilst they are being held in custody.¹⁸²¹ In June 2019, the Prime Minister confirmed that the government transferred 500 acres of land to the Samoa Prison Correctional Services for the building site and surrounding acreage for rehabilitation programmes.

Equality and non-discrimination

The Samoan Constitution provides for the right to equality before the law and non-discrimination is guaranteed on the basis of descent, sex, language, religion, political or other opinion, social origin, place of birth or family status.¹⁸²² The rights guaranteed by the constitution and protections offered by the different laws are strengthened by Samoa being party to the CRC, CEDAW and the CRPD, all of which provide for extensive protection against family violence.¹⁸²³ Samoans are not protected, however, from discrimination on the basis

¹⁸¹² Ibid.

¹⁸¹³ UN Women. <https://www.unwomen.org/en/get-involved/step-it-up/commitments/samoa>

¹⁸¹⁴ UN Women 2019. Samoa National Report Beijing +25. Available at: <https://www.unwomen.org/-/media/headquarters/attachments/sections/csw/64/national-reviews/samoa.pdf?la=en&vs=801> (accessed 10 August 2019).

¹⁸¹⁵ UNICEF Pacific 2017. Situation Analysis of Children in Samoa. Note. 1742.

¹⁸¹⁶ Constitution of the Independent State of Samoa 1960, Sections 5, 6, 7. Available at: <https://ombudsman.gov.ws/legislation/>

¹⁸¹⁷ Samoa Office of the Ombudsman (2018). State of human rights report June 2018: National public inquiry into family violence in Samoa. Available at: https://ombudsman.gov.ws/wp-content/uploads/2019/01/2018_-SHRR-2018-National-Public-Inquiry-into-Family-Violence_-English.pdf

¹⁸¹⁸ UNICEF Pacific 2017. Situation Analysis of Children in Samoa. Note. 1742.

¹⁸¹⁹ CEDAW/C/WSM/CO/6. Note. 1720.

¹⁸²⁰ Ibid.

¹⁸²¹ A/HRC/WG.6/25/WSM/1. Available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/028/03/PDF/G1602803.pdf?OpenElement>

¹⁸²² Constitution of the Independent State of Samoa 1960, Section 15(1), 15(2).

¹⁸²³ Ombudsman NHRI Samoa State of Human Rights Report June 2018. Available at: https://ombudsman.gov.ws/wp-content/uploads/2019/01/2018_-SHRR-2018-National-Public-Inquiry-into-Family-Violence_-English.pdf

of disability, age or sexual orientation.¹⁸²⁴ In practice, women face discrimination in employment and other aspects of life.¹⁸²⁵

Freedom of information (FOI)

Samoa does not have a stand-alone law that governs the flow of information among the government ministries and with members of the public and the media.¹⁸²⁶ The government generally operates with transparency and received praise from the International Monetary Fund in 2017 for its efforts to make statistical data more accessible online. A legal reform commission is reportedly considering an FOI law.¹⁸²⁷

Freedom of expression, association and peaceful assembly

While freedom of the press is generally respected, politicians and other powerful actors have used libel or defamation suits to respond to remarks or stories about them and in December 2017, the Parliament passed legislation that reintroduced criminal libel, which had been abolished in 2013.¹⁸²⁸ In response, the Journalists Association of Samoa said the criminal libel law risks undermining the role of the media in society as a public watchdog and weakens its ability to hold those in power to account. The Act targets unidentified bloggers who write defamatory remarks about others, such as accusing the government of corruption and nepotism.¹⁸²⁹ In March 2018, the Prime Minister warned that Facebook and other social media platforms may soon be banned in the country if bloggers using social media to attack the government did not start revealing their identities.¹⁸³⁰

Freedom of religion is guaranteed in Article 11 of the Constitution and is mostly respected in practice; however, a constitutional amendment in 2017, which moved references to Samoa being a Christian nation from the preamble of the constitution to the body,¹⁸³¹ has led to human rights concerns that the amendment may have future implications for freedom of religion.¹⁸³²

Freedom of assembly is protected by law and respected in practice and workers have the right to form and join trade unions, bargain collectively and strike. The Samoa Workers Congress is an umbrella body for all the workers' unions and in 2018 had seven affiliates, representing 4100 workers.¹⁸³³

Economic rights

Samoa has not ratified ICESCR. Samoa was included as a Least Developed Country (LDC) in 1971 and in 2010 the UN General Assembly adopted a resolution for the extension of the transition period preceding graduation from LDC status,¹⁸³⁴ culminating in Samoa graduating from the category in 2014.¹⁸³⁵ In 2018, the Samoan government, through the Ministry for Public Enterprises, established the Samoa Land Corporation to divest, develop or invest land assets to be profitable and to also provide the opportunity to widen the agricultural and industrial base of Samoa's economy.¹⁸³⁶

1824 Ibid.

1825 Ibid.

1826 Samoa Observer 2017. <https://www.samoaobserver.ws/category/samoa/28908> (accessed 31 August 2019).

1827 Freedom House. Available at <https://freedomhouse.org/report/freedom-world/2018/samoa> (accessed 31 August 2019).

1828 Ibid.

1829 Radio New Zealand 2017. <https://www.rnz.co.nz/international/pacific-news/346728/samoa-journalists-association-says-govt-undermining-media> (accessed 30 August 2019).

1830 Radio New Zealand 2018. <https://www.rnz.co.nz/international/pacific-news/353729/samoa-pm-threatens-to-ban-social-media> (accessed 30 August 2019).

1831 Freedom House. <https://freedomhouse.org/report/freedom-world/2018/samoa> (accessed 31 August 2019).

1832 Delegation of the European Union for the Pacific 2019. https://eeas.europa.eu/delegations/fiji_nb/62468/EU%20annual%20report%20on%20Human%20Rights%20and%20Democracy%20in%20Samoa,%202018 (accessed 5 September 2019).

1833 Freedom House. <https://freedomhouse.org/report/freedom-world/2018/samoa> (accessed 31 August 2019).

1834 UN General Assembly 2010. Extension of the transition period preceding the graduation of Samoa from the least developed country status. Available at: <https://www.refworld.org/docid/4cc929eb2.html> (accessed 2 September 2019).

1835 UN Department of Economic and Social Affairs. <https://www.un.org/development/desa/dpad/least-developed-country-category-samoa.html> (accessed 9 September 2019).

1836 Samoa Ministry for Public Enterprises. <https://www.mpe.gov.ws/links/public-bodies/trading/samoa-land-corporation/> (accessed 1 September 2019).

The Samoan economy and labour market suffered from the global economic crisis in 2008, the tsunami of 2009 and Cyclone Evan in late 2012, and the government faces challenges in providing the young population with sufficient paid employment opportunities as more and more migrate from rural to urban areas.¹⁸³⁷ The Strategy for the Development of Samoa (SDS) 2016–2020 provides an overview of the priorities the government will be progressing over this period, with strategic outcomes including economic, social, community and environmental improvement, and the policies, programmes and actions put in place to achieve outcomes.¹⁸³⁸ The SDS will also reflect how the national planning and budgeting processes are addressing the integration and mainstreaming of gender, human rights, climate and disaster resilience, and the responses and commitments to the international protocols to which Samoa is party including: Agenda 2030; the SDGs; Samoa Pathway; the Paris Agreement; and the Pacific Framework for Regionalism.¹⁸³⁹

Right to health and education

Human health resources are constrained in Samoa with a chronic shortage of doctors and nurses; there also exists an inequitable distribution of health professionals and services, with the majority being concentrated in the capital city of Apia.¹⁸⁴⁰ Samoa's Human Development Index value for 2017 is 0.713, which puts the country in the high human development category, positioning it at 104 out of 189 countries and territories.¹⁸⁴¹ Between 1990 and 2017, Samoa's life expectancy at birth increased by 10.3 years, mean years of schooling increased by 2.7 years, expected years of schooling increased by 0.8 years, and Samoa's Gross National Income per capita increased by about 12.5%.¹⁸⁴² A WHO report revised in 2018 noted the WHO intervention package for NCDs in 2013 resulted in high-risk members of the population being made aware of their risk status and becoming motivated to seek treatment or manage risk factors.¹⁸⁴³ For example, village members learned about the risk of NCDs at organised sessions, which brought villagers together and translated findings into their language.¹⁸⁴⁴

The literacy rate is estimated to be 97% in Samoa, where education is provided by the State in tandem with five religious missions, all following a common syllabus.¹⁸⁴⁵ The net enrolment ratio (NER) for early childhood education, which is voluntary, stood at a low 27% as of 2016, while the NER for secondary school stood at 68% as of 2016, with a higher proportion of girls enrolled than boys.¹⁸⁴⁶ Repetition of primary schooling is an area of concern, particularly for boys, and teachers are in short supply in primary schools, resulting in multi-grade classes.¹⁸⁴⁷

Women's and children's rights

Samoa became the first Pacific Island country to ratify CEDAW without reservation in 1992. The Samoan constitution makes reference to equality before the law for women but does not prohibit discrimination on the grounds of sexual orientation or HIV and AIDS, and has limited scope for anti-discrimination coverage beyond public institutions.¹⁸⁴⁸ There are concerns related to gender-based and domestic violence which continue to demand attention, such as those raised in the 2018 National Public Inquiry into Family Violence in Samoa, which

¹⁸³⁷ International Labour Organization. https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-suva/documents/publication/wcms_366540.pdf (accessed 1 September 2019).

¹⁸³⁸ Ministry of Finance 2016. Strategy for the Development of Samoa 2016/17 – 2019/20. Available at: <http://extwprlegs1.fao.org/docs/pdf/sao165879.pdf>

¹⁸³⁹ Ibid.

¹⁸⁴⁰ World Health Organisation. <https://www.who.int/bulletin/volumes/96/8/17-203695/en/> (accessed 2 September 2019).

¹⁸⁴¹ UNDP 2018. Human Development Indices and Indicators: 2018 Statistical Update. Briefing note for countries on the 2018 Statistical Update - Samoa. Available at: http://hdr.undp.org/sites/all/themes/hdr_theme/country-notes/WSM.pdf (accessed 2 September 2019).

¹⁸⁴² Ibid.

¹⁸⁴³ International Labour Organization. Note. 1792.

¹⁸⁴⁴ Ibid.

¹⁸⁴⁵ Scholaro pro. <https://www.scholaro.com/pro/countries/Samoa/Education-System> (accessed 2 September 2019).

¹⁸⁴⁶ UNICEF Pacific 2017. Situation Analysis of Children in Samoa. Note. 1742.

¹⁸⁴⁷ Ibid.

¹⁸⁴⁸ UN Women. <https://asiapacific.unwomen.org/en/countries/fiji/co/samoa> (accessed 5 September 2019).

revealed that the family violence rate is more than double the global average.¹⁸⁴⁹ At the local level, women's participation in village council decision-making is mainly indirect, and at the national level, a constitutional amendment which introduced a 10% parliamentary quota for female MPs in 2013 was activated during the 2016 election. There are five female MPs, out of total of 50, in the current Parliament.¹⁸⁵⁰

Samoa's Family Safety Act 2013 defines domestic violence broadly to include physical, sexual, emotional, verbal and psychological abuse and enables complainants to seek protection orders against abusive partners.¹⁸⁵¹ The CEDAW Committee in 2018 recommended an amendment to the Family Safety Act to include economic violence in its definition of violence.¹⁸⁵² The definition of rape is limited to sexual intercourse and girls 16 years and older can be held accountable for incestuous relationships.¹⁸⁵³ As a step forward to battling cyberbullying in the Pacific, UNICEF has worked with governments in the region to keep children in the Pacific Island countries safe from cyber-related harassment, including support to the Samoan government to develop a Cyber Safety Programme and support to police to resolve school violence.¹⁸⁵⁴ Since the adoption of the Family Safety Act 2013, it is acknowledged that there is a need to make progress on efficient implementation of the legislation and there is political will in Samoa to advance national action to end domestic violence.¹⁸⁵⁵

The ILO through the One UN Youth Employment Programme, in collaboration with the Pacific Community and Pacific Youth Council, established the Young Entrepreneurs Chamber (YEC) in Samoa in November 2017; since then, it has been fully incorporated into the Samoa Chamber of Commerce & Industry. The YEC is a major partner in national youth entrepreneurship activities in Samoa, making its debut engagement with the wider public at the national youth week celebrations to mark International Youth Day 2018.¹⁸⁵⁶

Hidden costs in education, including books, uniforms and fares are a barrier to the enrolment and survival rate of children from socioeconomically deprived families and in remote areas. According to UNICEF, this is linked to child labour of street vendors, who engage in vending in order to fund schooling or as an alternative.¹⁸⁵⁷ Notable data gaps in relation to education include the lack of disaggregated data on the situation of children who do not enrol in, or drop out of, secondary school.¹⁸⁵⁸ The government does provide assistance for children with disabilities in relation to accessing education and services.¹⁸⁵⁹

Rights of persons with disabilities (PWDs)

Samoa has established a Disabilities Taskforce, which is chaired by the Chief Executive Officer of Women, Community and Social Development.¹⁸⁶⁰ Information gained from the 2018 Samoa Disability Monograph notes that the median age at first birth among women both with and without disabilities is the same at 22 years of age, although the average number of children ever born varies slightly, with 2.1 children for women without disabilities and 1.6 children for women with disabilities. Significant disparities exist in education and economic activities that require urgent policy and programmatic attention.¹⁸⁶¹

¹⁸⁴⁹ Pacific Women Shaping Pacific Development. <https://pacificwomen.org/our-work/focus-areas/ending-violence-against-women/> (accessed 5 September 2019).

¹⁸⁵⁰ Ibid.

¹⁸⁵¹ UN Women. <https://asiapacific.unwomen.org/en/countries/fiji/co/samoa> (accessed 5 September 2019).

¹⁸⁵² CEDAW/C/WSM/CO/6. Available at: Note. 1720.

¹⁸⁵³ UN Women. <https://asiapacific.unwomen.org/en/countries/fiji/co/samoa> (accessed 5 September 2019).

¹⁸⁵⁴ UNICEF Pacific Island Countries. https://www.unicef.org/pacificislands/1852_27260.html (accessed 9 September 2019).

¹⁸⁵⁵ Delegation of the European Union for the Pacific 2019. https://eeas.europa.eu/delegations/fiji_nb/62468/EU%20annual%20report%20on%20Human%20Rights%20and%20Democracy%20in%20Samoa,%202018 (accessed 5 September 2019).

¹⁸⁵⁶ International Labour Organization 2018. https://www.ilo.org/suva/public-information/WCMS_638509/lang--en/index.htm (accessed 5 September 2019).

¹⁸⁵⁷ UNICEF Pacific 2017. Situation Analysis of Children in Samoa. Note. 1742.

¹⁸⁵⁸ Ibid.

¹⁸⁵⁹ Ibid.

¹⁸⁶⁰ UNICEF Pacific 2017. Situation Analysis of Children in Samoa. Note. 1742.

¹⁸⁶¹ Samoa Bureau of Statistics, Ministry of Women, Community and Social Development. An analysis of 2016 Census. Note. 1709.

Children with disabilities lack adequate access to tailored educational resources and facilities, particularly at the secondary level and in rural areas, where inclusive schools are unavailable, resulting in children being kept at home.¹⁸⁶² Buildings are not designed to facilitate access for children with physical needs¹⁸⁶³ and there are other significant barriers to accessing quality education for children with disabilities,¹⁸⁶⁴ which result in economic and social vulnerabilities later in life.¹⁸⁶⁵

Climate justice

Samoa is vulnerable to natural hazards such as tropical cyclones, floods and droughts, and climate change and disaster risks have a considerable impact on all sectors in relation to the realisation of children's and women's rights.¹⁸⁶⁶ Children, older women and households in coastal regions are particularly vulnerable to disaster and climate risks, including in the areas of health, and water, sanitation and hygiene.¹⁸⁶⁷ The National Climate Change Strategy 2015–2019 has been proposed as a way to strengthen the institutional and regulatory framework for climate change governance in Samoa.¹⁸⁶⁸ The strategy will: coordinate climate change mainstreaming, monitoring and evaluation; mainstream climate change adaptation into development policy; and mainstream climate change mitigation into development policy to help reduce greenhouse gas emissions.¹⁸⁶⁹

A 2017 UNICEF report noted that climate and disaster risks increase the threat of both communicable and non-communicable diseases, exacerbating existing bottlenecks and creating additional barriers for Samoans wanting to access health care. Children, older women and individuals living in coastal regions are particularly vulnerable to climate-sensitive health risks, and climate change and disaster risk have a strong impact on the child protection system by damaging infrastructure and by increasing risks of violence as a result of stress, displacement and confinement in shelters.¹⁸⁷⁰

The CEDAW Committee in 2018 noted the vulnerability of Samoa to climate change and expressed concern that the impacts disproportionately affect women and girls. Concern was also expressed about the lack of clear information on a comprehensive national policy on climate change and disaster risk management, which would include the participation of women in the process of policymaking and would incorporate a gender perspective.¹⁸⁷¹

¹⁸⁶² UNICEF Pacific 2017. Situation Analysis of Children in Samoa. Note. 1742.

¹⁸⁶³ Ibid.

¹⁸⁶⁴ Ibid.

¹⁸⁶⁵ Ibid.

¹⁸⁶⁶ Ibid.

¹⁸⁶⁷ Ibid.

¹⁸⁶⁸ National Climate Justice 2015. <https://nationalclimatejustice.org/2015/11/05/samoa/> (accessed 3 September 2019).

¹⁸⁶⁹ Ibid.

¹⁸⁷⁰ UNICEF Pacific 2017. Situation Analysis of Children in Samoa. Available at: https://www.unicef.org/pacificislands/10_Situation_Analysis_of_Children_Samoa.pdf

¹⁸⁷¹ CEDAW/C/WSM/CO/6. Note. 1720.



COUNTRY CHAPTERS

SOLOMON ISLANDS

Solomon Islands

Key facts

Capital city	Honiara	Total land area	27,986 (km ²) ¹⁸⁷²
Population (year)	660,121 (2018 est.) ¹⁸⁷³	Population growth % (year)	1.9% (2018 est.) ¹⁸⁷⁴
GDP per capita (year)	USD 2200 (2017 est.) ¹⁸⁷⁵	GNI per capita (Atlas method) (year)	USD 2000 (2018) ¹⁸⁷⁶
Type of government	Parliamentary democracy with the British monarch, through the Governor-General, as the head of state and the Prime Minister as head of government.		
Electoral system	First Past the Post		
Number of members of parliament (MPs): total/female (year)	50: 48 men/2 women. Ratio of women in Parliament 4%.		
Religions: by % of population (year)	Protestant: 73.4% (Church of Melanesia: 31.9%, SSEC: 17.1%, Seventh Day Adventist: 11.7%, United Church: 10.1%, CFC 2.5%), Catholics: 19.6%, other Christian: 2.9%, other: 4%, none: 0.03%, unspecified: 0.1% (2009 est.) ¹⁸⁷⁷		
Ethnic groups: by % of population (year)	Melanesian: 95.3%, Polynesian: 3.1%, Micronesian: 1.2%, other: 0.3% (2009 est.) ¹⁸⁷⁸		
Languages: by % of population (year)	Melanesian pidgin (in much of the country it is the lingua franca), English (official but spoken by only 1–2% of the population), 120 indigenous languages ¹⁸⁷⁹		
Life expectancy: male/female (year)	73.1male/ 78.6 female (2018 est.) ¹⁸⁸⁰	% youth aged 15-24 years: total male/female (year)	19.95%: male 67,794 /female 63,925 (2018 est.) ¹⁸⁸¹
% disability: total male/female (year)	14% (2009) minimal sex disparity ¹⁸⁸²		

1872 Land area only, excluding EEZ. CIA World Factbook. https://www.cia.gov/library/publications/the-world-factbook/geos/print_bp.html (accessed 4 September 2019).

1873 CIA World Factbook. https://www.cia.gov/library/publications/the-world-factbook/geos/print_bp.html (accessed 4 September 2019).

1874 Ibid.

1875 Ibid.

1876 World Bank Data. <https://data.worldbank.org/indicator/NY.GNP.PCAP.CD?view=map> (accessed 4 September 2019).

1877 CIA World Factbook. Note. 1828.

1878 Ibid.

1879 Ibid.

1880 Ibid.

1881 Ibid.

1882 Solomon Islands In Focus 2015. <http://www.solomonislandsinfo.com/people-with-disabilities-association.html> (accessed 4 September 2019).

International human rights treaty ratification and reporting obligations¹⁸⁸³

Treaty	Date of signature (S), ratification (R), accession (a)	Reservations	Latest report submitted	Reporting status
ICESCR	17 Mar ch1982 (R)	Art 7 (a), (i), 10(1), 13(2), (a) and 14	Initial report 2 July 2001	2 nd report overdue since June 2005
ICERD	17 March 1982 (R)		Initial report 1983.	2 nd report overdue since 1985.
CEDAW	6 May 2002 (a)		1 st to 3 rd 2014.	4 th report overdue since Nov 2018.
CRC	10 April 1995 (a)		2 nd and 3rd 1 July 2016.	4 th to 6 th report due 9 May 2023.
CRPD	23 September 2008 (S)			
OP-ICESCR	24 September 2009 (S)			
CEDAW OP	6 May 2002 (a)		N/A	
CRC-OP-AC	24 September 2009 (S)		N/A	
CRC-OP-SC	24 September 2009 (S)		N/A	
CRPD-OP	24 September 2009 (S)			

Special Procedures: Standing invitation extended 6 May 2011.

Country visits: Independent Expert on the effects of foreign debt and other related international financial obligations of states on the full enjoyment of all human rights (2011).

Special Rapporteur on violence against women, its causes and consequences (2012).

Universal Periodic Review: 1st cycle: 4 May 2011; 2nd cycle: 26 January 2016; next cycle: 2021.

International Criminal Court: Not a state party to the Rome Statute, although Solomon Islands signed the Rome Statute in 1998.¹⁸⁸⁴

System of government

Solomon Islands has a democratic parliamentary system of government, with a first-past-the-post system for the election of representatives at the national and provincial levels. The head of state is the British monarch, represented in Solomon Islands by the Governor-General, who is elected by Parliament for a five-year term. The head of government is the Prime Minister, who is elected by Parliament from among its own elected members. Solomon Islands gained independence from the United Kingdom on 7 July 1978. The country is governed through 50 constituencies. Elected constituency members make up the Parliament Members, with a majority of 26 forming the government, and the others the opposition.

Since independence, only five women have ever been elected to Parliament. The 2019 election returned one woman elected in 2014 and a woman elected in a by-election in 2018.¹⁸⁸⁵ In 2008, the introduction of reserved seats for women was proposed by women's groups. The proposal was for 10 reserved seats, with one seat for each of the nine provinces and one seat for the capital city of Honiara.¹⁸⁸⁶

1883 OHCHR. <https://www.ohchr.org/EN/Countries/AsiaRegion/Pages/SBIndex.aspx> (accessed 4 September 2019).

1884 PACLI. http://www.paclii.org/pits/en/status_pages/1998-5.html (accessed 10 August 2019).

1885 Pacific Women in Politics. <https://www.pacwip.org/country-profiles/solomon-islands/> (accessed 4 September 2019).

1886 Solomon Times 2019. <https://www.solomontimes.com/news/uneven-playing-field-for-women-in-politics/8927> (accessed 4 September 2019).

Cabinet did not support the proposal, although following the 2010 national elections, the new government indicated in its policy statement that it would look at options for women's reserved seats as part of a broader electoral boundaries review.¹⁸⁸⁷ The debate resurfaces in the lead-up to each election but there has been no progress.

A new Electoral Act was passed in 2018, which significantly influenced the 2019 National General Elections. Notable revisions introduced to the process include the definition of Ordinary Resident that allows for electors to vote in constituencies other than those in which they are usually resident.¹⁸⁸⁸ This resulted in a massive movement of people travelling to other constituencies during the 2019 elections, especially from Honiara to provincial islands of origin. Additional changes made by the new legislation include provisions for remote voting, regular reviews of the voters register and higher candidate nomination fees. Another provision made it compulsory for employers to release workers to vote on polling day and special considerations for assisting people with disabilities to cast their votes.¹⁸⁸⁹ The law also requires candidates to present party certificates if affiliated to a party. A total of 359,690 Solomon Islanders registered to vote in the elections, an increase of 72,000 compared to the 2014 elections.¹⁸⁹⁰ Of the 50 candidates elected, 37 were returning members of the former Parliament.

A biometric voter registration system was introduced in 2014, which improved registration accuracy and the voting process. According to the national report submitted during the UPR 2nd cycle process in 2016, 85% of persons eligible to vote were registered using this system, and of those 48% were women.¹⁸⁹¹ In 2018, there was an amendment to Section 23¹⁸⁹² of the National Constitution, which allows for dual citizenship. It also allows for people with dual citizenship to stand for Parliament (Section 48[a]).¹⁸⁹³

Judicial system and administration of justice

In 2017, the Solomon Islands Law Reform Commission completed a review of the Penal Code and the Criminal Procedure Code to produce the Fourth Interim Report of Administration of Justice Offences.¹⁸⁹⁴ The report contains recommendations to change parts of the Penal Code and revise penalties for various offences.¹⁸⁹⁵

The Family Protection Act (FPA) came into force on 1 April 2016, two years after it was passed by Parliament in 2014. The FPA criminalises domestic violence, defined under the Act to include physical, sexual, economic and psychological abuse. In the first half of 2018, 47 Police Safety Notices were filed with the Magistrates Court, and in the second half, 186 were filed.¹⁸⁹⁶ A significant limitation of the Act is its dependence on existing law enforcement reach and infrastructure, which remains largely restricted to urban centres. People residing in outer islands, rural or remote areas will have few encounters with the formal justice sector and are generally precluded from seeking protection under the Act. With the support of the SPC HRSD, DFAT and the United Nations Trust Fund to end violence against women, a pilot project is currently ongoing to capacitate local Authorised Justices who are empowered under the Act to issue Interim Protection Orders.¹⁸⁹⁷

In 2017, the Solomon Islands Justice Programme launched its Design Document for 2017-2021. Component 3 of the document is Access to Justice (AtJ), which aims to realise the following: more court circuits proceed as planned; women, men, girls and boys have increased access to justice through the Family Protection Act;

¹⁸⁸⁷ Op cit.

¹⁸⁸⁸ Electoral Act 2018. <http://www.parliament.gov.sb/files/legislation/Acts/2018/Electoral%20Act%202018.pdf> (accessed 30 July 2019).

¹⁸⁸⁹ Ibid.

¹⁸⁹⁰ Solomon Islands Electoral Commission 2019. <http://www.siec.gov.sb/index.php/2019-registered-voters-list.html>

¹⁸⁹¹ A/HRC/WG.6/24/SLB/1. Available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G15/247/87/PDF/G1524787.pdf?OpenElement>

¹⁸⁹² See Section 23. (1) of the Solomon Islands Constitution.

¹⁸⁹³ See Section 48 and s.48(a) of the Solomon Islands Constitution.

¹⁸⁹⁴ The Solomon Islands Law Reform Commission 2017. Administration of Justice: Forth Interim Report. Available at: <http://www.lawreform.gov.sb/publications/other-reports/reports-and-recommendations/19-administration-of-justice-offences-report-2018/file.html> (accessed 2 May 2019).

¹⁸⁹⁵ Ibid.

¹⁸⁹⁶ Solomon Islands Magistrates' Records provided to SPC HRSD CFO. Not available online at time of publication.

¹⁸⁹⁷ Family Protection Act 2014. Available at: http://www.paclii.org/sb/legis/num_act/fpa2014206.rtf (accessed 5 August 2019).

increased access to justice in rural areas; public awareness of legal rights is increased; and research and innovation provide new pathways for improving justice services.¹⁸⁹⁸ While the legal system provides the ultimate avenue for accessing justice, human rights issues in the country are dealt with according to different relevant responsible sectors. The Ministry of Commerce, Industry, Labour and Immigration has an Enforcement and Trafficking Unit that works closely with the Office of the DPP and the Royal Solomon Islands Police Force (RSIPF) to deal with suspected cases of human trafficking and people smuggling.¹⁸⁹⁹ The Penal Code (Amendment) (Sexual Offences) Act 2016 sets out new definitions for different sexual offences and provides specific sentencing.¹⁹⁰⁰ It provides victims of sexual abuse with access to justice and a mechanism of protection to the vulnerable.

AtJ remains a challenge in the Solomon Islands due to inadequate resources from the government to support the system, compounded by the inherent geographical challenges of being a dispersed, archipelagic country. In a study conducted by UNDP and the Ministry of Justice and Legal Affairs, "...about 66% of respondents said the most common way to handle disputes in the community is through the village chief, followed by church leaders and police...Solomon Islanders with a disability were nearly twice as likely to be very unsatisfied with justice services as those without a disability."¹⁹⁰¹

Between 1998-2003, the country experienced ethnic tension and civil conflict between the people of Guadalcanal and Malaita provinces, stemming from the former driving out Malaitans who had settled in the outskirts of Honiara. This spilled over to some other provinces where Malaitans were forcibly ejected. This period also saw many partisan actions by members of the police force, which had strong ethnic biases in its composition. The arrival of the Regional Assistance Mission to the Solomon Islands (RAMSI) successfully restored impartiality to the conduct of justice sector actors.

The actions of RSIPF are guided by the Police Act 2013. The Act provides a legislative framework governing RSIPF external relations, governance, employment, and powers and duties as well as the conduct and discipline of staff.¹⁹⁰² RSIPF's Professional Standards and Internal Investigation (PSII) Unit deals with police officers who allegedly break the law. This unit is fully functioning and has been responsible for bringing police officers charged with misconduct to be dealt with according to law.

Perceived biases in judicial decision making in the Solomon Islands is challenged through a hierarchical system of appeals in the judicial system, as in many other democracies. Part 2 Chapter 5 of the Constitution outlines the structure of the judiciary, comprising the High Court, with jurisdiction in civil and criminal cases, and a Court of Appeal (COA). The High Court also has original jurisdiction to hear and determine any application concerning the violation of any person's constitutional rights. The local courts are established by the Chief Justice's warrant under the Local Courts Act. A party that is dissatisfied with a decision by the Magistrates Court can appeal the case to the High Court, and ultimately, to the COA. In a 2016 case that has caused much public discontent, the Public Entitlement Committee's decision to award tax free salaries to Members of Parliament was challenged in the High Court by a coalition of claimants including several anti-corruption watchdogs such as Transparency Solomon Islands.¹⁹⁰³ This was later appealed in the COA resulting in the government winning the case.

Cybercrime is also an emerging issue in the Solomon Islands. The country received Undersea Cable access in 2019 allowing for more internet access and the associated risk of an increase in cybercrimes similar to those that occur in other countries, such as hacking, theft and fraud.

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- ¹⁸⁹⁸ Coffey International Development and the Whitelum Group 2017) Solomon Islands Justice Programme Design Document July 2017 to June 2021. Available at: <https://dfat.gov.au/about-us/publications/Documents/solomon-islands-justice-program-design-2017-2021.pdf> (accessed 2 August 2019).
- ¹⁸⁹⁹ MICILI. <https://www.commerce.gov.sb/departments-units/immigration/about-the-division/our-units/397-enforcement-and-human-trafficking-unit.html> (accessed 5 August 2019).
- ¹⁹⁰⁰ Penal Code (Amendment) (Sexual Offences) Act 2016. Available at: http://www.paclii.org/sb/legis/num_act/pcoa2016308/ (accessed 5 June 2019).
- ¹⁹⁰¹ UNDP 2019. <http://www.pacific.undp.org/content/pacific/en/home/presscenter/pressreleases/2019/new-study-shines-light-on-justice-sector.html> (accessed 5 August 2019).
- ¹⁹⁰² SIG and RAMSI 2017. Regional Assistance Mission to Solomon Islands: The fourteen-year intervention. Available at: http://www.parliament.gov.sb/files/business&procedure/tabled_papers/10th_Parliament/2017/sig-ramsi-report14yrs.pdf (accessed 5 August 2019).
- ¹⁹⁰³ Radio New Zealand 2016. <https://www.rnz.co.nz/international/pacific-news/315846/worries-tax-free-pay-for-solomon-mps-creates-entitlement-culture> (accessed 5 August 2019).

The country is yet to establish regulations that will guide the provision and use of the internet.

Access to justice and the right to remedy

Legal aid is available in criminal, family and civil matters, and is administered by the Public Solicitor's Office. Historically, the Public Solicitor's Office is overburdened and under-resourced, with recommendations made for the government to recruit more lawyers for the Family Protection Unit within the office. Various UN recommendations have reiterated the need to expand services beyond the capital of Honiara and to reactivate the circuit courts in order to facilitate access to judicial services for victims of violence living outside the capital.¹⁹⁰⁴ The UPR Working Group (2016) recommended increased budgetary allocation to the training of police officers and the judiciary to ensure that women have equal and substantive access to justice under the Family Protection Act.¹⁹⁰⁵ The Family Protection Act is currently due for review.

The Whistleblowers Protection Act 2018 provides that whistleblowers under the Anti-Corruption Act 2018 shall not be subjected to detriment. Detriment (among other meanings) includes "discrimination, disadvantage or adverse treatment in relation to employment, career, profession, trade or business, including disciplinary action."¹⁹⁰⁶

The Committee on the Rights of the Child in 2018 urged the government to bring its juvenile justice system fully in line with the CRC and other relevant standards by adopting without delay the Youth Justice Bill, and ensuring that children under the age of 18 are accorded with the safeguards provided in the Penal Code.¹⁹⁰⁷

National human rights institution (NHRI)

In June 2019, a workshop was conducted to commence information gathering for the country's third round of UPR reporting and the establishment of an NHRI to monitor the progress of the UPR and UN Treaties to which the country has acceded. The workshop was conducted by the Ministry of Foreign Affairs and SPC HRSD. The establishment of the institution is expected to eventuate in the coming months and was welcomed by representatives at the workshop. Establishing a Paris Principles-compliant NHRI is proposed in the Draft Federal Constitution¹⁹⁰⁸ to promote, monitor and adjudicate human rights cases and matters.¹⁹⁰⁹ Cabinet has also proposed that existing institutions such as the Ombudsman's Office and the Leadership Code Commission (LCC) could have a greater mandate to address human rights issues, noting that several departments have created internal mechanisms for mainstreaming human rights in their work. The Ombudsman's Office investigates cases and public complaints of government maladministration and the LCC is investigating matters of misconduct involving Members of Parliament or senior civil servants.¹⁹¹⁰

Security sector

There has not been a defence force since independence in 1978. RSIPF is mandated with both law enforcement and some emergency management duties. It is entrusted with maintaining and enforcing law and order, preserving peace, protecting life and property, and preventing and detecting crime, among other roles. Since the enforcement of the Police Act in 2013, RSIPF, with the help of the departing RAMSI, introduced a limited rearmament in 2017. RSIPF was disarmed by RAMSI in the post-Tension (internal conflict) era in 2003 due to police lack of impartiality during the Tensions. A total of 125 members of the Police Response Team have access to firearms. This rearmament is limited to only pistols and shotguns, with a focus on non-lethal ammunition and not using military-style assault weapons.¹⁹¹¹

¹⁹⁰⁴ A/HRC/23/49/Add.1. Available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G13/114/76/PDF/G1311476.pdf?OpenElement>

¹⁹⁰⁵ A/HRC/32/14. Available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/076/50/PDF/G1607650.pdf?OpenElement>

¹⁹⁰⁶ Whistleblowers Protection Act 2018. Available at: http://www.parliament.gov.sb/files/legislation/Acts/2018/Whistleblowers_Protection_Act_2018.pdf (accessed 10 August 2019).

¹⁹⁰⁷ CRC/C/SLB/CO/2-3. Available at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2fc%2fSLB%2fCO%2f2-3&Lang=en

¹⁹⁰⁸ Discussions have been underway for many years on the formation of a Federation of States.

¹⁹⁰⁹ A/HRC/WG.6/24/SLB/1. Available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G15/247/87/PDF/G1524787.pdf?OpenElement>

¹⁹¹⁰ Ibid.

¹⁹¹¹ ABC News 2017. <https://www.abc.net.au/news/2017-05-09/solomon-islands-begins-limited-rearmament-of-police-force/8509118>

Since the departure of RAMSI in 2017, the Australian Federal Police has deployed officers who will engage with RSIPF for the next 14 years as trainers. Their mandate does not cover policing powers, nor are they armed.¹⁹¹² The PSII Unit of RSIPF deals with grievances towards the conduct of police officers.

The Customs and Excise Act 2013 regulates the actions of customs officers who, for the purpose of carrying out the provisions of the customs laws, have the same powers, authorities and privileges given by law to members of RSIPF.¹⁹¹³

The Solomon Islands has some private security firms that operate at a local scale, mainly in Honiara. Large-scale security firms with intelligence services were present under RAMSI during its mission period but have largely wound up operations since RAMSI's departure.

Refugees and asylum seekers

The Solomon Islands acceded to the 1951 Convention on the Status of Refugees on 28 February 1995 and its 1967 Protocol on 12 April 1995.¹⁹¹⁴ There are currently few cases of international refugees (three in 2015)¹⁹¹⁵ or asylum seekers in the Solomon Islands. During the colonial era in the 1950s, the British Protectorate Administration resettled Gilbertese¹⁹¹⁶ people in the western part of the country. These people and their descendants are Solomon Islands citizens with rights comparable to the indigenous population, except in the case of customary land ownership.¹⁹¹⁷ Since then, there has never been a large-scale resettlement of international refugees or other groups in the country; however, there have been groups of people in the country who have been internally displaced due to conflict or the effects of climate change and natural disasters. In 2017, the government resettled victims of the 2014 April floods in the east side of Honiara and named the new settlement April Valley. Residents who lost their homes and loved ones during the floods have been grateful to the government; however, some have commented that the assistance was limited to the provision of land with no other support for people to rebuild their lives and no basic services like water or electricity.¹⁹¹⁸ Further, people in Walande and Fanalei Atolls in Malaita Province had to be relocated to the main Island due to sea level rise that washed away their land. The government is yet to intervene in their plight.¹⁹¹⁹

Migration

The largest occurrence of migration in the Solomon Islands is internal from rural areas to urban, mostly from other islands to the capital of Honiara. The island with the highest number of emigrants to Honiara is Malaita, the most populous island province close to Guadalcanal where Honiara is situated. The impetus for the movement is access to better government services and employment. There are also other inter-island movements by people, although not as significant as the movement to Honiara. The country has a small population of Chinese migrants, as well as Philippine nationals and nationals of other East Asian countries who entered as employees for logging companies. Migrants in the country are generally able to access basic government services including education and health; however, they are also the object of strong xenophobia and anti-immigrant sentiment. This has the potential for backlash violence against migrant communities, as was seen in the burning of Chinatown during the 2006 riots. In 2015, a total of 2585 migrants lived in the Solomon Islands.¹⁹²⁰ In 2017-

¹⁹¹² Ibid.

¹⁹¹³ SIG 2003. Customs and Excise Act Cap. 121 Including Subsidiary Legislation. Available at: http://www.mof.gov.sb/Libraries/Customs_Legislation/Customs_Act.sflb.ashx (accessed 6 August 2019).

¹⁹¹⁴ A/HRC/WG.6/11/SLB/2. Available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G11/108/30/PDF/G1110830.pdf?OpenElement> (accessed 6 August 2019).

¹⁹¹⁵ World Bank Data. <https://data.worldbank.org/indicator/SM.POP.REFG?locations=SB> (accessed 4 August 2019).

¹⁹¹⁶ The Gilbert Islands are now known as the country of Kiribati and the people are I-Kiribati.

¹⁹¹⁷ Donner D.S. 2016. The legacy of migration in response to climate stress: learning from the Gilbertese resettlement in the Solomon Islands. NRF A United Nations Sustainable Development Journal. Available at: <https://onlinelibrary.wiley.com/doi/full/10.1111/1477-8947.12082> (accessed 8 June 2019).

¹⁹¹⁸ Radio New Zealand 2017. <https://www.rnz.co.nz/international/pacific-news/334923/solomons-flood-victims-relocated-then-forgotten> (accessed 6 August 2019).

¹⁹¹⁹ Solomon Star 2017. <https://www.solomonstarnews.com/index.php/news/national/item/19137-living-on-the-edge-of-climate-change> (6 August 2019)

¹⁹²⁰ WorldData.info. <https://www.worlddata.info/oceania/solomon-islands/asylum.php> (accessed 4 September 2019).



2018, 643 Solomon Islanders temporarily migrated to New Zealand as seasonal workers.¹⁹²¹ Up to 2018, 68 Solomon Islanders have applied to Australia for refugee status. Reasons for the claims could not be found. None have been accepted so far.¹⁹²²

Human Trafficking, Forced Labour, and Contemporary Forms of Slavery

According to the Immigration Act 2012, Division 2 – People Smuggling and Trafficking Offences, people trafficking is done by a person if they engage in recruiting, transporting, harbouring or receiving another person (the trafficked person) for the purposes of exploitation.¹⁹²³ A person who is convicted of an offence under subsection (1) is liable to a fine not exceeding 45,000 penalty units¹⁹²⁴ or to imprisonment for a term not exceeding five years, or both.¹⁹²⁵ Solomon Islands is a source, transit, and destination country for local and Southeast Asian men and women subjected to forced labour and forced prostitution, and local children have been subjected to sex and labour trafficking.¹⁹²⁶ Logging companies have been linked to trafficking cases where men employed in the sector have lured young girls by giving them money, or the girls have been sold by their parents, camouflaging the transaction as traditional bride price, although it is very different.¹⁹²⁷ Government statistics available from April 2018 to March 2019 identified at least 39 victims of trafficking, including 35 Indonesian male labour trafficking victims in the logging industry; three female sex trafficking victims under the age of 18; and one unspecified male victim under the age of 18. The numbers may include cases that did not involve forced labour or commercial sexual exploitation.¹⁹²⁸ In recent years, with support from international organisations such as IOM, the government has been making significant efforts to combat human trafficking, including through implementation of the Solomon Islands National Action Plan Against Human Trafficking and People Smuggling. The Immigration Division within the Ministry of Commerce, Industries, Labour and Immigration is the primary entity dealing with migration and it includes officials dedicated to counter-trafficking and smuggling.¹⁹²⁹

Solomon Islands is rated as Tier 2 under the US State Department ranking as it does not fully meet the minimum standards for the elimination of trafficking but is considered to be making significant efforts to do so. According to the 2019 Trafficking in Persons report, the government demonstrated overall increasing efforts compared to the previous reporting period.¹⁹³⁰ These include investigating more alleged incidents of trafficking, identifying more victims than in prior years and advancing its first trafficking prosecution.¹⁹³¹ According to this tier ranking, “the government did not meet the minimum standards in several key areas such as lack of awareness of the crime and applicable legislation among front-line officers, under-resourced protection services and widespread observance of informal justice models, and slow responses to trafficking cases. Reports of official complicity in trafficking continued, and authorities identified few cases of internal sex trafficking despite its prevalence throughout the country, also no anti-trafficking training was conducted for law enforcement.”¹⁹³²

Civil society and human rights defenders

CSOs and human rights defenders are generally free to exercise their rights and conduct advocacy activities in the Solomon Islands without threats, harassment or interference from government. It is not a requirement for NGOs to register with the government as a charitable organisation, but doing so can prove beneficial to

1921 New Zealand Immigration. <https://www.immigration.govt.nz/documents/statistics/statistics-rse-arrivals.pdf> (accessed 10 August 2019).

1922 WorldData.info. <https://www.worlddata.info/oceania/solomon-islands/asylum.php> (accessed 4 September 2019).

1923 Immigration Act 2012. Not available online.

1924 The Penalty Units Act 2009 was introduced to allocate a jail sentence for the default of payment of fines. The value of one penalty unit is one SBD. Available at: http://www.parliament.gov.sb/files/legislation/2009/Penalties%20_Miscellaneous%20Amendments_%20Bill.pdf (accessed 4 September 2019).

1925 Immigration Act 2012. Not available online.

1926 IOM 2018. Solomon Islands. <https://www.iom.int/countries/solomon-islands> (accessed 6 August 2019).

1927 Ibid.

1928 US Department of State 2019. Trafficking in persons report June 2019. Available at: <https://www.state.gov/wp-content/uploads/2019/06/2019-Trafficking-in-Persons-Report.pdf> (accessed 10 August 2019).

1929 IOM 2018. Solomon Islands. <https://www.iom.int/countries/solomon-islands> (accessed 6 August 2019).

1930 US Department of State 2019. Trafficking in persons report June 2019. Note. 1883.

1931 Op cit.

1932 Op cit.

credibility and for property ownership. Many CSOs and a number of NGOs operate in the Solomon Islands, focusing on improving literacy, conservation, sustainable development and fostering local entrepreneurship. The Development Services Exchange is the country's national NGO umbrella body¹⁹³³ with a membership of 65 local CSOs and international NGOs based in Solomon Islands. CSOs are organised thematically and the most active are those representing particular segments of the population, notably the women's rights movement. Key actors in this space include the National Council of Women and its provincial chapters, the Family Support Centre (FSC), the Women's Rights Action Movement and the women's media agency, Vois Blong Mere. Organisations such as FSC have been instrumental in the development of the Family Protection Act, not just in terms of lobbying for its passage, but as implementing partners to roll out services and training in communities. People with Disabilities Solomon Islands is the main disability support group and has provincial membership. Locally based CSOs and NGOs tend to lack resources and are often dependent on the funds and priorities of international donors.¹⁹³⁴ Many of these organisations engage with the UPR process.

Domestic law and human rights

The Penal Code (Amendment) (Sexual Offences) Act 2016 sets out new definitions for different sexual offences and provides specific sentencing.¹⁹³⁵ The Child and Family Welfare Act 2017 extends to children the protection from violence and neglect, with specific provisions for courts to make care and protection orders, as well as orders to uplift.¹⁹³⁶

The Anti-Corruption Act 2018 sets out standard definitions of corruption offences and establishes an anti-corruption watchdog to regulate and monitor corruption in government departments and services.¹⁹³⁷ The measure is considered to be overdue and necessary but weakened by not being retroactive; the watchdog will have no powers to investigate incidences of corruption dating from before the enactment.

The Whistleblowers Protection Act 2018 establishes whistle blowers as a protected category for making known any offences under the Anti-Corruption Act.¹⁹³⁸

Human rights policies

The Gender Equality and Women's Development (GEWD) Policy 2016-2019 was formally launched in early 2017 and replaces an earlier policy (GEWD 2011-2013). The policy aligns with the country's CEDAW commitments and sets out a framework for the achievement of gender equality across all government services and in all spheres of life for the women of Solomon Islands.¹⁹³⁹ Underneath that policy sits the National Policy on the Elimination of Violence against Women and Girls 2016-2020, the National Strategy on Economic Empowerment of Women and Girls, and the National Action Plan (NAP) on Women, Peace and Security, launched in 2017. The NAP aligns with UN Security Council Resolution 1325, which requires all UN Member States to develop a NAP. Solomon Islands was the first PIC to do so and the NAP has a specific focus on implementing the recommendations of the Truth and Reconciliation Commission for women who experienced sexual violence during the Tensions.¹⁹⁴⁰ In March 2019, RSIPF launched a gender equality policy.¹⁹⁴¹

¹⁹³³ Commonwealth Network. http://www.commonwealthofnations.org/sectors-solomon_islands/civil_society/national_ngos_civil_society/ (accessed 20 August 2019).

¹⁹³⁴ Freedom House. Freedom in the World 2019. <https://freedomhouse.org/report/freedom-world/2019/solomon-islands> (accessed 10 August 2019).

¹⁹³⁵ Penal Code (Amendment) (Sexual Offences) Act 2016. Available at: http://www.paclii.org/sb/legis/num_act/pcoa2016308/ (accessed 5 August 2019).

¹⁹³⁶ SIG 2017. Child and Family Welfare Act 2017. Available at: <http://www.parliament.gov.sb/files/legislation/Acts/2017/Child%20and%20Family%20Welfare%20Act%202017.pdf> (accessed 6 August 2019).

¹⁹³⁷ SIG 2018. Anti-Corruption Act 2018. Available at: http://www.parliament.gov.sb/files/legislation/Acts/2018/Anti-Corruption_Act_2018.pdf (accessed 6 August 2019).

¹⁹³⁸ SIG 2018. Whistle-blowers Protection Act 2018. Available at: http://www.parliament.gov.sb/files/legislation/Acts/2018/Whistleblowers_Protection_Act_2018.pdf (accessed 6 August 2019).

¹⁹³⁹ SIG 2016. Gender Equality and Women's Development Policy 2016–2020. Available at: https://www.pacificclimatechange.net/sites/default/files/documents/_national_gender_equality_and_womens_development_policy_2016....pdf (accessed 6 August 2019).

¹⁹⁴⁰ Women's International League for Peace and Freedom. National action plan: Solomon Is. Available at: <https://www.peacewomen.org/action-plan/national-action-plan-solomon> (accessed 6 August 2019).

¹⁹⁴¹ Royal Solomon Islands Police Force. <https://www.rsipf.gov.sb/?q=node/1043> (accessed 6 August 2019).

The Solomon Islands National Youth Policy 2017-2030 was also launched, setting forth a comprehensive agenda for youth rights and development, and aligns with both the country's CRC commitments and the SDGs. The Education Strategic Framework 2016-2020 also aligns with the SDGs.¹⁹⁴²

Right to life, liberty and security of person

Solomon Islands has yet to ratify either ICCPR or CAT, although it has received recommendations through the UPR process and from UN treaty bodies to do so. Deficiencies in due process, although common, are mainly a result of limited resources and capacity constraints. Roughly half of the country's prison inmates are on remand awaiting trial due to case backlogs.¹⁹⁴³ Domestic violence and rape are underreported problems, even though protections under the law are in place, and many victims who do report offences are reluctant to take their cases to court.¹⁹⁴⁴

Equality and non-discrimination

A notable development in the Solomon Islands in the last three years is the Draft Federal Constitution 2018. Chapter 3, Paragraph 19, subsection 3 of the draft provides that each sphere and each organ of government must not discriminate directly or indirectly against anyone on grounds such as birth, age, ethnicity, social origin, race, colour, language, religion, conscience, belief or opinion, culture, sex, pregnancy, marital status, disability, social status or economic status. Gender was not included as grounds for discrimination. It also states that "sex may not be interpreted as including sexual orientation."¹⁹⁴⁵ Homosexuality is illegal for males and same sex unions are not recognised. Subsection 6 of the same paragraph states "to promote the achievement of equality, the Government may take legislative and other measures designed to protect or advance persons, or categories of persons, who are disadvantaged or have special needs." This allows for the establishment of Temporary Special Measures by the government to advance areas that call for equity. The Federal Constitution was presented to the Prime Minister in June 2019.

There are no formal barriers for women in employment in the Solomon Islands; however, systematic disadvantages continue to impact the participation of women in formal employment. Girls have a higher chance of dropping out of school due to economic and social reasons, aggravated by lack of affirmative actions to increase their access and opportunities.

All religions in the country acknowledge tolerance for each other and are able to worship freely without intrusion from the State; however, the State can intervene when a religious practice appears to be disadvantaging followers. In early 2018, police were called to investigate a religious movement calling themselves the Kingdom Movement whose leader encouraged followers to sell their properties in preparation for a miracle.¹⁹⁴⁶ Racial difference is not acute in the Solomon Islands and there have not been reports of discrimination based on racial lines in recent times. The ethnic tension between Malaita and Guadalcanal during the period 1998-2003 were based on provincial differences, arising mainly from disputed access to land and resources. The country ratified the CERD 1982 but is overdue on its initial report.

Freedom of information (FOI)

Solomon Islands does not have FOI legislation. It is generally difficult or impossible for citizens to access information, including information about themselves, through any government department or service.

Freedom of expression, association and peaceful assembly

The National Constitution in Chapter 2 outlines the Fundamental Rights and Freedoms of the Individual. Part 12 of this Chapter stipulates the Freedom of Expression where: "Except with his own consent, no person shall

¹⁹⁴² UNICEF Pacific 2017. Situation analysis of children in Solomon Islands. Available at: https://www.unicef.org/pacificislands/11_Situation_Analysis_of_Children_Solomon_Islands.pdf

¹⁹⁴³ Freedom House. Freedom in the World 2019. Note. 1828.

¹⁹⁴⁴ Ibid.

¹⁹⁴⁵ SIG 2018. Constitution of the Republic of Solomon Islands (draft).

¹⁹⁴⁶ Island Sun 2018. <http://theislandsun.com.sb/dont-get-wrong/> (accessed 10 August 2019).

be hindered in the enjoyment of his freedom of expression, and for the purposes of this section the said freedom includes the freedom to hold opinions without interference, freedom to receive ideas and information without interference, freedom to communicate ideas and information without interference and freedom from interference with his correspondence.”¹⁹⁴⁷

Rights to peaceful public protest and to join trade unions are also mentioned in parts 12 and 13 of the same chapter; however, peaceful protests have been suppressed by relevant authorities in recent times when they escalated into riots and unlawful looting in the aftermath of the elections of Prime Ministers in 2006 and 2019.¹⁹⁴⁸

Media freedom was stable in the Solomon Islands until late 2020, as evidenced by the frequent criticism of government policies and actions with minimal rebuttal by the government. Media outlets include the Solomon Islands National Broadcasting Cooperation, a number of FM radio stations, independent newspapers, a TV channel and different social media platforms, the most significant being Facebook. In November 2020, the government decided to ban Facebook, a decision that was criticized by analysts who noted that a Facebook ban due to criticism of the government was an attack on freedom of expression.¹⁹⁴⁹

The nurses’ association won concessions in 2018 by threatening to strike over working conditions, and a one-day strike by transport workers resulted in a reduction to a transportation tax increase.¹⁹⁵⁰

Economic rights

Solomon Islands ratified ICESR in 1982 but reported only once, in 2001. The Second Periodic Report has been overdue since 2005. Legal protections against exploitative working conditions are not consistently enforced.¹⁹⁵¹

The Solomon Islands National Provident Fund Amendment Act 2018 represents a significant step forward for the economic rights of Solomon Islanders by making the provident fund accessible to people employed in the informal sector. Previously, only government employees or those working in large (international) firms were able to participate in the fund, effectively excluding the majority of the population. The Act now allows anyone to register.

Men continue to dominate in formal employment. In the 2015 Solomon Islands Gender Assessment by ADB, it was found that women hold only 25% of private sector wage jobs and 36% of public sector wage jobs, and they are paid less than men for doing similar or the same type of work. “At the level of business ownership, there are 285 women compared to 1126 men who have ‘Employer’ status.”¹⁹⁵² This imbalance is exacerbated for people living with disabilities. The Ministry of Public Service was planning to launch a new Gender Equality and Social Inclusion Policy in 2019. The policy, once implemented, will play an important role in addressing these issues.

The Committee on the Rights of the Child in 2018 expressed serious concern about the economic exploitation of children and recommended: taking necessary measures to ensure that no child under 18 years of age engages in hazardous labour, including in the agriculture, logging, tourism and fishing industries; putting in place social programmes that target the elimination or prevention of child labour, especially its worst forms; and strengthening the labour inspection system so that it works effectively.¹⁹⁵³

1947 National Constitution of Solomon Islands. Available at: http://www.paclii.org/sb/legis/consol_act/c1978167/ (accessed 31 July 2019).

1948 Solomon Times 2019. <https://www.solomontimes.com/news/the-politics-of-riots-in-the-solomon-islands/9025> (accessed 31 July 2019).

1949 Amnesty International. <https://www.amnesty.org/en/latest/news/2020/11/solomon-islands-facebook-ban-due-to-criticism-of-government-is-brazen-attack-on-freedom-of-expression>

1950 Freedom House. Freedom in the World 2019 website. Note. 1828.

1951 Ibid.

1952 Asian Development Bank 2015. Solomon Islands country gender assessment. Available at: <https://www.adb.org/sites/default/files/institutional-document/176812/sol-country-gender-assessment.pdf>

1953 CRC/C/SLB/CO/2-3. Available at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2fSLB%2fCO%2f2-3&Lang=en

Right to health and education

According to the WHO, the Solomon Islands' health system is in transition based on an ambitious reform agenda focused on devolving health services to the provinces, and integration of health services.¹⁹⁵⁴ The National Health Strategic Plan for 2016-2020 looks at four key result areas: service coverage; service quality; building strong partnerships; and setting the foundations for the future. Priority interventions are immunisation, family planning, water, sanitation and hygiene, neonatal care, malaria control and TB control. Two priority population groups are people with disabilities and women exposed to violence and abuse.¹⁹⁵⁵ A systems review in 2015 reported that the challenge facing the government, and donors, is to strengthen the system within very real financial and human resource constraints.¹⁹⁵⁶ Corruption in the health sector and concerns about the health risks of populations affected by mining operations have also been raised.¹⁹⁵⁷

Adequate nutrition is one of the key public health challenges in the Solomon Islands, with households experiencing food poverty, especially poor diets with inadequate nutrition.¹⁹⁵⁸ The 2015 estimate, and most recent, for improved drinking water was 93.2% for urban areas and 77.2% for rural areas.¹⁹⁵⁹ Improved sanitation was estimated at 81.4% for urban and 15% for rural.¹⁹⁶⁰

The government struggles to provide adequate mental health services to vulnerable populations but has stated that community rehabilitation programmes, home visits and mental health promotion remain important priority initiatives.¹⁹⁶¹ The Committee on the Rights of the Child in 2018 recommended expediting the adoption of the Mental Health Treatment Act and the National Mental Health Policy and taking all measures necessary, including regional cooperation, to improve conditions at the National Psychiatric Unit, provide rehabilitation services and increase capacity and the number of personnel specialised in children with mental health issues.¹⁹⁶²

The government provides free basic education to children from Years 1 to 9 of schooling, although parents pay other related costs. Not all school-age children are enrolled. The government prioritised education after the conflict and continues to make efforts toward its goal of Education for All by adopting various education policies, including the Education Strategic Framework 2016-2020, which is framed around the SDGs. A new education bill has been drafted to reflect the policy and strategy direction.¹⁹⁶³ Survival rate to Year 9 remains a concern. In 2017, only 88% of enrolled pupils completed to Year 6, the end of primary school, 85% completed to Year 8 and only 76% completed to Year 9, the end of middle school and fee-free education.¹⁹⁶⁴ While enrolments were close to gender parity for that year, the dropout rate was not disaggregated.¹⁹⁶⁵ Solomon Islands has a reservation to ICESCR Article 13(2)(a) which allows it to postpone the obligation to provide free and compulsory universal primary education.¹⁹⁶⁶

Amongst the recommendations of the Committee on the Rights of the Child in 2018 were to take more active measures to end all forms of discrimination against children, with special attention to discrimination against girls, particularly in relation to education and access to basic services for children living in rural areas and to

¹⁹⁵⁴ Solomon Islands–WHO Country Cooperation Strategy 2018–2022. WPRO/2017/DPM/021. Available at: <https://apps.who.int/iris/rest/bitstreams/1096378/retrieve> (accessed 10 August 2019).

¹⁹⁵⁵ Ibid.

¹⁹⁵⁶ Hodge N. et al 2015. Solomon Islands health system review. Vol.5 No.1. Available at: http://apps.searo.who.int/PDS_DOCS/B5322.pdf (accessed 10 August 2019).

¹⁹⁵⁷ A/HRC/WG.6/24/SLB/3. Available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G15/252/00/PDF/G1525200.pdf?OpenElement>

¹⁹⁵⁸ Ibid.

¹⁹⁵⁹ CIA World Factbook. Note. 1828.

¹⁹⁶⁰ Op cit.

¹⁹⁶¹ A/HRC/WG.6/24/SLB/1. Available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G15/247/87/PDF/G1524787.pdf?OpenElement>

¹⁹⁶² CIA World Factbook. Note. 1828.

¹⁹⁶³ UNICEF Pacific 2017. Situation analysis of children in Solomon Islands. Note. 1828.

¹⁹⁶⁴ Ministry of Education and Human Resources Development. Annual Report 2017. Available at: <http://www.mehrd.gov.sb/documents?view=download&format=raw&field=2060> (accessed 20 August 2019).

¹⁹⁶⁵ Ibid.

¹⁹⁶⁶ UNICEF Pacific 2017. Situation analysis of children in Solomon Islands. Note. 1828.

children with disabilities, and address the high number of drop-outs and student absenteeism, particularly among girls, due to pregnancy, child marriage, poor sanitary conditions, poverty and lack of space in senior secondary institutions.¹⁹⁶⁷

Women's and children's rights

The Ministry of Women, Youth, Children and Family Affairs (MWYCFA) launched the National Youth Policy 2017-2030 in November 2018 and reviewed the Solomon Islands National Gender Equality and Women's Development (GEWD) Policy, which was launched in 2017. Both policies share the same vision to advance gender equality in all areas of life and at all levels so that women and men in Solomon Islands can fully participate, access equal opportunities, and benefit equally from development outcomes in order to fulfil their needs and support their well-being.¹⁹⁶⁸ In 2017, MWYCFA also launched the Solomon Islands Women, Peace and Security National Action Plan 2017-2021, providing a roadmap to guide progress of key national and international commitments concerning advancing gender equality, women's empowerment and women's participation in national peace policy and crime prevention strategy.¹⁹⁶⁹

The Child and Welfare Act 2018 is an "Act to provide for the welfare and protection of children" by placing more accountability on parents to look after their children and strengthening the mandate of the social welfare department to facilitate cases dealing with children. It is still awaiting its official launch by the government. Additionally, the Ministry of Public Service's Gender Equality and Social Inclusion (GESI) Policy has been finalised and is awaiting launch. The GESI Policy aims to offer guidance to ensure non-discrimination, equal rights, opportunities and well-being of women, men and persons living with disabilities in all ministries and structures of the workforce in Solomon Islands. Similarly, the Ministry of Education and Human Resources is currently carrying out scoping across the country for the Second Chance Education Policy that will allow students who have dropped out of school to complete their primary and secondary education. This policy will also accommodate girls who have dropped out of school due to pregnancy. During the International Women's Day commemorations in March 2019, RSIPF and the Honiara City Council launched gender equality policies.

RSIPF has a sexual assault unit that deals with issues of domestic violence; most of its cases are women victims. The 2009 Family Health and Safety Study found that nearly 65% of all ever-partnered women have experienced physical or sexual violence by an intimate partner.¹⁹⁷⁰ The study has not been repeated to date and the situation was not reported elsewhere as having changed significantly by 2019. RSIPF also runs Seif Ples (safe place), a clinic offering a temporary safehouse and counselling services to victims of domestic abuse. Since 2016, 50% of all new police recruits have been women.¹⁹⁷¹ FSC also offers a safe house, counselling and legal aid services to victims of domestic violence, as does the Christian Care Center. SAFENET is a coordinated referral network between frontline service providers such as police, health and safe houses, to aid victims of violence to access services, justice and safety. Currently, there are no specific services available for children in the country. Meanwhile, more groundwork is needed to prepare the social welfare department for the impending roll out of the Child and Welfare Act.

Legal literacy in the country is limited due to numerous contributing factors, including the level of basic literacy of many in the population. A law that has been advocated for widely in Solomon Islands is the FPA. MWYCFA has used several mediums to disseminate information on the FPA, including radio, billboards, community outreach, pamphlets and so on. The FPA awareness campaign is ongoing with relevant stakeholders using different mediums to reach out to the national populace. The Act is currently due for review. The enactment of the FPA and the Child and Welfare Act have garnered focus on issues of abuse and discrimination against

¹⁹⁶⁷ CRC/C/SLB/CO/2-3. Note. 1862.

¹⁹⁶⁸ SIG-MWYCFA 2017. Solomon Islands National Youth Policy 2017-2030. Available at: <http://www.mwycfa.gov.sb/resources-2/strategic-plans-policies/youth-development-empowerment/6-solomon-islands-national-youth-policy-2017-2030/file.html>

¹⁹⁶⁹ SIG-MWYCFA 2017. Solomon Islands Women, Peace and Security Action Plan 2017. Available at: <http://www.lse.ac.uk/women-peace-security/assets/documents/2019/NAP/Solomon-Islands-NAP-2017-2021.pdf>

¹⁹⁷⁰ SPC 2009. Solomon Islands family health and safety study. Available at: <https://pacific.unfpa.org/sites/default/files/pub-pdf/SolomonIslandsFamilyHealthandSafetyStudy.pdf>

¹⁹⁷¹ Solomon Star 2017. <https://www.solomonstarnews.com/index.php/features/women/item/19461-gender-equality-in-rsipf> (accessed 10 September 2019).

women and children. This is evidenced by the continual reporting of cases through media sources and social media platforms as a source of education and information dissemination for the public. Increasingly, people are being made aware of the regulations around violence against women and children. Amongst the many recommendations made by the Committee on the Rights of the Child in 2018 were to adopt a national plan of action against sexual exploitation of children and against child labour; continue efforts to guarantee access to girls, boys, women and persons with disabilities to health services, education services, drinking water and sanitation; and ensure the effective implementation of the FPA.¹⁹⁷²

Reproductive health services are available to women through reproductive health clinics where Pap smear tests and other reproductive health needs can be accessed. There is a mammogram facility at the National Referral Hospital in Honiara for breast screening; women in the provinces wanting to access these services must travel to Honiara. In May 2019, the Ministry of Health and Medical Services introduced the Human Papilloma Virus (HPV) injection to be administered to girls from 9 to 14 years of age to reduce the prevalence of cervical cancer.

In 2016, the Penal Code was amended with a new provision related to child exploitation material.¹⁹⁷³ Anecdotally, technology-facilitated bullying among children is occurring;¹⁹⁷⁴ however, it has not caught major media attention. The level of usage of social media among young people is rapidly increasing and the access to faster internet through the new internet cable in 2019 has likely enabled further opportunities for abuse. Current access to 4G internet in the Solomon Islands has increased access to pornographic sites to underage groups who are able to use the internet. In recent times, concern over access to pornography has surfaced in the media with links made to increased incidences of sexual abuse of children.¹⁹⁷⁵ The Solomon Islands Ministry of Communication and Aviation is mandated to lead control measures on the use of internet.

Efforts to improve gender equality have gained momentum in recent years. The Ministry of Public Service has mandated the introduction of gender focal points in all government ministries as a measure to mainstream gender and women's development in government services. MWYCFA is working with stakeholders to revive advocating for temporary special measures for women in political leadership, advocating for the effectiveness of the FPA, women's participation in security and peace building, and advancing women's economic empowerment. At present, among the 24 ministries, there are only three female Permanent Secretaries, and only three female Members of Parliament. The Committee on the Rights of the Child in 2018 recommended the intensification of efforts to facilitate the participation of women in political and public affairs.¹⁹⁷⁶

Rights of peoples with disabilities (PWDs)

The Solomon Islands signed the CRPD in 2013 but is yet to ratify the convention. In 2019, the Ministry of Foreign Affairs and External Trade together with the Ministry of Health and Medical Services (MHMS) and other stakeholders, revisited discussions around ratification of CRPD. One of the prerequisites of ratification is to review and endorse the Draft National Disability Policy (2014-2018). The review resulted in a National Disability and Inclusive Education Policy and Plan of Action, which is now awaiting endorsement by the government.¹⁹⁷⁷ The MHMS established the Community Based Rehabilitation (CBR) unit to promote the rights of PWDs at the community level. The unit is currently collecting disability data as the basis for planning strategies on how to address the social services needs of PWDs in the country. Additionally, the CBR unit is said to be working closely with relevant government departments within the framework of the National Policy on Disability Inclusive Development 2013-2018 to ensure that mechanisms for implementing CRPD are planned and budgeted for as pre-emptive steps to ratification. However, the status of the policy was unclear according to the combined NGO alternative report to the Committee on the Rights of the Child (2017). Noting that the policy had only a year to run, information had been received that it was awaiting executive approval within the MHMS.¹⁹⁷⁸

¹⁹⁷² CRC/C/SLB/CO/2-3. Note. 1862.

¹⁹⁷³ INT_CRC NGO_SLB_29608_E. https://tbinternet.ohchr.org/Treaties/CRC/Shared%20Documents/SLB/INT_CRC NGO_SLB_29608_E.pdf

¹⁹⁷⁴ UN Women 2019. Beijing +25 National Review Report. Available at: <https://www.unwomen.org/-/media/headquarters/attachments/sections/csw/64/national-reviews/solomon-islands-en.pdf?la=en&vs=711> (accessed 10 August 2019).

¹⁹⁷⁵ ABC Pacific Beat 2018. <https://www.abc.net.au/radio-australia/programs/pacificbeat/condemnation-in-solomon-islands-over-rape/9586288> (accessed 7 August 2019).

¹⁹⁷⁶ CRC/C/SLB/CO/2-3. Note. 1862.

¹⁹⁷⁷ Ibid.

¹⁹⁷⁸ INT_CRC NGO_SLB_29608_E. Available at: https://tbinternet.ohchr.org/Treaties/CRC/Shared%20Documents/SLB/INT_CRC NGO_SLB_29608_E.pdf

Although there are provisions for the inclusion of PWDs in development, protection of rights and tangible support are difficult to come by where infrastructure, subsidies, opportunities and services are not made accessible and available. In urban areas there are no disability-friendly roads, buildings or amenities, contributing to the denial of economic opportunities. The problem is made worse for those in rural areas. The Youth at Work programme, an initiative supported by the Pacific Community and donors based in Honiara, Auki (Malaita) and Gizo (Western Province), tries to address this by offering special opportunities for youth with disabilities to explore entrepreneurship. Similarly, training centres run by faith-based organisations, such as San Isidro and Bethesda based around Honiara, also provide training opportunities to PWDs.

Efforts have been made by the government and there are plans underway for infrastructure development such as building ramps, creating a user-friendly public transportation system and improving accessibility to public buildings. Further, with a change in the Electoral Act to allow for people with disabilities to cast their vote with help from another person, or to do so remotely, people with disabilities have improved access to voting.¹⁹⁷⁹ There are concerns, however, about the lack of public policies and measures to protect the rights of women and girls with disabilities. MWYCFA is conducting a situational analysis on government policies that support PWDs. The purpose of the study is to inform the ministry's workplan on engaging with women and girls with disabilities.

The Ministry of Health and Medical Services is responsible for the health needs of PWDs, although hospital services are only available at the National Referral Hospital in the capital. A limited CBR service exists and is understaffed and underfunded.¹⁹⁸⁰ Mental health services are also based at the National Referral Hospital and the National Psychiatric Unit situated on the grounds of Kilu'ufi Hospital in Malaita Province.¹⁹⁸¹ There is very little recent information on the mental health situation, but a study in 2015 found that the civil conflict and subsequent natural disasters are impacting the mental health and functioning of individuals, families and communities, and that more investment is required in the treatment and prevention of mental and substance use disorders.¹⁹⁸² Family members mostly bear the role of looking after the well-being of affected people and aiding them to access services. The Committee on the Rights of the Child in 2018 recommended the speedy adoption of the Mental Health Treatment Act and the National Mental Health Policy and to do whatever necessary to improve conditions at the National Psychiatric Unit.¹⁹⁸³

Climate justice

Solomon Islands is a signatory to the UNFCCC and the Kyoto Protocol, and it ratified the Paris Agreement in 2016.¹⁹⁸⁴ The country has been active in advocating strongly for emissions reduction pathways that are capable of limiting global temperature increases to below 1.5°C and calling for the inclusion of a Land Loss and Damage Article in the Paris Agreement.¹⁹⁸⁵ The Solomon Islands is also a signatory to the Hyogo Framework for Action 2005-2015 and a succeeding instrument, the Sendai Framework for Disaster Risk Reduction 2015-2030.¹⁹⁸⁶

In their efforts to address climate change and disaster risk reduction, the government established a Ministry of Environment, Climate Change, Disaster Management and Meteorology. This ministry has worked with other key ministries to mainstream risk resilience by placing an officer acquainted with climate change to influence ministerial planning. The key ministries are MWYCFA, the Ministry of National Planning and Development Coordination (MNPDC) and the Ministry of Agriculture and Livestock. In the last five years, the government

1979 Electoral Act 2018. Available at: <http://www.parliament.gov.sb/files/legislation/Acts/2018/Electoral%20Act%202018.pdf> (accessed 30 July 2019).

1980 Ibid.

1981 UNDP 2018. Solomon Islands youth status report 2018. Available at: <https://www.undp.org/content/dam/fiji/docs/UNDP-SOI-Youth-Status-Report-2018.pdf> (accessed 30 July 2019).

1982 Maukera R. and Blignault I. 2015. A decade of peace: Mental health issues and service developments in the Solomon Islands since 2003. Available at: <https://doi.org/10.1177/1039856215592317> (accessed 4 September 2019).

1983 CRC/C/SLB/CO/2-3. Note. 1862

1984 Pacific Community, the Pacific Islands Forum Secretariat, the Deutsche Gesellschaft Für International Zusammenarbeit GmbH and the United Nations Programme 2017. Solomon Islands climate change and disaster risk finance assessment. Available at: <https://www.forumsec.org/wp-content/uploads/2018/09/Solomon-CCDRA-Report.pdf>

1985 Op cit.

1986 Op cit.

has developed national policies and plans including: the National Development Strategy, the National Climate Change Policy, the National Adaptation Programme of Action and a draft Disaster Management Plan.¹⁹⁸⁷ These instruments provide a broader framework for national development priorities including “resilient and environmentally sustainable development with effective disaster risk management response and recovery.”¹⁹⁸⁸ They also enable addressing climate change as a cross-cutting issue and ways to work across different sectors to “identify both medium and long term adaptation needs of Solomon Islands.”¹⁹⁸⁹ There is no existing national legislation to support climate change action. Drafting of a national climate change bill has been underway since 2017 to provide a “legislative and regulatory basis for climate change activities and the institutions that implement them.”¹⁹⁹⁰ There is also a need to review the National Disaster Council Act of 1989 to adequately reflect the requirements outlined in the current draft National Disaster Management Plan.

Environmental justice is an issue in the country, where logging activities are rampant, making up 60% of the country’s exports, and leading to environmental degradation and social problems.¹⁹⁹¹ A recent example is the government providing permits for a logging company to operate within the catchment area of the water source that services 40% of the capital’s population.¹⁹⁹² This resulted in high turbidity in the water causing the Water Authority to shut down the main pump, thereby leaving people without running water for an extended period. There is also a lack of proper waste management in urban and rural areas, which increases the pollution from human and industrial wastes. An oil spill from a cargo ship loading bauxite from a mine on Rennell Island, which is near a World Heritage site, raised questions of liability, inadequate legislation and corporate responsibility.¹⁹⁹³ The spill was a health risk to local communities and undermined food security.¹⁹⁹⁴

MNPDC facilitates and coordinates the national development and planning process guided by the national population count. There is a distinct policy objective for climate change disaster risk management and for gender and social development. The draft National Disaster Management Plan, through its implementation mechanisms, is advanced in its inclusion of women in particular, and also youth and other marginalised groups.¹⁹⁹⁵ Given its geographic features, climate change can and has already impacted the food security of people in the Solomon Islands. “Taro, the staple root crop in Ontong Java atoll, is dying due to salinity of the swamp and sandy soil.”¹⁹⁹⁶ In other areas, food gardens are being eroded out to sea. Changes in weather patterns also affect planting and harvest times. People’s reliance on processed food in these situations can increase vulnerability to NCDs.

Many programmes are implemented at the community level and have established mechanisms such as community climate change committees for facilitating the perspectives of women, youth, children and people with disabilities into programme processes, such as strategic planning, governance and monitoring.¹⁹⁹⁷ The Ministry of Women, through its GEWD Policy, aims to mainstream gender across all areas of government and development, including climate change and disaster risk reduction.

1987 Op cit.

1988 Ibid.

1989 Ibid.

1990 Ibid.

1991 SIG 2019. Solomon Islands Budget 2019: Financial Policies and Strategies, Budget Paper, Vol 1. Available at: http://www.mof.gov.sb/Libraries/Budget_2019/2019_Volume_1_Financial_Policy_Objectives_and_Strategies.sflb.ashx

1992 Solomon Star 2019. Available at: <https://www.solomonstarnews.com/index.php/news/national/item/21712-loggers-blamed>

1993 Radio New Zealand 2019. <https://www.rnz.co.nz/international/pacific-news/386042/rennell-oil-spill-an-inevitable-outcome-of-broken-system-says-academic> (accessed 4 August 2019).

1994 Radio New Zealand 2019. <https://www.rnz.co.nz/international/programmes/datelinepacific/audio/2018703704/a-second-environmental-disaster-for-solomon-islands> (accessed 4 August 2019).

1995 Pacific Community, the Pacific Islands Forum Secretariat, the Deutsche Gesellschaft Für International Zusammenarbeit GmbH and the United Nations Programme 2017. Solomon Islands climate change and disaster risk finance assessment. Available at: <https://www.forumsec.org/wp-content/uploads/2018/09/Solomon-CCDRAF-Report.pdf>

1996 The Guardian 2010. <https://www.theguardian.com/world/2010/nov/09/solomon-islands-climate-change> (accessed 29 July 2019).

1997 Pacific Community, the Pacific Islands Forum Secretariat, the Deutsche Gesellschaft Für International Zusammenarbeit GmbH and the United Nations Programme 2017. Solomon Islands climate change and disaster risk finance assessment. Available at: <https://www.forumsec.org/wp-content/uploads/2018/09/Solomon-CCDRAF-Report.pdf>



COUNTRY CHAPTERS

**KINGDOM OF
TONGA**

Kingdom of Tonga

Key facts

Capital city	Nuku'alofa	Total land area	747 sq km ¹⁹⁹⁸
Population (year)	106,398 (July 2018 est.) ¹⁹⁹⁹	Population growth % (year)	-0.1% (2018 est.) ²⁰⁰⁰
GDP per capita (year)	USD 5900 (2017 est.) ²⁰⁰¹	GNI per capita (Atlas method) (year)	USD 4300 (2018) ²⁰⁰²
Type of government	Constitutional monarchy with the King as the head of state and the Prime Minister as the head of government. ²⁰⁰³		
Electoral system	Unicameral Legislative Assembly or Fale Alea. Up to 30 seats – 26 for the 2017–19 term; 17 people's representatives directly elected in single-seat constituencies by simple majority vote, and nine hereditary leaders elected by nobles.		
Number of members of parliament (MPs): total/female (year)	26: 24 male/2 female. ²⁰⁰⁴ Ratio of women 7.7%.		
Religions: by % of population (year)	Protestant 64.1% (includes Free Wesleyan Church 35%, Free Church of Tonga 11.9%, Church of Tonga 6.8%, Assembly of God 2.3%, Seventh Day Adventist 2.2%, Tokaikolo Christian Church 1.6%, other 4.3%), Mormon 18.6%, Roman Catholic 14.2%, other 2.4%, none 0.5%, unspecified 0.1% (2016 est.) ²⁰⁰⁵		
Ethnic groups: by % of population (year)	Tongan 97%, part-Tongan 0.8%, other 2.2%, unspecified (2016 est.) ²⁰⁰⁶		
Languages: by % of population (year)	Tongan and English 76.8%, Tongan, English, and other language 10.6%, Tongan only (official) 8.7%, English only (official) 0.7%, other 1.7%, none 2.2% (2016) ²⁰⁰⁷		
Life expectancy: male/female (year)	76.6 years: 75 years male / 78.3 years female (2018 est.) ²⁰⁰⁸	% youth aged 15–24 years: total male/female (year)	19.69% male 10,725 / female 10,223 (2018 est.) ²⁰⁰⁹
% disability: total male/female (year)	10.6% male 10.6%/female 10.5% (2016) ²⁰¹⁰		

1998 CIA World Factbook. <https://www.cia.gov/library/publications/the-world-factbook/geos/tn.html> (accessed 4 October 2019).

1999 Ibid.

2000 Ibid.

2001 Ibid.

2001 World Bank Data. <https://data.worldbank.org/indicator/NY.GNP.PCAP.CD> (accessed 4 October 2019).

2003 CIA World Factbook. Note 1952.

2004 Pacific Women in Politics. <https://www.pacwip.org/country-profiles/tonga/> (accessed 4 October 2019).

2005 CIA World Factbook. Note 1952.

2006 Op cit.

2007 Op cit.

2008 Op cit.

2009 Op cit.

2010 Tonga Statistics Department 2017. Tonga 2016 census of population and housing, volume 1: Basic tables and administrative report. Nuku'alofa: Tonga Statistics Department. Available at: http://prdrse4all.spc.int/sites/default/files/02_2016_censusreportvol_1rev.pdf (accessed 3 October 2019).

International human rights treaty ratification and reporting obligations²⁰¹¹

Treaty	Date of signature (S) ratification (R) accession (a)	Reservations	Latest report submitted	Reporting status
ICERD	16 February 1972 (a)	Arts 5 (d) and (v); 6, 15 and 20 and Declaration: Art 4 (a) 9(b)and (c); 6,15 and 20.	14 th report submitted 17 March 1999	15 th report overdue since 17 March 2001
CRC	06 November 1995 (a)		Initial report submitted 5 April 2018	2 nd to 6 th reports due 5 December 2023
CRPD	15 November 2007 (S)			

Special Procedures: Standing invitation extended 25 January 2013.

Country visits: Working Group on discrimination against women request 10 November 2015, no reply; Special Rapporteur in the field of cultural rights request 24 April 2019.

Universal Periodic Review: 1st cycle 14.5.2008; 2nd cycle 21 January 2013; 3rd cycle 15 January 2018.

International Criminal Court: Not a State Party to the Rome Statute.

System of government

The Kingdom of Tonga is the only monarchy in the Pacific. Parliamentary elections are held every three years. Legislative reforms in 2010 resulted in a democratic transfer of power from the monarchy to Members of Parliament (MPs); however, the monarch retains important powers, including the authority to veto legislation, dissolve Parliament and appoint judicial officials.²⁰¹² The Prime Minister and Deputy Prime Minister are indirectly elected by the Legislative Assembly and appointed by the monarch; elections were last held on 18 December 2017 and were to be held next in November 2020.²⁰¹³ The unicameral Fale Alea, or Legislative Assembly, consists of 17 members who are directly elected by commoners, nine noble members elected by their peers, and up to four additional members whom the Prime Minister may appoint to the Cabinet from outside the Parliament and who hold their seats ex officio.²⁰¹⁴ The Speaker is appointed from among the noble members on the recommendation of the assembly.²⁰¹⁵ The framework for parliamentary elections falls short of universal suffrage due to the reservation of nine seats for the nobility.²⁰¹⁶

At the 2017 election, two women won seats, one being returned from the previous Parliament and given a Cabinet position which was rescinded in March 2018 due to a legal matter.²⁰¹⁷ The second elected woman has since held a Cabinet position.

In August 2017, the monarch dissolved Tonga's Legislative Assembly on the advice of the Speaker who accused the Prime Minister of seeking to further reduce the monarch's constitutional authority.²⁰¹⁸ A snap election was held in November 2017 and returned the incumbent Prime Minister and his party with an increased majority.²⁰¹⁹

2011 UN Treaty Body Database. https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/countries.aspx?CountryCode=TON&Lang=EN (accessed 4 October 2019).

2012 Freedom House. Freedom in the World 2018. Available at: <https://freedomhouse.org/report/freedom-world/2018/tonga> (accessed 4 October 2019).

2013 CIA World Factbook. Note. 1952.

2014 Freedom House. Freedom in the World 2018. Note. 1966.

2015 Op cit.

2016 Op cit.

2017 Matangi Tonga 2018. <https://matangitonga.to/2018/04/12/pm-fires-akosita-lavulavu> (accessed 4 October 2019).

2018 Freedom House. Freedom in the World 2018. Note. 1966.

2019 Op cit.

Political turmoil continued in what was described as a push for more democracy²⁰²⁰ until the ailing Prime Minister died in office in September 2019.²⁰²¹ A new Prime Minister was elected at the end of September, vowing to unite the politically divided Kingdom.²⁰²² The new Cabinet contains two women, three nobles, three independents and five former members of the late Prime Minister's party. One of the women was appointed from outside the Legislature, and is the Minister of Health.²⁰²³

In recent years, a women's coalition has been advocating for progress on a Temporary Special Measures Bill to reserve seats for women in Parliament. A submission was made to Cabinet in 2017 but was put on hold due to the snap election. No progress had been made in 2019.

Judicial system and administration of justice

Tonga's Constitution was adopted on 4 November 1875 and has been amended many times, most recently in 2016. Amendments are proposed by the Legislative Assembly and require approval by the Assembly in each of three readings, in addition to the unanimous approval of the Privy Council, which is a high-level advisory body to the monarch, the Cabinet, and assent by the monarch.²⁰²⁴

The monarch retains authority over judicial appointments and dismissals. The Judicial Appointments and Discipline Panel, a committee of the Privy Council, provides advice on appointments, including for the Lord Chancellor, who has responsibility for administering the courts. The monarch in Privy Council has final jurisdiction over cases in the Land Court relating to hereditary estates and titles.²⁰²⁵ The highest court is the Court of Appeal (COA), which consists of the court president and a number of judges determined by the monarch. Appeals beyond the COA are brought before the monarch in Privy Council, which has both judicial and legislative powers.²⁰²⁶ There is also a Supreme Court, Magistrates Courts and Land Courts. The judiciary is regarded as largely independent. Broader judicial reforms that would have increased the Cabinet's influence over judicial appointments were adopted by the Parliament in 2014, although assent from the monarch was never received.²⁰²⁷

Corruption and abuse of office are said to be serious problems. The illegal sale of Tongan passports is considered an ongoing problem. Public officials and leaders of state-owned companies are sometimes held accountable for bribery and other malfeasance, but anticorruption mechanisms are generally weak and lacking resources. An Ombudsman was appointed in late 2016, although the post of Anti-Corruption Commissioner has been vacant since its creation in 2007.²⁰²⁸

Access to justice and the right to remedy

Due process provisions and safeguards against arbitrary arrest and detention are typically respected by the authorities; however, there is no mechanism to guarantee access to counsel for indigent defendants.²⁰²⁹

There are five prisons, one on each of the main islands. Tonga's country report to the Committee on the Rights of the Child commented that the probation office works closely with NGOs to provide rehabilitation programmes for both offenders and victims.

²⁰²⁰ Radio New Zealand 2019. <https://www.rnz.co.nz/international/programmes/datelinepacific/audio/2018706973/tonga-govt-shelves-plans-for-more-democracy> (accessed 4 October 2019).

²⁰²¹ New Zealand Herald 2019. https://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=12267061 (accessed 4 October 2019).

²⁰²² Radio New Zealand 2019. <https://www.rnz.co.nz/international/pacific-news/399897/diverse-tonga-cabinet-aims-to-end-division> (accessed 4 October 2019).

²⁰²³ Op cit.

²⁰²⁴ CIA World Factbook. Note. 1952.

²⁰²⁵ Freedom House. Freedom in the World 2018. Note. 1966.

²⁰²⁶ CIA World Factbook. Note. 1952.

²⁰²⁷ Freedom House. Freedom in the World 2018. Note. 1966.

²⁰²⁸ Ibid.

²⁰²⁹ Ibid.

Unofficial restorative justice is available through the community at large, which facilitates reconciliation and assimilation of the offenders into society.²⁰³⁰

A UNICEF Situation Analysis in 2017 reported the lack of a comprehensive legal framework guiding the delivery of child protection, prevention, early intervention and response services.²⁰³¹ In 2019 the Committee on the Rights of the Child noted that Tonga is developing a youth diversion scheme as an alternative to a formal juvenile justice system but expressed concern about the low age of criminal responsibility (7 years), the lack of a law governing the administration of juvenile justice, no time limit for pre-trial detention of children, the lack of legal representation in court, and the lack of awareness on the convention by magistrates and other officials, amongst other areas.²⁰³²

A Family Protection Legal Aid Centre opened in the capital in March 2018 to provide free legal advice and related services for those experiencing domestic violence. Situated in the capital Nukualofa, the centre also provides legal advice on family law matters, such as custody and maintenance. The centre was established by the Ministry of Justice with support from SPC HRSD and the Australian government. The ministry provides a building for the centre to operate from and funds staff salaries. In the first year of operation, the centre received 367 clients, with 59% of eligible clients receiving legal assistance to obtain protection orders. Legal representation in court was also provided while 37 clients were referred by the centre to other service providers, such as police, family violence counselling services and safe house providers. The ministry plans to fully absorb the costs of running the centre from 1 July 2022.²⁰³³ The Attorney General's Office has some of its lawyers working specifically on domestic violence cases, working closely with the Domestic Violence Unit of the Tonga police.²⁰³⁴

A 2018 recommendation from the UPR Working Group was for Tonga to improve the relevant legislation, policies and programmes to provide greater protections for people with disabilities.²⁰³⁵

National human rights institution (NHRI)

Tonga's third report to the UPR, submitted in 2017, stated that the establishment of an NHRI is not financially or technically feasible.²⁰³⁶ The Ombudsman's Act 2016 gives the Ombudsman's Office the power to investigate any decision, recommendation, or act or omission by any government department or relevant organisation or its officer, employee or member, to which the Act applies.²⁰³⁷

Security sector

Tonga's 2017 UPR report noted that the Tonga Police had proposed the establishment of a committee to consider the ratification of CAT in order to provide a legal framework for a zero tolerance approach to torture and abuse, and to provide an accountability framework to assist police, corrections facility officers and other forces.²⁰³⁸ The report went on to say that Tonga does not tolerate police brutality, although in the recent past, three police officers had been convicted of manslaughter and assault of a person in custody.²⁰³⁹

2030 CRC/C/TON/CO/1. Available at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2fc%2fTON%2f1&Lang=en

2031 UNICEF Pacific 2017. Situation analysis of children in Tonga. Available at: https://www.unicef.org/pacificislands/13_Situation_Analysis_of_Children_Tonga.pdf

2032 CRC/C/TON/CO/1. Note. 1984.

2033 Information provided by SPC HRSD.

2034 Ibid.

2035 A/HRC/38/5. Available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G18/104/85/PDF/G1810485.pdf?OpenElement>

2036 A/HRC/WG.6/29/TON/1. Available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G17/333/10/PDF/G1733310.pdf?OpenElement>

2037 Ombudsman Act, Chapter 04.04, 2016 Revised Edition. Available at: https://crownlaw.gov.to/cms/images/LEGISLATION/PRINCIPAL/2016/2016-0404/OmbudsmanAct_1.pdf.

2038 A/HRC/WG.6/29/TON/1. Available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G17/333/10/PDF/G1733310.pdf?OpenElement>

2039 Ibid.

An independent evaluation conducted in 2016 reported that the Tonga Police had been positive and proactive in its response to public perceptions of their attitudes, behaviour and capacity to address key human rights concerns, and had been receptive to gender equality and empowerment related initiatives.²⁰⁴⁰ At the time, only 24% (102) of the force was female; 11 females were commissioned officers and 13 females were sergeants.²⁰⁴¹ A number of police officers accused of misconduct have been investigated, dismissed or convicted of crimes in recent years; however, rising public concern has focused on problems including the country's role as a transit point for drug trafficking, drug-related petty crime and organised crime affecting the Chinese community.²⁰⁴² Continued bias and instances of crime against members of the Chinese minority have been reported in the media.²⁰⁴³

In June 2019, the Guardian newspaper reported that increased drug trafficking in the Pacific is causing grave social harm in countries like Fiji, Samoa and Tonga, which now have domestic markets for drugs as well as greater levels of addiction and drug-related corruption and violence.²⁰⁴⁴ In April 2019, police arrested a senior customs officer after intercepting a drug haul worth USD 2.6 million smuggled from the US and five illegal firearms with ammunition.²⁰⁴⁵ The implication of police officers in drug-related matters indicates the involvement of police in the drug trade.²⁰⁴⁶

His Majesty's Armed Forces consist of territorial forces, land forces, which include the Tonga Royal Guards, Royal Tonga Marines and a Combined Log and Tech Support Unit, and the Tonga Navy, Training Wing, Air Wing and Support Unit.²⁰⁴⁷ The government's 2017 UNPR report stated that the armed forces had updated their regulations and policies granting equal opportunity to women in the military, including permission to marry outside the military, serve in operations overseas and have access to all trades, except the infantry and on-board patrol boats.²⁰⁴⁸

Prison conditions are reported to be generally adequate²⁰⁴⁹ and the government's 2017 UPR report commented on the increase in the number of female prison officers and that prison officers are now more exposed to training on the rights of prisoners.²⁰⁵⁰

In May 2017, Tonga became a signatory to the Convention on Cybercrime²⁰⁵¹ and signed an agreement with Australia to share cyber security information to better manage cyber threats and vulnerabilities for businesses and the Tongan community.²⁰⁵²

Refugees and asylum seekers

No information could be found on countries of origin, although reportedly it is common for Fiji natives to find refuge in Tonga.²⁰⁵³ The Borgen Project reported that Tonga has never implemented a law under which asylum or refugee status is granted to an individual; however, if a person's life or freedom is threatened, they are not

2040 Tennent S. and Bernklau S. 2016. Tonga police development programme evaluation. Available at: https://www.mfat.govt.nz/assets/Aid-Prog-docs/Evaluations/2016/April-2016/TongaPoliceDevProg-Evaluation-Report_Final.pdf (accessed 1 October 2019).

2041 Ibid.

2042 Freedom House. Freedom in the World 2018. Note. 1966.

2043 Ibid.

2044 The Guardian 2019. <https://www.theguardian.com/world/2019/jun/26/australia-and-new-zealand-urged-to-step-up-fight-against-pacific-drug-trade> (accessed 10 September 2019).

2045 Radio New Zealand 2019. <https://www.rnz.co.nz/international/pacific-news/387885/tongan-police-arrest-customs-official-after-drug-bust> (accessed 10 October 2019).

2046 TVNZ 2019. <https://www.tvnz.co.nz/one-news/world/tonga-steps-up-war-meth-trade-multiple-arrests-over-30kg-drug-seized> (accessed 10 October 2019).

2047 CIA World Factbook. Note. 1952.

2048 A/HRC/WG.6/29/TON/1. Available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G17/333/10/PDF/G1733310.pdf?OpenElement>

2049 Freedom House. Freedom in the World 2018. Note. 1966.

2050 A/HRC/WG.6/29/TON/1. Note. 1990.

2051 Matangi Tonga. 2017.. <https://matangitonga.to/2017/05/11/tonga-joins-cyberime-convention>

2052 Matangi Tonga 2017. <https://matangitonga.to/2017/05/25/tonga-signs-australia-manage-cyber-security> (accessed 1 October 2019).

2053 The Borgen Project 2017. <https://borgenproject.org/refugees-in-tonga/> (accessed 10 October 2019).

forced to leave. The few migrants living in Tonga were said to have very few political rights and know they are not very welcome.²⁰⁵⁴ In 2018, 70 Tongans had applications for refugee status in Australia. No cases had been determined at the time.²⁰⁵⁵

Migration

Tonga's Strategic Development Framework 2015-2025 commented that Tonga's population has been relatively stable due to large out-migration. However, migration from outer islands has seen the population concentrated in Tongatapu, the main island where 75% of the population now lives. The subsequent social changes are said to be undermining traditional support systems, leaving more people vulnerable.²⁰⁵⁶ Additionally, the concentration of the population on Tongatapu is said to increase the vulnerability to extreme natural events.²⁰⁵⁷

Some estimates suggest an overseas Tongan-related population of similar size to the resident Tongan population, with the majority living in the US, Australia and New Zealand.²⁰⁵⁸ Each year 250 Tongans are selected by ballot for residency in New Zealand.²⁰⁵⁹ In 2017-2018, 1899 Tongans participated in the New Zealand temporary seasonal worker scheme²⁰⁶⁰ and around 3000 participated in the Australian scheme.²⁰⁶¹

A news report in 2019 commented that the number of deportees to Tonga at the time was estimated at around 1000, with exact figures difficult to obtain.²⁰⁶² Many Tongans have been deported from the US, Australia and New Zealand, where permanent residents who commit a serious crime are, by law, deported the day their sentence is complete. The lack of reintegration programmes for deportees in Tonga has resulted in some returning to crime,²⁰⁶³ including the drug trade.²⁰⁶⁴

In 2015, a total of 5731 migrants from other countries lived in Tonga.²⁰⁶⁵ Countries of origin were not provided for 2015, but in 2013, migrants came from Fiji, Samoa, India, China and Japan.²⁰⁶⁶

Human Trafficking, Forced Labour, and Contemporary Forms of Slavery

Tongan and foreign individuals are vulnerable to trafficking in Tonga, and some Tongans are vulnerable to trafficking abroad. East Asian women, especially from China, who are recruited from their home countries for legitimate work in Tonga, are vulnerable to sex trafficking in clandestine establishments operating as legitimate businesses. Some Tongan women and children are vulnerable to domestic servitude, and some Tongan children are vulnerable to sex trafficking. Reports indicate Fijians working in the domestic service industry in Tonga experience mistreatment indicative of labour trafficking. Tongan adults working overseas, including in Australia and New Zealand, are vulnerable to labour trafficking.²⁰⁶⁷

²⁰⁵⁴ Op cit.

²⁰⁵⁵ WorldData.info. <https://www.worlddata.info/oceania/tonga/asylum.php> (accessed 4 October 2019).

²⁰⁵⁶ Ministry of Finance and National Planning 2015. Tonga Strategic Development Framework 2015–2025. Available at: http://finance.gov.to/sites/default/files/2018-06/TSDF%202015-2025_English.pdf (accessed 24 October 2019).

²⁰⁵⁷ Ibid.

²⁰⁵⁸ Ibid.

²⁰⁵⁹ New Zealand Immigration. <https://www.immigration.govt.nz/new-zealand-visas/apply-for-a-visa/about-visa/pacific-access-category-resident-visa> (accessed 10 October 2019).

²⁰⁶⁰ New Zealand Immigration. <https://www.immigration.govt.nz/documents/statistics/statistics-rse-arrivals.pdf> (accessed 10 October 2019).

²⁰⁶¹ DevPolicy Blog website 28 June 2019. Available at: <https://devpolicy.org/why-has-tonga-been-so-successful-in-the-swp-21090628/> (accessed 10 October 2019).

²⁰⁶² Stuff 2019. <https://www.stuff.co.nz/entertainment/film/110618772/no-return-address-the-former-criminals-deported-back-to-tonga> (accessed 12 October 2019).

²⁰⁶³ ABC Pacific Beat 2019. <https://www.abc.net.au/radio-australia/programs/pacificbeat/tonga-struggling-to-accommodate-criminal-deportees/10788314> (accessed 12 October 2019).

²⁰⁶⁴ Vice 2019. https://www.vice.com/en_ca/article/evezba/the-fate-of-tongas-criminal-returnees (accessed 12 October 2019).

²⁰⁶⁵ WorldData.info. <https://www.worlddata.info/oceania/tonga/asylum.php> (accessed 4 October 2019).

²⁰⁶⁶ UNICEF Migration Profiles fact sheet. <https://esa.un.org/miggmgprofiles/indicators/files/Tonga.pdf>

²⁰⁶⁷ Op cit.

Tonga remained on the US State Department Tier 2 ranking as the government demonstrated increasing efforts to eliminate trafficking, including by providing increased funding to an NGO to assist trafficking victims, and by training new police recruits on victim identification and trafficking investigations.²⁰⁶⁸ However, minimum standards were not met in several key areas: authorities did not conduct any new trafficking investigations, develop procedures to proactively identify victims, or effectively coordinate governmental anti-trafficking efforts.²⁰⁶⁹

The trafficking task force is responsible for leading anti-trafficking efforts along with the Transnational Crime Unit of the Police Force; however, there is no national action plan to combat trafficking or conduct awareness campaigns, and the lack of an action plan or formal interagency policies reportedly hindered governmental anti-trafficking coordination. No efforts were made to reduce the demand for commercial sex acts or forced labour.²⁰⁷⁰ On a positive note, briefings were provided to Tongans participating in seasonal worker programs overseas, which included information on workers' rights.²⁰⁷¹ The government had not prosecuted or convicted any trafficking cases since 2011 and did not report any investigations, prosecutions, or convictions of government employees complicit in trafficking offences.²⁰⁷²

Civil society and human rights defenders

NGOs have not reported harassment or other restrictions by authorities, while key organisations, such as the Women and Children Crisis Centre and the National Youth Council, receive small annual grants as contributions to operational costs. A number of different laws govern the registration processes for civil society groups, but they are not considered onerous.²⁰⁷³

NGOs and CSOs are involved at the grassroots, national and international levels in the health, education, environmental and gender developmental sectors.²⁰⁷⁴ The Civil Society Forum of Tonga (CSFT) is the umbrella organisation for NGOs and CSOs and provides opportunities for capacity building and leadership development.²⁰⁷⁵ The government has recognised the potential of CSFT to take the lead role for involvement of NGOs on political, social and economic activities.²⁰⁷⁶

In a victory for human rights defenders, in September 2019, the Supreme Court rejected a decision by a senior magistrate to refuse to hear a case filed by the Family Protection Legal Aid Centre (FPLAC) on behalf of a woman claiming maintenance, custody and a restraining order against her husband. The Lord Chief Justice hearing the appeal said the magistrate in the case could not refuse to accept the application or declare that he would refuse to accept any applications brought by FPLAC. The Lord Chief Justice also directed the Magistrates Court to accept for filing all actions lodged by FPLAC.²⁰⁷⁷

Domestic law and human rights

In 2018, a Microfinance Institutions Act and a Moneylenders Act regulated the loan industry and restricted interest rates and fees to align with the amount prescribed by the Reserve Bank.²⁰⁷⁸ These laws should reduce the risk of exploitation of people who have taken loans from microfinance institutions and moneylenders.

²⁰⁶⁸ Op cit.

²⁰⁶⁹ Op cit.

²⁰⁷⁰ Ibid.

²⁰⁷¹ Op cit.

²⁰⁷² Ibid.

²⁰⁷³ Freedom House. Freedom in the World 2018. Note. 1966.

²⁰⁷⁴ Commonwealth Network. http://www.commonwealthofnations.org/sectors-tonga/civil_society/

²⁰⁷⁵ PIANGO. <http://www.piango.org/our-members/member-countries/tonga/> (accessed 4 October 2019).

²⁰⁷⁶ Pasifika Rising. <https://www.pasifikarising.org/polynesia/civil-society-forum-of-tonga-csft/> (accessed 10 October 2019).

²⁰⁷⁷ Kaniva Tonga News 2019. <https://kanivatonga.nz/2018/09/lord-chief-justice-slams-senior-magistrates-decision-to-turn-away-legal-aid-case/> (accessed 30 September 2019).

²⁰⁷⁸ PACLII. http://www.paclii.org/to/legis/num_act/mia2018296/ (accessed 10 October 2019).

In 2019, police regulations under the Tonga Police Act 2010 established a Police Employment Committee to deal with breaches of discipline, including sexual harassment, and regulate the conduct of forensic investigations and surveillance, amongst other matters.²⁰⁷⁹

Human rights policies

In 2019, the Revised National Policy on Gender and Development was replaced with the updated National Women's Empowerment and Gender Equality Tonga Policy and Strategic Plan of Action 2019-2025.

Tonga Police have included an equal opportunity clause in their Recruitment, Promotion, Transfer and Leave Management policy, and the Armed Forces updated their regulations and polices granting equal opportunity to women in the military, with the exception of the infantry and on-board patrol boats.²⁰⁸⁰

In 2017, the Ministry of Health conducted a workshop on Family Planning Guidelines and Sexual Reproductive Health Policy to re-design and review the current policy.²⁰⁸¹ A National Disability Inclusive Health Plan 2016-2020 is being implemented.

In 2019, the Committee on the Rights of the Child recommended consideration of a comprehensive national policy and strategy on children that encompasses all areas covered by the convention.²⁰⁸²

Right to life, liberty and security of person

Due process provisions and safeguards against arbitrary arrest and detention are said to be typically respected by authorities, although legal representation is generally difficult to access.²⁰⁸³ The constitution includes a general provision for equality before the law and is upheld in many respects; however, women and minority communities still face some forms of discrimination²⁰⁸⁴ and violence. Domestic violence remains a problem despite state and civil society efforts to prevent it;²⁰⁸⁵ however, women's rights organisations and the new Family Protection Legal Aid Centre are assisting victims to understand and claim their rights and protections. The Committee on the Rights of the Child in 2019 urged the government to bring its juvenile justice system fully in line with the convention.²⁰⁸⁶

Equality and non-discrimination

Tonga ratified CERD in 1972 but has not reported since 1999.

Cultural biases tend to discourage women's political participation and women cannot inherit noble titles, meaning the noble seats in the Parliament are effectively reserved for men.²⁰⁸⁷ Participation by ethnic minorities is subject to similar obstacles, although the population is mostly homogeneous and many members of the small Chinese minority have been able to obtain citizenship and its associated political rights.²⁰⁸⁸

The constitution includes a general provision for equality before the law and this is upheld in many respects; however, in practice, women still face some forms of discrimination, including in land and inheritance laws and with respect to employment. Same-sex sexual activity is criminalised, but criminalisation is not actively enforced. In recent years, local lesbian, gay, bisexual and transgender groups have worked to raise awareness of their cause and lobbied the government to adopt legal reforms.²⁰⁸⁹

2079 Tonga Police Regulations 2019. Available at: https://ago.gov.to/cms/images/LEGISLATION/SUBORDINATE/2019/2019-0033/TongaPoliceRegulations2019_1.pdf (accessed 10 October 2019).

2080 A/HRC/WG.6/29/TON/1. Available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G17/333/10/PDF/G1733310.pdf?OpenElement>

2081 Ibid.

2082 CRC/C/TON/CO/1. Note. 1984.

2083 Freedom House. Freedom in the World 2018. Note. 1966.

2084 Ibid.

2085 Ibid.

2086 CRC/C/TON/CO/1. Note. 1984.

2087 Freedom House. Freedom in the World 2018. Note. 1966.

2088 Op cit.

2089 Op cit.

Freedom of information (FOI)

Tonga does not have a law to guarantee public access to government information, which can be difficult to obtain in practice, and officials are not legally obliged to disclose their assets and income. The government has at times resisted public scrutiny of pending policies. Nevertheless, the Parliament generally operates openly, and the media and civil society are typically able to monitor its proceedings and comment on legislation.²⁰⁹⁰

Freedom of expression, association and peaceful assembly

The constitution guarantees freedom of the press and a variety of news outlets operate independently, including online.²⁰⁹¹ Tonga Broadcasting Commission (TBC) is government-owned and runs two television channels and two radio stations. Commercial advertising is a significant source of revenue.²⁰⁹² Politicians have a history of using civil defamation suits and other means to retaliate against critical coverage. In 2017, the then Prime Minister repeatedly complained about reporting by the state-run TBC and accused the radio and television outlet of being an enemy of government.²⁰⁹³ A series of leadership changes at TBC followed later in the year: TBC's long-standing general manager was terminated in May when her contract came up for renewal; a political ally was appointed as board chair in September; and the Chief Editor and news manager were transferred to the sales department in October, raising widespread concerns among press freedom advocates.²⁰⁹⁴

There are no major constraints on Tongans' ability to discuss politics and other topics in person or on social media;²⁰⁹⁵ however, in August 2019, it was reported that Tongan police were considering laying treason charges against people insulting the royal family on Facebook. The government was discussing blocking the platform because of escalating tensions between pro-democracy groups and supporters of the monarchy.²⁰⁹⁶

Constitutional protections for religious freedom are generally upheld in practice. Religious groups are not required to register; however, those that do, receive various benefits. There are some restrictions on commercial activity on Sundays in keeping with a constitutional recognition of the Christian sabbath.²⁰⁹⁷ Academic freedom is generally unrestricted, although there were reports of self-censorship to avoid friction with the government in the past.²⁰⁹⁸

The constitution protects freedom of assembly, and demonstrations, though rare, generally remain peaceful.²⁰⁹⁹ Workers have the legal right to organise in trade unions but implementing regulations have never been issued, meaning the country's various de facto unions generally operate as associations. Tonga joined ILO in 2016, although it has yet to ratify its conventions on labour standards.²¹⁰⁰

Economic rights

While the legal framework generally supports private business activity, individuals cannot own or sell land outright, as all land is technically the property of the King. Land rights, once granted by nobles or directly by the Crown through an allotment system, can only be leased or inherited, and while women can obtain leases, they are generally not eligible to receive or inherit land allotments,²¹⁰¹ the conditional exception being widows with no sons.

²⁰⁹⁰ Op cit.

²⁰⁹¹ Ibid.

²⁰⁹² Public Media Alliance. <https://www.publicmediaalliance.org/tonga-broadcasting-commission/> (accessed 4 October 2019).

²⁰⁹³ Freedom House. Freedom in the World 2018. Note. 1966.

²⁰⁹⁴ Op cit.

²⁰⁹⁵ Op cit.

²⁰⁹⁶ Radio New Zealand 2019. <https://www.rnz.co.nz/international/pacific-news/396948/tongan-police-could-lay-treason-charges-after-royal-slander-on-facebook> (accessed 10 October 2019).

²⁰⁹⁷ Freedom House. Freedom in the World 2018. Note. 1966.

²⁰⁹⁸ Op cit.

²⁰⁹⁹ Op cit.

²¹⁰⁰ Op cit.

²¹⁰¹ Op cit.

Horticulture and fisheries are important economic activities contributing to family and household incomes. The 2016 census reported that 86% of households were active in agriculture in order to meet their own food needs or for cash income through sale.²¹⁰²

The 2016 census found that 66% of men aged 15 years and over are in work compared to 41% of women (paid or unpaid, including subsistence and unpaid workers in family business), and 43% of women aged 15 years and over were outside the labour force compared to 29% of men.²¹⁰³ Women's share of those working for pay or profit was 39%, making up 42% of employees in the public sector and only 35% of private sector employees.²¹⁰⁴ Self-employed women were 28% of the private sector, mostly producing handicrafts for sale, and the number of both women and men in self-employment was decreasing.²¹⁰⁵

Female-headed households represent 23% of all households and are among the most vulnerable.²¹⁰⁶ A number of programmes are underway to foster women's economic empowerment, including entrepreneurial training projects to support women to generate income from handicrafts, cooking, sewing and other stereotypical activities. The Tonga Development Bank has introduced loan products and financial support services for women's groups and for individual women, with interest rates of 4-8%,²¹⁰⁷ which is lower than some microfinance schemes.

In 2016, the government initiated a cash assistance program for persons with disabilities.²¹⁰⁸ NGOs run programmes to encourage youth employment and support.²¹⁰⁹ Personal remittances sent to families by Tongans working in the diaspora make an important contribution to the economy. Reportedly, around 61% of households received remittances in 2016.²¹¹⁰

Foreign household workers – many of them from Fiji – are vulnerable to economic exploitation and practices like passport confiscation, and East Asian women have been trafficked to the country for forced prostitution.²¹¹¹

Right to health and education

There is near to universal access to health services in Tonga through three hospitals, 14 health centres and 34 maternal and child health clinics, although access for people in remote locations and persons with disabilities is a challenge. The Ministry of Health (MOH) is being supported to implement a series of reforms to achieve the government's commitment to provide universal health coverage and achieve the SDGs.²¹¹² Tonga has not ratified ICESCR but reported to the UPR in 2017 that the principles of ICESCR are incorporated in Tongan laws, including the right to adequate health care and right to education.²¹¹³ MOH was reviewing some of the legislation to ensure alignment with international standards.²¹¹⁴ An ADB project was working with MOH to develop a national capacity for gender mainstreaming in health and the role of statistics and gender indicators in decision making, along with identifying priorities for training and capacity development.²¹¹⁵ The National Integrated Sexual and Reproductive Health Strategic Plan expired in 2018 and work is underway to review results and renew

²¹⁰² Pacific Community and the Kingdom of Tonga Ministry of Internal Affairs 2019. Gender equality: where do we stand? Available at: <https://www.spc.int/resource-centre/publications/gender-equality-where-do-we-stand> (accessed 20 September 2019).

²¹⁰³ Ibid.

²¹⁰⁴ Op cit.

²¹⁰⁵ Ibid.

²¹⁰⁶ Ibid.

²¹⁰⁷ Ibid.

²¹⁰⁸ A/HRC/WG.6/29/TON/1. Available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G17/333/10/PDF/G1733310.pdf?OpenElement>

²¹⁰⁹ Op cit.

²¹¹⁰ CRC/C/TON/1. Note. 1984.

²¹¹¹ Freedom House, Freedom in the World 2018 website. Note.1966.

²¹¹² Pacific Community and the Kingdom of Tonga Ministry of Internal Affairs 2019. Gender equality: where do we stand? Available at: <https://www.spc.int/resource-centre/publications/gender-equality-where-do-we-stand> (accessed 20 September 2019).

²¹¹³ A/HRC/WG.6/29/TON/1. Note. 2064.

²¹¹⁴ Ibid.

²¹¹⁵ Ibid.



the plan.²¹¹⁶ In 2017, the Tonga Leitis Association conducted a Trans Health Blueprint Workshop to educate transgender men and women on their health rights in the community.²¹¹⁷

NCDs are the leading cause of illness and death in Tonga, estimated by WHO to account for 83% of all deaths.²¹¹⁸ Based on trends across four major risk factors for NCDs, 99.9% of Tongan adults are at moderate to high risk of developing an NCD.²¹¹⁹ The high prevalence of obesity and of being overweight is occurring at a younger age in 53.8% of girls and 36% of boys.²¹²⁰

It has been estimated that 10% of Tongans suffer from mental illness at some point in their lives, with MOH reporting 192 admissions to the psychiatric ward in 2016, two thirds of which were readmissions and one third were persons with a disability.²¹²¹ Increasingly, incidents were said to be related to side effects of using psychotropic drugs, including marijuana and methamphetamine. Resources for quality mental health care and support have increased in recent years and hospital facilities for mental health patients have improved. A separate facility is under construction at the main prison for cases referred by the judicial system.²¹²²

All children under the age of 19 years have a right to access quality education, and education is compulsory between the ages of 4-18 years or when the child has completed 12 years of education. Corporal punishment in schools is banned.²¹²³ A UNICEF Situation Analysis in 2017 reported that education statistics are out of date, making it difficult to conduct a comprehensive assessment and analysis of the current education situation and noted that the gap in statistics should be factored into Tonga's ongoing reform initiatives.²¹²⁴ Information provided showed that in 2013, 97% of children were in primary education, with a 91.8% survival rate to the last grade of primary education, and 79% were in secondary education. A higher proportion of boys were enrolled in primary education, while a higher proportion of girls were enrolled in secondary education; this was attributed to a higher number of boys repeating the final year of primary education.²¹²⁵ The limited number of secondary schools in rural areas was considered to be a driver of low enrolment and dropout rates due to high transport costs and migration of students to urban and peri-urban areas.²¹²⁶

In 2019, the Committee on the Rights of the Child expressed serious concern that primary education is not free, enrolment rates have dropped in primary and secondary schools, children are underachieving in primary education, school facilities are inadequate, as are teacher quality and learning resources, and there is poor access to schools, especially in rural areas and on the outer islands and for children with disabilities.²¹²⁷ The Committee on the Rights of the Child recommended that Tonga take effective measures to: make primary education free and ensure that all girls and boys complete equitable and quality primary and secondary education; ensure that children with disabilities are not discriminated against in access to education and basic services; and ensure that sexual and reproductive health education is part of the mandatory school curriculum, amongst other areas.²¹²⁸

²¹¹⁶ Ibid.

²¹¹⁷ Ibid.

²¹¹⁸ Pacific Community and the Kingdom of Tonga Ministry of Internal Affairs (2019). Gender equality: where do we stand? Available at: <https://www.spc.int/resource-centre/publications/gender-equality-where-do-we-stand> (accessed 20 September 2019).

²¹¹⁹ Op cit.

²¹²⁰ Op cit.

²¹²¹ Ibid.

²¹²² Op cit.

²¹²³ A/HRC/WG.6/29/TON/1. Note. 2064.

²¹²⁴ UNICEF Pacific 2017. Situation analysis of children in Tonga. Note. 1985.

²¹²⁵ Ibid.

²¹²⁶ Ibid.

²¹²⁷ CRC/C/TON/CO/1. Note. 1984.

²¹²⁸ Ibid.

Women and children's rights

Tonga announced an intention to ratify CEDAW in 2015, however, a public backlash, mostly from religious groups, resulted in the government withdrawing work on this. Since then, a women's coalition has been meeting to plan public awareness on the convention and to dispel myths.²¹²⁹ Due to political changes, progress has been slow.

A gender equality analysis published by the Pacific Community in 2019 found that the legal framework is progressive and relatively liberal with regard to the promotion of gender equality but some laws discriminate against women, notably those related to land ownership and the distribution of property and wealth during divorce.²¹³⁰ Traditional gender stereotypes in Tonga are consistent with those of the rest of the Pacific, where women's roles are meant to be based around the home, family and extended family, predominantly in caring and nurturing, while men's roles include providing food, income and security for the home and family as well as in leadership and politics.²¹³¹ Women's traditionally held high social status within Tongan society is at odds with the reality of relatively high rates of GBV and the situation of some women with no land or income remaining in households with violent fathers, uncles, family members or husbands with no viable means of support to leave.²¹³²

In 2019, a new National Women's Empowerment and Gender Equality Policy and Strategic Plan of Action 2019-2025 was launched, along with a Gender Mainstreaming Handbook to strengthen the capacity of the government to mainstream gender throughout national policies and practices and to improve gender statistics in favour of better monitoring of gender equality. A training schedule on the manual is set to follow. The policy objectives are to: create an enabling environment for mainstreaming gender across government policies, programmes and services, corporate budgeting, and monitoring and evaluation; ensure families and communities prosper from gender equality; ensure equitable access to economic assets and employment; increase women's leadership and equitable political representation; and create equal conditions to respond to natural disasters, environmental challenges and climate change. Peoples with disabilities and other vulnerable groups of women are expected to be integrated into the five priority outcomes.

The 2017 UNICEF Situation Analysis identified a number of issues having an impact on children's rights, including: community attitudes towards violence against children and corporal punishment; the low health workforce to population ratio affecting access to health services; the difficulties faced by women and children on remote islands in accessing services, including in education and health; the increasing risk of extreme weather and natural disasters as well as climate change-related weather conditions, that have an impact on access to and quality of education, health, water and sanitation and other services; the impacts of poverty and vulnerability; the lack of a child protection legal framework and system; and cultural attitudes and traditions that prevent or impede the realisation of children's rights in several sectors.²¹³³

Child mortality rates have been declining over recent decades, but gaps exist in immunisation coverage. Access to early childhood education in remote and rural areas is said to be very limited and reports viewed by UNICEF suggest the quality of programmes and learning materials are substandard and teachers lack proper training.²¹³⁴ Underfunding of education was also considered an issue, especially in relation to primary education, and not all children complete the mandatory 14 years of education.²¹³⁵ There is no child protection system and no government agency dedicated to child welfare.

²¹²⁹ Pacific Community and the Kingdom of Tonga Ministry of Internal Affairs (2019). Gender equality: where do we stand? Available at: <https://www.spc.int/resource-centre/publications/gender-equality-where-do-we-stand> (accessed 20 September 2019).

²¹³⁰ Op cit.

²¹³¹ Op cit.

²¹³² Ibid.

²¹³³ UNICEF Pacific 2017. Situation analysis of children in Tonga. Note. 1985.

²¹³⁴ Ibid.

²¹³⁵ Op cit.

Evidence of children engaged in the worst forms of child labour, including forced domestic work, has been reported, and children and young people are more likely to be living in poor households than the wider population.²¹³⁶

On 21 March 2018, Tonga drew national and international attention when the Ministry of Education banned girls in public schools from participating in boxing and rugby, supposedly to preserve the dignity of Tongan women and maintain Tongan cultural values.²¹³⁷ The decision was described as a blow to women's rights.²¹³⁸ Following public backlash, the then Prime Minister reversed the ministry's decision soon after.²¹³⁹

Rights of persons with disabilities (PWD)

Tonga has signed but not ratified the CRPD. The National Disability Inclusive Health Plan 2016-2020 guides the Ministry of Health in strengthening access to health care, rehabilitation and mental health services for PWDs. Implementation has included: the acquisition by the national hospital of an accessible vehicle to enable persons with disabilities on Tongatapu to be transported to and from health centres; the first national mental health symposium being held to strengthen the focus on community-based mental health care; a national community-based rehabilitation meeting; and disability inclusion training for health professionals.²¹⁴⁰ Implementation of the plan is ongoing and the development of a stronger linkage between PWDs and government has reportedly improved public awareness of the impact that discrimination and exclusion have on the lives of PWDs seeking health care in Tonga.²¹⁴¹

The Social Protection and Disability Division under the Ministry of Internal Affairs is the focal point for PWDs and is working with the Attorney General's Office to progress ratification of CRPD.²¹⁴² In June 2017, the division received technical assistance from the Pacific Islands Forum Secretariat and Pacific Office of the Economic and Social Commission for Asia and the Pacific to examine legislative implementation of the convention.²¹⁴³

Naunau 'o e 'Alamaite Tonga Association Inc is a disability self-advocacy organisation, founded and operated by Tongan PWDs; a key objective is the ratification of CRPD. Tonga National Visual Impairments Association conducts training for the visually impaired in independent living, mobility, computers, music, cooking, braille, and how to participate in activities for humanitarian response.²¹⁴⁴ Tonga Red Cross has support programmes for PWDs and the Tonga Skills training organisation mainstreams the inclusion of PWDs in vocational training. In 2018, 800 PWDs were receiving a disability allowance,²¹⁴⁵ although UNICEF reported that very limited assistance is provided to children with disabilities.²¹⁴⁶ UNICEF reported in 2017 that PWDs are very likely to be vulnerable to poverty given the lack of opportunities accessible to them.²¹⁴⁷ A gap in the legal and policy framework is the specific protection of girls with disabilities and protection of boys from sexual offences.²¹⁴⁸

2136 Op cit.

2137 Washington Post 2018. <https://www.washingtonpost.com/news/morning-mix/wp/2018/03/21/rugby-obsessed-tonga-shaken-by-apparent-ban-to-keep-girls-from-playing-the-sport/> (accessed 15 October 2019).

2138 One News Now 2018. <https://www.tvnz.co.nz/one-news/sport/other/womens-rights-delivered-blow-after-tonga-bans-girls-school-rugby-boxing-despite-promised-funding-injection-nz> (accessed 15 October 2019).

2139 Radio New Zealand 2018. <https://www.rnz.co.nz/international/pacific-news/353233/tongan-prime-minister-overrides-girls-rugby-ban> (accessed 15 October 2019).

2140 Pacific Disability Forum SDG-CRPD Monitoring Report 2018. Available at: http://www.pacificdisability.org/What-We-Do/Research/FINAL_SDG_Report_Exec-Summary_2018.aspx (accessed 10 September 2019).

2141 Op cit.

2142 Ma'a Fafine mo e Famili, Naunau 'o 'Alamaite Tonga and Loughborough University 2018. The experiences and needs of children, including children with disabilities, living in Tonga 2018. Email mftonga@gmail.com for copies.

2143 A/HRC/38/5. Available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G18/104/85/PDF/G1810485.pdf?OpenElement>

2144 CBMNZ and PDF 2018. Tropical Cyclone Gita: Disability inclusive situational analysis, Tonga. Available at: https://cbm-nz.org.nz/images/pdfs/Tropical_cyclone_Gita.pdf (accessed 4 October 2019).

2145 Pacific Disability Forum SDG-CRPD Monitoring Report 2018: Executive Summary. Note. 2096.

2146 Ibid.

2147 UNICEF Pacific 2017. Situation analysis of children in Tonga. Note. 1985.

2148 Ibid.

A 2018 study involving 20 children, among other participants, found that all children in the study,²¹⁴⁹ including children with disabilities, reported being physically abused by parents, teachers, prefects, older siblings and other older people.²¹⁵⁰ Also, children with disabilities suffered discrimination and stigmatisation, even within their families, due to a sense of shame.²¹⁵¹

The UN OHCHR compilation report²¹⁵² on Tonga for the UPR in 2017 reported information from an earlier study on the prevalence of domestic violence which found that women with disabilities are more vulnerable to hardship and poverty and often culturally, socially and economically excluded. Further, women with disabilities are less educated, experience higher rates of unemployment, are more likely to be abused, are poorer and more isolated, experience worse health outcomes, and generally have a lower social status than men living with disabilities or female peers elsewhere. Women with disabilities are two to three times more likely to become victims of physical and sexual abuse than women with no disabilities.²¹⁵³ The UN Country Team based in Fiji recommended that Tonga strengthen the legal and policy framework related to improving the access of persons with disabilities to health, education, employment, public places, transport and information.²¹⁵⁴

In the 2018 report of the UPR Working Group, several members recommended that Tonga continue to review and improve the relevant legislation, policies and programmes to accord those living with disabilities more protection, services and opportunities to participate fully in Tongan society.²¹⁵⁵

Climate justice

Tonga became a signatory to UNFCCC in 1998 and in 2015 submitted Intended Nationally Determined Contributions.²¹⁵⁶ Tonga is the world's third 'most at risk' country to the effects of climate change and is highly dependent on imported fuels to meet its overall energy requirements.²¹⁵⁷ The government improved national energy security by approving a policy to supply 100% of electricity generation through renewable resources by 2020.²¹⁵⁸ A Tonga Climate Change Fund was established for strategic use of Green Climate Funds and donor grants. The fund is designed to be a self-sustainable long-term financing mechanism with two elements: an endowment account comprising 80% of the initial capital sum (USD 4 million) and future grants, which will be invested in a low risk financial instrument or bank account and an operational account which will be used to finance projects.²¹⁵⁹

Tonga's Climate Change Policy: A Resilient Tonga by 2035 acknowledges that the country is extremely vulnerable to the adverse effects of climate change and disaster risks because of its geographical, geological and socioeconomic features. The policy recognises that climate change is the single biggest issue determining the future of Tonga over the coming decades and will require a whole of Tonga level of cooperation and coordination.²¹⁶⁰ The policy recognises that building resilience will be very costly, even without considering the funds required for loss and damage due to climate change. The policy is described as multifaceted, cross-sectoral, gender-inclusive and equitable, with a strong emphasis on community ownership, supported by

2149 The study included twenty children and twenty parents, grandparents and guardians.

2150 Ma'a Fafine mo e Famili, Naunau 'o 'Alamaite Tonga and Loughborough University (2018). Note. 2098.

2151 Ibid.

2152 OHCHR. <https://www.ohchr.org/EN/HRBodies/UPR/Pages/TOindex.aspx>

2153 A/HRC/WG.6/29/TON/2. Note. 2064.

2154 Ibid.

2155 A/HRC/38/5. Available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G18/104/85/PDF/G1810485.pdf?OpenElement>

2156 Government of Tonga 2016. Tonga Climate Change Policy: A Resilient Tonga by 2035. Available at: <https://www.climatechange.gov.to/document/tonga-climate-change-policy-resilient-tonga-2035>

2157 United Nations Climate Change. <https://unfccc.int/climate-action/momentum-for-change/activity-database/tonga-climate-change-trust-fund> (accessed 10 October 2019).

2158 Op cit.

2159 United Nations Climate Change. Note. 2113.

2160 Government of Tonga 2016. Tonga Climate Change Policy: A Resilient Tonga by 2035. Available at: <https://www.climatechange.gov.to/document/tonga-climate-change-policy-resilient-tonga-2035>

strong governance.²¹⁶¹ There are six policy objectives: aligning legislation; data collection and analysis; building capability throughout government, the private sector, and civil society; actions at the national, island and community levels; mobilisation of finances and resources; and strong regional and international partnerships and negotiations as required for a transformation to a resilient and sustainable future.²¹⁶²

A revised Joint National Action Plan on Climate Change and Disaster Risk Management 2018-2028 (JNAP 2) was developed in 2018 to implement the Climate Change Policy. Eventually, all relevant sector policies and plans, community development plans and island strategic development plans, will align with the policy and the revised JNAP.²¹⁶³ In 2018, Tropical Cyclone Gita caused devastation to Tongatapu and 'Eua islands, causing widespread flooding and destruction, including the levelling of trees, power lines, homes and a number of significant landmarks, most notably Parliament House.²¹⁶⁴ A post-Cyclone Gita situation analysis of Tongatapu in 2018 found that the impact was greater for PWDs who already experienced limitations with regard to social inclusion, accessing education, livelihood opportunities and safe housing, water and sanitation facilities. Recommendations included addressing barriers and fostering inclusion of PWDs in disaster preparation and response.²¹⁶⁵

In 2018, the Committee on the Rights of the Child welcomed the revised JNAP but urged for more to be done to include the special needs of children, including children with disabilities, in planning disaster risk reduction preparedness, response and recovery.²¹⁶⁶ A gender equality report published in 2019²¹⁶⁷ acknowledged that while the Climate Change Policy recognised the different impacts of climate change on women and men, decision making in this space was largely informed by men, resulting in discussions and decisions failing to take into account the specific needs of women and other marginalised groups. The report also noted that women are less likely to receive critical information on emergency preparedness.²¹⁶⁸

Following Cyclone Gita in 2018, the government promptly transferred AUD 500,000, provided by the Australian government for disaster relief, through the Social Welfare Scheme for the Elderly and the Disability Benefits Scheme, resulting in timely support to older persons and PWDs.²¹⁶⁹

²¹⁶¹ Ibid.

²¹⁶² Ibid.

²¹⁶³ Ibid.

²¹⁶⁴ The Guardian 2018. <https://www.theguardian.com/world/2018/feb/13/cyclone-gita-tonga-devastated-by-worst-storm-in-60-years> (accessed 10 October 2019).

²¹⁶⁵ CBMNZ and PDF 2018. Tropical Cyclone Gita: Disability inclusive situational analysis, Tonga. Available at: https://cbm-nz.org.nz/images/pdfs/Tropical_cyclone_Gita.pdf (accessed 4 October 2019).

²¹⁶⁶ CRC/C/TON/CO/1. Note. 1984.

²¹⁶⁷ Pacific Community and the Kingdom of Tonga Ministry of Internal Affairs 2019. Gender equality: where do we stand? Available at: <https://www.spc.int/resource-centre/publications/gender-equality-where-do-we-stand> (accessed 20 September 2019).

²¹⁶⁸ Ibid.

²¹⁶⁹ Pacific Disability Forum SDG-CRPD Monitoring Report 2018: Executive Summary. Note. 2096.



COUNTRY CHAPTERS

TUVALU

Tuvalu

Key facts

Capital city	Funafuti	Total land area	26 sq. km
Population (year)	11,646 (2019) ²¹⁷⁰	Population growth % (year)	1.2 % (2019) ²¹⁷¹
GDP per capita (year)	USD 4420 ²¹⁷²	GNI per capita (Atlas method) (year)	USD 5430 (2018) ²¹⁷³
Type of government	Parliamentary democracy (House of Assembly) under a constitutional monarchy; the British monarch is represented through the Governor-General ²¹⁷⁴ as head of state and Prime Minister as head of government. ²¹⁷⁵		
Electoral system	Unicameral House of Assembly of 16 seats; members directly elected in single- and multi-seat constituencies by simple majority vote to serve 4-year terms.		
Number of members of parliament (MPs): total/female (year)	15: 14 males, 1 female (2015). '16: 15 males, 1 female (2019). Ration of women 6.25%. ²¹⁷⁶		
Religions: by % of population (year)	Ekalesia Kelisiano Tuvalu 92.4% (Congregational Christian Church of Tuvalu 85.7%, Brethren 3%, Seventh Day Adventist 2.8%, Assemblies of God 0.9%), Bahai 2%, Jehovah's Witness 1.3%, Mormon 1%, oth-er 3.1%, none 0.2% (2012 est.) ²¹⁷⁷		
Ethnic groups: by % of population (year)	Tuvaluan 86.8%, Tuvaluan/I-Kiribati ²¹⁷⁸ 5.6%, Tuvaluan/Other 6.7%, other 0.9% (2012 est.) ²¹⁷⁹ Polynesian: 96%, Micronesian: 4%		
Languages: by % of population (year)	English and Tuvaluan are official languages but also use other language such as Samoan, Kiribati (on the island of Nui) and Gilbertese		
Life expectancy: male/female (year)	Male: 65 years Female: 69.6 years (2018 est.) ²¹⁸⁰	% youth aged 15–24 years: total male/female (year)	18.63% male 1078/female 999 (2018 est.) ²¹⁸¹
% disability: total male/female (year)	466 = 4.5 % (2017) ²¹⁸² Male: 195 Female: 271 ²¹⁸³		

²¹⁷⁰ World Population Review. <http://worldpopulationreview.com/countries/tuvalu-population/> (accessed 5 August 2019).

²¹⁷¹ Op cit.

²¹⁷² International Monetary Fund DataMapper. <https://www.imf.org/external/datamapper/NGDPDPC@WEO/WEOWORLD?year=2019> (accessed 5 August 2019).

²¹⁷³ CIA World Fact Book. <https://www.cia.gov/library/publications/the-world-factbook/geos/tv.html> (accessed 5 August 2019).

²¹⁷⁴ The Governor-General is appointed by the monarch on the recommendation of the Prime Minister.

²¹⁷⁵ CIA World Fact Book. Note. 2129.

²¹⁷⁶ Ibid.

²¹⁷⁷ Ibid.

²¹⁷⁸ The term for a native, citizen or person who is ethnically from Kiribati.

²¹⁷⁹ CIA World Fact Book. Note. 2129.

²¹⁸⁰ Ibid.

²¹⁸¹ Ibid.

²¹⁸² Survey conducted in 2017, see reference 14. The author notes that due to limitations on access to households the number may be higher and the next census will provide a more accurate result.

²¹⁸³ Tavola H. 2018. Tuvalu study on people with disability. DFAT/Pacific Women Shaping Pacific Development. Available at: <https://pacificwomen.org/research/tuvalu-study-on-people-with-disability/> (accessed 10 August 2019).

International human rights treaty ratification and reporting obligations

Treaty	Date of signature (S) ratification (R) or accession (a)	Reservations	Latest report submitted	Reporting status
CEDAW	6 October 1999 (a)		3 rd & 4 th report 12 November 2012	5 th report overdue 1 March 2019
CRC	22 September 1995 (a)		3 rd to 6 th report 9 March 2018	To be reviewed in 2020
CRPD	18 December 2013 (a)		Initial report submitted 9 March 2018	To be reviewed in 2020

Special Procedures: Standing invitation extended 26 April 2013.

Country visits: Independent expert on the issue of human rights obligations related to access to safe drinking water and sanitation, 2012. The Special Rapporteur on cultural rights visited in 2019.

Universal Periodic Review: 1st cycle: 11 December 2008; 2nd cycle: 24 April 2013; 3rd cycle in May 2018; next UPR in May 2023.

International Criminal Court: On 15 March 2012²¹⁸⁴ Cabinet endorsed the proposal to accede to the Rome Statute. The accession to the Rome Statute is yet to be realised.

System of government

Tuvalu is a constitutional monarchy with a parliamentary democracy. The head of state is Her Majesty Queen Elizabeth II, represented by the Governor-General who must be a citizen of Tuvalu.

The head of government is the Prime Minister, who is elected by members of parliament. The Cabinet is appointed by the Governor-General on the recommendation of the Prime Minister. The unicameral Parliament has 15 seats and members are elected by a popular vote for a term of four years. Seven islands are allocated two members each, and one, Nukulaelae, is allocated one member. Elections are by universal suffrage (over 18 years).²¹⁸⁵ In the election of 2015, one woman was elected for a second term and appointed Minister for Natural Resources and Land. There have only ever been two women elected to Parliament. Cabinet is collectively responsible to Parliament for the performance of the executive functions of the State.

Traditional leaders also play a role in the informal political leadership of Tuvalu. Traditional leaders include chiefs (*aliki*), elders (*toeaina*) and the *falekaupule* system, which is the traditional assembly in each island composed in accordance with the *Aganu* (local customs and usages of an island).²¹⁸⁶

Tuvalu has been undergoing a constitutional review process since 2016, which was halted after parliament was dissolved in July 2019. Elections took place in September 2019 and it will be a matter for the new parliament to make a decision on the review. The review aims to modernise the constitution and ensure it suits the future needs of the country.²¹⁸⁷ Tuvalu has experienced a number of political crises which the constitution was unable to resolve. Further, there are gaps in the constitution in relation to important issues such as religion and religious freedom, gender and marginalized populations such as people with disabilities, as well as environmental issues.²¹⁸⁸

²¹⁸⁴ Cabinet Decision – M067-12. International Criminal Court statute.

²¹⁸⁵ Commonwealth of Nations. <http://www.commonwealthofnations.org/sectors-tuvalu/government/>

²¹⁸⁶ United Nations Office on Drugs and Crime. Country review report of Tuvalu, 21 February 2017. Available at: https://www.unodc.org/documents/treaties/UNCAC/CountryVisitFinalReports/2017_02_28_Tuvalu_Final_Country_Report.pdf

²¹⁸⁷ Tuvalu constitutional review project report, January – July 2018. Available at: <https://www.undp.org/content/dam/fiji/docs/TuvaluCRProjectUpdateReport.pdf>

²¹⁸⁸ Op cit.

Judicial system and administration of justice

The judiciary in Tuvalu is constitutionally independent from the executive. It comprises the Sovereign in Council, Court of Appeal, High Court of Tuvalu and other courts, such as the Magistrates Court, Island Court, Lands Court and Lands Courts Appeal Panel, and tribunals as provided for under Acts of Parliament.²¹⁸⁹

The Sovereign in Council is the Queen of the United Kingdom, acting by and with the advice of the Judicial Committee of the Privy Council.²¹⁹⁰ It can only hear appeals from decisions of the Court of Appeal for cases involving the interpretation or application of the constitution, enforcement of the Bill of Rights, or final or interlocutory decisions of the Court of Appeal which, in the opinion of the Court of Appeal, are of public importance.²¹⁹¹

The Chief Justice is appointed by the Governor-General on the Prime Minister's advice and presides over the High Court. The High Court is expected to sit at least once a year. The High Court has unlimited and original jurisdiction on criminal and civil matters and matters pertaining to the Bill of Rights in the constitution. It also hears appeals from the Magistrates Court. The Magistrates Court consists of a Senior Magistrate who has jurisdiction to hear criminal matters where the penalty does not exceed a term of imprisonment of 14 years and civil cases involving an amount of up to AUD 10,000.²¹⁹² It has jurisdiction to hear appeals from the native land appeal panel and Island Courts.²¹⁹³ Island Courts hear the majority of the cases in Tuvalu. They are subordinate to the Magistrates Court and presided over by island magistrates. There are eight Island Courts regulated by the Island Courts Act (Cap 7.32),²¹⁹⁴ and each has three lay magistrates, including a president, vice president and an ordinary member. Their jurisdiction is limited to the boundaries of the island on which they were established, inland and adjacent waters. They can hear petitions for divorce, claims in contract and tort for amounts not exceeding AUD 60, maintenance applications and custody applications. All decisions of the court are made by majority.²¹⁹⁵ Lands Courts and the Lands Court Appeal Panel deal specifically with customary matters, including customary land disputes, customary wills, customary succession, customary adoption and customary fishing rights.

Access to justice and the right to remedy

The People's Lawyer Act 2008 created the Office of the People's Lawyer.²¹⁹⁶ Advice and services are free to anyone charged with a criminal offence. The office receives some government funding and charges the public fees ranging from AUD 10 per hour to AUD 30 per hour, depending on the type of case, but cannot decline to represent a person because of their inability to pay fees.²¹⁹⁷ Since 2016, the office has expanded to cater to the growing demand for legal assistance, providing legal assistance and representatives outside of working hours for urgent matters. While the office undertakes some outreach work in the outer islands, its services are largely limited to the capital Funafuti. The 2015 Auditor-General's report noted that two private legal practices had been established, but there was a need for more to meet demand.²¹⁹⁸

In 2015, the CEDAW Committee expressed concern about women's limited access to justice, in particular on the outer islands, and the difficulties that they face in obtaining effective remedies and redress in the courts.

²¹⁸⁹ Tuvalu Island Court Bench Book, June 2004. Available at: <http://www.paclii.org/tv/other/tuvalu-courts-bench-book-2004-eng.pdf>

²¹⁹⁰ Ibid.

²¹⁹¹ Ibid.

²¹⁹² Since 1966, the Australian dollar has been the official currency of Tuvalu.

²¹⁹³ Tuvalu Magistrates Court Act 2008 Revised Edition CAP 7.36. Available at: https://www.tuvalu-legislation.tv/cms/images/LEGISLATION/PRINCIPAL/1963/1963-0005/MagistratesCourtsAct_1.pdf

²¹⁹⁴ http://tuvalu-legislation.tv/cms/images/LEGISLATION/PRINCIPAL/1965/1965-0010/IslandCourtsAct_1.pdf

²¹⁹⁵ Tuvalu Island Court Bench Book, June 2004. Note. 2145.

²¹⁹⁶ Peoples Lawyer Act 1988, S6. Available at: https://tuvalu-legislation.tv/cms/images/LEGISLATION/PRINCIPAL/1988/1988-0008/PeoplesLawyerAct_1.pdf (accessed 20 July 2019).

²¹⁹⁷ People's Lawyer (Fees) Regulations LN No.5 of 2012. Available at: https://www.tuvalu-legislation.tv/cms/images/LEGISLATION/SUBORDINATE/2012/2012-0005/PeoplesLawyerFeesRegulations_1.pdf

²¹⁹⁸ Country report of the Office of the Attorney General Tuvalu October 2015. Available at: http://pijonsec.org/images/34th/countryreports2016/tuvalu_country_report.pdf (accessed 10 August 2019).

Barriers identified were customary laws and practices, local and geographical barriers, a lack of information about their rights, and limited access to legal assistance, amongst other areas.²¹⁹⁹ The committee noted that there had been an increase in the number of women gaining access to the Office of the People's Lawyer since the appointment of a woman to that office but remained concerned about the lack of financial and human resources of the office. Recommendations were made to address these issues and to collect comprehensive disaggregated data on complaints filed by women as well as their outcomes.²²⁰⁰

National human rights institution (NHRI)

In October 2017, the National Human Rights Institution Act (NHRI) Act was passed. The Act establishes an NHRI to advocate and promote respect for human rights in Tuvalu and to encourage the maintenance and development of harmonious relations between individuals and among diverse groups in Tuvaluan society. The Act gives the Ombudsman additional powers to promote and protect human rights. The NHRI can receive complaints and initiate inquiries into pressing human rights issues as well as undertake activities to promote awareness of fundamental human rights.²²⁰¹ An amendment to the Leadership Code 2008 gives the Ombudsman a mandate over the NHRI. The Ombudsman is in the process of recruiting another commissioner for the NHRI and staff.

Security sector

Tuvalu's security sector comprises the Tuvalu National Police, which includes a Maritime Surveillance Unit, Customs, Prisons and Immigration. The Police Powers and Duties Act 2009 (PPDA) and the Family Protection Act 2014 widens the scope and power of the police to respond to pertinent issues, including domestic violence.²²⁰² Outside of the capital, Falekaupule (traditional assembly of elders) and Kaupule (island council) are obliged to use their resources to assist the police in the detection and prevention of crime within the area of its authority.²²⁰³ The PPDA mandates the police to provide victims with protection until further action is taken and to ensure prompt referral of the case to the courts for prosecution. On the outer islands, the police officer serves as the investigating officer as well as the prosecutor.²²⁰⁴ The Police Act 1965²²⁰⁵ does not preclude criminal charges being brought against an officer who commits a criminal offence. The Act also permits a disciplinary committee to bring disciplinary actions against a police officer.

A Transnational Crime Unit was established to investigate cybercrime; however, cybercrime is currently not considered a crime in Tuvalu and so steps are being taken to legislate specific offences relating to cybercrime.²²⁰⁶ Tuvalu established a Combined Law Agency Group consisting of eight to ten overseas law enforcement agencies for the purpose of sharing information and collaboration in the enforcement of national law. The terms of reference for this group has been developed and is awaiting endorsement by Cabinet.²²⁰⁷

The PPDA includes special procedural protections for individuals under the age of 18 at the arrest stage; however, there are only limited provisions for children under the Criminal Procedure Code and children are generally subject to the same trial procedures and sentencing provisions as adults.²²⁰⁸ The Island Courts Act 1965 allows a male child under the age of 16 to be sentenced to corporal punishment, to be administered by a parent or guardian, and for grave offences, children under 16 years may be sentenced to life imprisonment.²²⁰⁹

²¹⁹⁹ CEDAW/C/TUV/CO/3-4. Available at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fTUV%2fCO%2f3-4&Lang=en

²²⁰⁰ Op cit.

²²⁰¹ APF 2017. <https://www.asiapacificforum.net/news/tuvalu-passes-bill-establish-nhri/>

²²⁰² A/HRC/WG.6/30/TUV/1. Available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G18/079/95/PDF/G1807995.pdf?OpenElement>

²²⁰³ Falekaupule Act. Cap. 4.08. Available at: http://www.paclii.org/tv/legis/consol_act_2008/fa121/ (accessed 4 August 2019).

²²⁰⁴ Tuvalu Court Bench Book 2004. Note. 2145.

²²⁰⁵ https://tuvalu-legislation.tv/cms/images/LEGISLATION/PRINCIPAL/1965/1965-0003/PoliceAct_1.pdf (Accessed 4 August 2019).

²²⁰⁶ Telephone interview of TCU Officer by SPC HRSD CFO on 15th May 2019.

²²⁰⁷ Government of Tuvalu 2016. Te Kakeega III: National strategy for sustainable development 2016 to 2020. <https://www.adb.org/sites/default/files/linked-documents/cobp-tuv-2017-2019-ld-02.pdf>

²²⁰⁸ UNICEF Pacific 2017. Situation analysis of children in Tuvalu. Available at: https://www.unicef.org/pacificislands/14_Situation_Analysis_of_Children_Tuvalu.pdf.

²²⁰⁹ Ibid.

There is no requirement to separate juvenile detainees from adults, however, separation is permitted if suitable accommodation is available.²²¹⁰

The Committee on the Rights of the Child strongly urged Tuvalu to bring its juvenile justice system into full conformity with the convention, detailing areas such as raising the age of criminal liability and repealing the provisions that allow corporal punishment and life imprisonment for child offenders.²²¹¹ The concluding observations to Tuvalu's 3rd UPR cycle in May 2018 noted the intention to strengthen measures to ensure respect and protection for vulnerable groups, including women and PWDs, and recommended implementation of the human rights national action plan to address violence against women, including through community education, police training and stronger recording processes, and strengthening the capacity of the Tuvalu Police Force and the Office of the Attorney General in applying child-sensitive justice procedures.²²¹²

Refugees and asylum seekers

The law in Tuvalu allows granting of asylum or refugee status, but there are no reported applications for asylum or refugee status. In recent years, Tuvaluans have sought climate change refugee status in other countries.

Migration

Both internal and external migration is common in Tuvalu, with some migration being triggered by environmental risks.²²¹³ At present, the majority of internal migration²²¹⁴ is to Funafuti to access education, employment and medical facilities, and because of climate-related hazards on other islands.²²¹⁵ The flow of people from the outer islands to Funafuti has placed great strain on the capital's scarce resources.²²¹⁶

Tuvalu has a history of international labour migration; labour emigration forms an important part of the government agenda and is likely to increase as climate change continues to impact Tuvalu.²²¹⁷ Currently, over half of the population lives in Funafuti and the number is expected to increase over time as families from the more threatened outer islands lose their livelihoods through sea inundation and drought. A 2015 survey²²¹⁸ found that 8% of internal migrants named climate change as a reason for internal migration.²²¹⁹ Over 70% of households in the survey felt that migration would be a likely future response if sea level rise, flooding, saltwater intrusion or droughts become more severe.²²²⁰ The Tuvalu National Labour Migration Policy and Action Plan (approved in August 2015) promotes continued bilateral and regional dialogue and cooperation on labour migration, with the aim of strengthening Tuvalu's existing labour migration arrangements and developing new opportunities.

Tuvalu's National Strategy for Sustainable Development, Te Kakeega III, includes the goal of strengthening the protection of labour rights and promoting a safe and secure working environment for all workers, including migrant workers.²²²¹

²²¹⁰ Ibid.

²²¹¹ CRC/C/TUV/CO/1. Available at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC/C/TUV/CO/1&Lang=En

²²¹² A/HRC/39/8. Available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G18/209/66/PDF/G1820966.pdf?OpenElement>

²²¹³ Examples of environmental risks includes threat to food supply due to climate change and soil becoming less fertile and impacting agriculture and increasing sea levels.

²²¹⁴ 2807 individuals were included in UNU-EHS study in 2015 which found that 41% of migrants moved to acquire educational advancement, while 32% moved to acquire employment. Environmental factors appear to have triggered 9% of all reported movements.

²²¹⁵ Milan, A. et al 2016. Tuvalu: Climate change and migration – Relationships between household vulnerability, human mobility and climate change Report No.18. Bonn: United Nations University Institute for Environment and Human Security (UNU-EHS). Available at: https://collections.unu.edu/eserv/UNU:5856/Online_No_18_Tuvalu_Report_161207_.pdf

²²¹⁶ Ibid.

²²¹⁷ Ministry of Foreign Affairs, Trade, Tourism, Environment and Labour 2015. Tuvalu National Labour Migration Policy, 24 November 2015. Available at: <https://www.unescap.org/sites/default/files/Tuvalu%20National%20Migration%20Labour%20Policy.pdf>

²²¹⁸ In Tuvalu the survey covered three islands and 320 households.

²²¹⁹ United Nations ESCAP 2015. Climate change and migration in the Pacific: Links, attitudes, and future scenarios in Nauru, Tuvalu, and Kiribati. Available at: https://i.unu.edu/media/ehs.unu.edu/news/11747/RZ_Pacific_EHS_ESCAP_151201.pdf

²²²⁰ Ibid.

²²²¹ Government of Tuvalu 2016. Te Kakeega III: National strategy for sustainable development 2016-2020. Note. 2164.

The Employment Act has now been revised to ensure there are appropriate mechanisms in place to protect national workers and outgoing migrants. Tuvalu is not a party to the CRMW, although the recent UPR recommendations included the ratification of this treaty as a measure for protecting internal climate migrants.²²²²

New Zealand's Pacific Access Category is open to 75 citizens of Tuvalu annually through a ballot process.²²²³ Those drawn from the ballot are invited to apply for residence, and if granted, are able to live, work and study in New Zealand. A job offer is a prerequisite for taking up the residence invitation, as is competence in the English language.²²²⁴ In the 2013 New Zealand Census, 3537 people identified as being of Tuvaluan ethnicity. Of those, 46.5% (1611 people) were born in New Zealand.²²²⁵ In the 2017-2018 financial year, New Zealand provided 80 seasonal worker visas to Tuvaluans, which are usually for a nine-month duration and renewable annually subject to employer demand.²²²⁶ In 2017, two families from Tuvalu claiming climate refugee status were denied refuge in New Zealand because they were not at risk of persecution as required under the Refugee Convention.²²²⁷ In 2015, a total of 141 persons lived in Tuvalu as permanent residents.²²²⁸ The number may include returning descendants of Tuvaluan migrants who settled years earlier in the diaspora.

Human Trafficking, Forced Labour, and Contemporary Forms of Slavery

Tuvalu has not ratified the United Nations Convention against Transnational Organised Crime; however, rights are protected under domestic legislation. Trafficking of any person, including children, is an offence under the Counter Terrorism and Transnational Organised Crime Act 2009;²²²⁹ however, many provisions are considered to be in outdated language, do not provide equal protection to boys and girls, and do not penalise offences in relation to child pornography, hazardous or exploitative child labour, or online exploitation or grooming of children.²²³⁰ The Human Rights National Action Plan includes activities to review and revise legislation to ensure adequate protection of children from sexual abuse and commercial sexual exploitation.²²³¹ There have been no reported cases of trafficking; however, in a 2006 Behavioural Surveillance Survey, 1% of youth aged 15-24 reported having sex with a commercial partner.²²³² Concern has also been expressed that children are engaged in child labour in the fishing industry.²²³³

Civil society and human rights defenders

NGOs operate without interference.²²³⁴ Many receive an annual small grant from the government to support their core costs. Tuvalu's Association of NGOs (TANGO) is an umbrella organisation for 48 member NGOs and CSOs, and is Tuvalu's representative on PIANGO. TANGO assists NGOs in their developmental work through capacity-building and networking.²²³⁵ In August 2019, TANGO played an active role in the PIF meeting in Funafuti, advocating for civil society's role in issues such as climate change and regionalism.²²³⁶

2222 A/HRC/39/8. Available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G18/209/66/PDF/G1820966.pdf?OpenElement>

2223 Ministry of Business, Innovation Employment. <https://www.immigration.govt.nz/new-zealand-visas/apply-for-a-visa/about-visa/pacific-access-category-resident-visa> (accessed 10 August 2019).

2224 Op cit.

2225 Stats NZ. http://archive.stats.govt.nz/Census/2013-census/profile-and-summary-reports/ethnic-profiles.aspx?request_value=24724&parent_id=24706&tabname= (accessed 10 August 2019).

2226 Ministry of Business, Innovation and Employment. <https://www.immigration.govt.nz/documents/statistics/statistics-rse-arrivals.pdf> (accessed 10 August 2019).

2227 Radio New Zealand 2017. <https://www.rnz.co.nz/news/national/342280/climate-change-refugee-cases-rejected> (accessed 10 August 2019).

2228 WorldData.info. <https://www.worlddata.info/oceania/tuvalu/asylum.php> (accessed 10 August 2019).

2229 Discussions with Transnational Crimes Unit & Attorney General's Office.

2230 UNICEF Pacific 2017. Note. 2165.

2231 Op cit.

2232 Ibid.

2233 Ibid.

2234 Freedom House. Freedom in the world 2018. Note. 2162.

2235 Commonwealth Network. http://www.commonwealthofnations.org/sectors-tuvalu/civil_society/national_ngos_civil_society/ (accessed 10 August 2019).

2236 TANGO Facebook page. <https://www.facebook.com/pages/category/Non-Governmental-Organization--NGO-/Tuvalu-Association-of-Non-Governmental-Organizations-2160256607548390/> (accessed 13 August 2019).

In 2019, the Tuvalu Women in Maritime Association was launched, focusing on achieving gender equality and empowering all women and girls in the maritime sector.²²³⁷ Also in 2019, Live and Learn Environmental Education Society was registered with the purpose of promoting greater understanding of human and environmental sustainability through education and communication.²²³⁸ The Tuvalu National Youth Council is concerned with the spiritual, mental, physical and social development of young people in Tuvalu.²²³⁹ The Tuvalu Family Health Association continues to raise awareness for sexual and reproductive health and rights. The Tuvalu Red Cross Society, although not an NGO, is active in climate change and disaster management,²²⁴⁰ amongst other areas. Recent campaigns focused on the impacts of climate change, particularly the right to health and life. Several CSOs and NGOs are working in education, including the National Preschool Council, the Preschool Teachers Association and Education for All.²²⁴¹ Tuvalu National Council of Women (TNCW) also continues to assist women by conducting awareness sessions on their rights and encouraging economic empowerment. TNCW has in the past conducted a legal literacy project with assistance from SPC HRSD.²²⁴² Fusi Alofa Association is the only organisation advocating for PWDs;²²⁴³ however, many NGOs include disability components in their work. There are also faith-based communities active in the civil society space.

Domestic law and human rights

Tuvalu is undergoing a constitutional review and significant to the proposed constitutional changes is the inclusion of gender and disability as grounds for non-discrimination. In an attempt to harmonise its domestic legislation with its international obligations,²²⁴⁴ Tuvalu has made amendments to various human rights-based legislation including:²²⁴⁵ The Island Courts (Amendment) Act 2017; The Leadership (Amendment) Act 2017, the Marriage (Amendment) Act 2017; The National Human Rights Institution Act 2017; and the Labour and Employment Relations Act 2017.

The government has completed consultations on the Child Protection and Welfare Bill 2017 (CP&W), which is the first law in Tuvalu to make comprehensive provisions for issues related to the rights, protection and welfare of children, in accordance with the CRC.²²⁴⁶ The UPR Working Group recommended that legislation is required to criminally prohibit procuring, offering, providing, obtaining, or using children for prostitution and/or for the production of pornography, or other illicit activities. The working group also encouraged Tuvalu to continue with the integration of the CRC and CEDAW into national laws and policies, and to finalise constitutional changes aimed at strengthening the non-discrimination clauses on gender and disability, and clarifying the principle of equality of women and men.²²⁴⁷

²²³⁷ PACWIMA constitution. Available at: <http://www.pacwima.org/about.html> (accessed 5 July 2019).

²²³⁸ Live and learn environmental and education society constitution. Available at: <https://livelearn.org/>

²²³⁹ Voice for Pacific Young People. www.pacificyouthcouncil.org/Tuvalu.php (accessed 5 July 2019).

²²⁴⁰ International Federation of Red Cross and Red Crescent Societies 2017. <https://www.ifrc.org/en/news-and-media/news-stories/asia-pacific/tuvalu/building-resilience-in-vulnerable-communities-in-tuvalu-73924/>

²²⁴¹ Commonwealth Education Online. http://www.cedol.org/pacific/tuvalu/civil_society_in_tuvalu/ (accessed 10 August 2019).

²²⁴² SPC 2013. Stocktake of the gender mainstreaming capacity of Pacific Island Governments. Available at: <https://pacificwomen.org/wp-content/uploads/2017/09/Tuvalu-gender-stocktake.pdf> (accessed 10 August 2019).

²²⁴³ Tavola H. 2018. Tuvalu study on people with disability. DFAT/Pacific Women Shaping Pacific Development. Available at: <https://pacificwomen.org/research/tuvalu-study-on-people-with-disability/> (accessed 10 August 2019).

²²⁴⁴ Tuvalu's international obligation include the Convention on the Rights of the Child (CRC), the Convention on the Elimination of all forms of Discrimination against Women (CEDAW) and the Convention on the Rights of Persons with Disabilities (CRPD).

²²⁴⁵ A/HRC/39/8. Available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G18/209/66/PDF/G1820966.pdf?OpenElement>

²²⁴⁶ Ibid.

²²⁴⁷ Ibid.

Human rights policies

In 2016 Tuvalu commenced implementation of the National Human Rights Action Plan 2016-2020²²⁴⁸, the first of its kind in the Pacific. The plan captures commitments under the UPR, SDGs and the Te Kakeega III. Tuvalu has introduced or is implementing the following policies and strategies with human rights provisions:

- Tuvalu National Youth Policy: 2015-2019;
- Tuvalu Social Development Policy: 2016 which includes an implementation plan up to 2020;
- Tuvalu National Policy for Disability: June 2018;
- Child Protection Policy (final drafting stage);
- The Sustainable and Intergraded Water and Sanitation Policy 2012-2021;
- National Gender Policy 2014-2019;
- Tuvalu National Climate Change Policy (2012-2021);
- Tuvalu National Labour Migration Policy 2016 ;
- Tuvalu Health Reform Strategy 2016-2019; and
- Police Strategic Plan 2018-2020, which is currently undergoing a mid-term review.

Right to life, liberty and security of person

Section 16 of the Constitution guarantees every person in Tuvalu the right to life and protection by law and section 17 guarantees the right to liberty of person. In its report to the CRPD Committee, the government advised that recent draft policies remove and abolish the deprivation of liberty of PWDs.²²⁴⁹ The Committee on the Rights of the Child recommended raising the age of criminal liability from 10 years of age to an internationally accepted standard, establishing a minimum age for deprivation of liberty, and revising laws to grant probation and parole in cases where sentences of deprivation of liberty are imposed.²²⁵⁰ These recommendations were in response to a report of a juvenile having served 10 years of a life sentence.²²⁵¹ It should be noted that juvenile deprivation of liberty is very rare.

Climate change remains one of the biggest threats to the right to life and security of the general population. Droughts, irregular rain, cyclones, floods and sea level rise affect households, particularly on the outer islands, and continues to threaten livelihoods of Tuvaluans.²²⁵²

Equality and non-discrimination

The constitution is silent on gender and does not recognise the need for inclusion of marginalised populations such as PWDs. With the dissolution of Parliament in July 2019, the constitutional review will resume when the new Parliament commences post elections. In relation to equality and non-discrimination, Tuvalu noted in its first report to the CRPD Committee that changes resulting from the constitutional review and the new NHRI Act 2017 are expected to address areas of concern identified in the UPR and other UN Committee recommendations.²²⁵³

2248 Government of Tuvalu and SPC. https://rrrt.spc.int/sites/default/files/resources/2019-01/Tuvalu_National_HumanRights_Action_Plan.pdf

2249 CRPD/C/TUV/1. Available at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRPD%2fC%2fTUV%2f1&Lang=en

2250 CRC/C/TUV/CO/1. Note. 2168.

2251 UNICEF Pacific 2017. Situation analysis of children in Tuvalu. Note. 2165.

2252 Campbell J. and Warrick O. 2014. Climate change and migration issues in the Pacific. Available at: <http://www.unescap.org/sites/default/files/Climate-Change-andMigration-Issues-in-the-Pacific.pdf>

2253 CRPD/C/TUV/1. Note. 2206.

The report to the CRPD Committee also notes that the Labour Employment Relations Act 2017 has an equal employment opportunities section, including for PWDs to have access to the same employment opportunities, and provides guidance on the employment of young people.²²⁵⁴ There is already a zero-tolerance policy for workplace harassment of any sort.²²⁵⁵

Sexual conduct between men is a criminal offence which is punishable by a term of imprisonment between seven and 14 years;²²⁵⁶ however, there have been no reported cases of anyone being charged under this offence. Several members of the UPR Working Group recommended repealing all sex-related discriminatory legislation and legislation criminalising consensual same-sex relations to ensure consistency with the principles of equality and non-discrimination.²²⁵⁷

Freedom of information (FOI)

The constitution provides for freedom of expression and information in Article 24. There does not appear to be FOI legislation that provides for access to official information or for the protection or correction of personal information collected by a government department.

Freedom of expression, association and peaceful assembly

Although the law provides for freedom of peaceful assembly, island chiefs are able to place restrictions on assembly for public worship.²²⁵⁸ The Committee on the Rights of the Child urged Tuvalu to take measures to ensure freedom of thought, conscience and religion is guaranteed in the constitution and all other relevant laws, including the Religious Organisations Restriction Act 2010,²²⁵⁹ which places the registration of religious organisations at the discretion of island Falekaupule (traditional assembly of elders) and may result in restrictions on public assembly of minority religions. The 2018 UPR recommendations include measures to guarantee freedom of religion or belief, including by addressing concerns from minority religious groups over limitations on their activities in the outer islands.²²⁶⁰

The constitution provides for freedom of the press. There have been no reported restrictions on this right,²²⁶¹ however, the country's sole radio station is controlled by the government's media department.²²⁶² The small media market does not support independent domestic news outlets.²²⁶³ The government operates a national newspaper (Fenui) and many households use satellite dishes to access foreign programming.²²⁶⁴ Internet penetration was reported to have grown to 50% of the population in recent years,²²⁶⁵ although internet access is primarily available on Funafuti only. There are no restrictions or censorship of online content.

Private sector workers reportedly have the right to organise unions, bargain collectively and strike. Those in the public sector can join professional associations and engage in collective bargaining but are not permitted to strike. In practice, most disputes are resolved through negotiations. The only registered union represents seafarers.²²⁶⁶

2254 Ibid.

2255 Ibid.

2256 Penal Code CAP 10.20. Available at: https://tuvalu-legislation.tv/cms/images/LEGISLATION/PRINCIPAL/1965/1965-0007/PenalCode_1.pdf (accessed 1 August 2019).

2257 A/HRC/39/8. Available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G18/209/66/PDF/G1820966.pdf?OpenElement>

2258 Religious Organisations Restriction Act 2010, s4. Available at: <https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/89619/102999/F-433273586/TUV89619.pdf> (accessed 7 July 2019).

2259 CRC/C/TUV/CO/1. Note. 2168.

2260 A/HRC/39/8. Available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G18/209/66/PDF/G1820966.pdf?OpenElement>

2261 Freedom House. Freedom in the world 2019. Available at: <https://freedomhouse.org/report/freedom-world/2019/tuvalu>

2262 United States Department of State, Bureau of Democracy, Human Rights and Labour. Tuvalu 2018 human rights report 2018. Available at: <https://fj.usembassy.gov/wp-content/uploads/sites/180/Tuvalu-2018-Human-Rights-Report.pdf>

2263 Freedom House. Freedom in the world 2019. Note. 2162.

2264 Op cit.

2265 Op cit.

2266 Freedom House. Freedom in the World 2019. Note. 2162.

Economic rights

The National Strategy for Sustainable Development (NSSD) 2016-2020 prioritises the labour empowerment of women. According to NSSD, the 2012 census (most recent) reported that 68% of men were in waged employment but only 51% of women.²²⁶⁷ Moving young women towards entrepreneurship is a priority of the National Gender Policy, and monthly bazaars provide opportunities for women to engage in micro businesses.²²⁶⁸ Overall, economic progress for women has been hampered, with the key reasons being limited private sector opportunities, limited resourcing, and climate change.²²⁶⁹

The jobless and inactive population, including students, PWDs, retired persons and those in full-time home duties, had increased to 24% in 2010, up 5% since 2004.²²⁷⁰ In 2019, the government increased financial support for seniors from AUD 70 to AUD 100 per month.²²⁷¹ Since 2015, PWDs have qualified for AUD 70 per month.²²⁷² A 2017 UNICEF report commented that the lack of comprehensive social protection limits the ability of the government to lift vulnerable persons out of poverty and support economic growth.²²⁷³ In 2019, consultations on the Social Protection Bill were underway; the bill aims to widen social protection to include babies, pregnant women, widows and school children.²²⁷⁴

Labour mobility is one of four priority areas for the government.²²⁷⁵ In 2016, approximately 600 men and women were employed overseas, including in seasonal worker programs and the Pacific Access Category.²²⁷⁶ Many of these workers remit money back to families in Tuvalu, thus stimulating the local economy. The Department of Labour is working towards increasing recruitments under overseas labour initiatives,²²⁷⁷ including for women, in acknowledgement of the lack of employment opportunities at home. There is no current data available for youth employment nor employment disaggregated by gender or occupation.

The Employment Act 2008 continues to provide the legislative and regulatory framework for employment in Tuvalu and sets the protection of labour rights.²²⁷⁸ The law prohibits forced or compulsory labour. A child younger than 14 years is prohibited from working in the formal labour market, a child younger than 15 is prohibited from taking on industrial employment, and a person must be 18 years old before entering into work contracts; however, there is a special provision that allows children 15 years and older to enter apprenticeships with the approval of the Commissioner of Labour.²²⁷⁹ The Labour Employment Relations Bill 2017 has clauses on equal employment opportunities, including for PWDs, and minimum standards for youth employment.²²⁸⁰ It is anticipated that the bill will come into law after the election in September 2019.

Currently, the government has four food security projects funded by the Pacific Community (SPC) which are aimed at improving livelihoods. The projects are implemented in Nanumanga, Nui, Funafuti and Vaitupu.

²²⁶⁷ Government of Tuvalu 2016. Te Kakeega III: National strategy for sustainable development 2016-2020. Note. 2164.

²²⁶⁸ UN Women 2019. Beijing 25+ National Review Report: Tuvalu. Available at <https://www.unwomen.org/-/media/headquarters/attachments/sections/csw/64/national-reviews/tuvalu.pdf?la=en&vs=758> (10 August 2019).

²²⁶⁹ Ibid.

²²⁷⁰ Ibid.

²²⁷¹ Ibid.

²²⁷² Tavola H. 2018. Tuvalu study on people with disability. DFAT/Pacific Women Shaping Pacific Development. Note. 2220.

²²⁷³ UNICEF Pacific 2017. Situation analysis of children in Tuvalu. Note. 2165.

²²⁷⁴ UN Women 2019. Beijing 25+ National Review Report: Tuvalu. Note. 2225.

²²⁷⁵ Ibid.

²²⁷⁶ Ibid.

²²⁷⁷ Ibid.

²²⁷⁸ Tuvalu Employment Act 2008. Available at: http://tuvalu-legislation.tv/cms/images/LEGISLATION/PRINCIPAL/1965/1965-0006/EmploymentAct_1.pdf (accessed 1 August 2019).

²²⁷⁹ United States Department of State, Bureau of Democracy, Human Rights and Labour 2018 Tuvalu. Note. 2219.

²²⁸⁰ CRPD/C/TUV/1. Note. 2206.

The Department for Agriculture also provides seedlings to farmers in the mentioned islands to help in their pulaka (swamp taro) farm endeavours.²²⁸¹

Two ILO projects are underway. The first is on labour law reform and includes reviewing the Employment Act, the Industrial Relations Code and the Trade Unions Act, and developing new labour legislation to better comply with the ILO's eight Fundamental Labour Conventions. The second is to improve labour migration data collection to inform policymaking and increase the participation of Tuvaluan workers in better-regulated labour migration schemes, including seafaring and seasonal worker programs.²²⁸² The CEDAW Committee expressed concern over the general lack of data disaggregated by sex, age, race, ethnicity, geographical location and socioeconomic background to systematically monitor and evaluate the equality of economic progress.²²⁸³

Right to health and education

The country's only hospital is located on Funafuti and is difficult to access for those on the outer islands. There are two health clinics, one south and one north of Funafuti. There are eight health centres covering the outer islands, which are usually staffed by a nurse who is able to provide primary care and preventive services. The country has a Medical Treatment Scheme which facilitates travel to overseas hospitals for those who require advanced clinical care.²²⁸⁴

Most health services are provided by the government with the exception of family planning services, which are jointly provided by the public health services and the Tuvalu Family Planning Association.²²⁸⁵ A STEPS²²⁸⁶ survey conducted in 2015 shows a high rate of obesity among adults aged 18-69 years, with 55.2% in males and 70.7% in females.²²⁸⁷ WHO is supporting the Ministry of Health to implement the National Health Reform Strategy 2016-2019, which includes support for promoting mental health, preventing mental disorders, alcohol harm and suicide, reducing stigmatisation and discrimination, and promoting human rights across the life course.²²⁸⁸

Tuvalu is reported to have one of the highest per capita rates of HIV in the Pacific, with 11 reported cases in 2015.²²⁸⁹ The seafaring industry was considered to be of particular concern as travelling men reportedly engage in risky sexual activity while away from home and then engage in sexual intercourse with their wives upon their return, without being aware that they may have contracted an STI or HIV.²²⁹⁰ The rate of chlamydia infection amongst youth aged 15-24 years is the highest in the Pacific (21%),²²⁹¹ emphasising the need for improved sexual and reproductive health education.

The CEDAW Committee commended Tuvalu for improving access to health care for those on the outer islands but noted that women continue to experience difficulties in gaining access to affordable and adequate health care and that there is a lack of sexual and reproductive health services, including age-appropriate school education on sexual and reproductive health and rights.²²⁹²

Education is compulsory until the age of 15 years. No law specifically mandates free basic education, but government policy generally provides free basic education for all. School attendance peaks in primary education

²²⁸¹ Pulaka, Cyrtosperma merkusii, or swamp taro, is a crop grown mainly in Tuvalu.

²²⁸² ILO. https://www.ilo.org/asia/WCMS_410195/lang--en/index.htm (accessed 16 August 2019).

²²⁸³ CEDAW/C/TUV/CO/3-4. Note. 2155.

²²⁸⁴ Tuvalu-WHO Country Cooperation Strategy 2018–2022. WPRO/2017/DPM/024. Available at: <https://apps.who.int/iris/rest/bitstreams/1096384/retrieve> (accessed 10 August 2019).

²²⁸⁵ Ibid.

²²⁸⁶ The WHO STEP wise approach to chronic disease risk factor surveillance (STEPS).

²²⁸⁷ Tuvalu-WHO Country Cooperation Strategy 2018–2022. WPRO/2017/DPM/024. Note. 2241.

²²⁸⁸ Ibid.

²²⁸⁹ UNICEF Pacific 2017. Situation analysis of children in Tuvalu. Note. 2165.

²²⁹⁰ Ibid.

²²⁹¹ Ibid.

²²⁹² CEDAW/C/TUV/CO/3-4. Note. 2155.

(96.6%) and declines in secondary education (74.3%).²²⁹³ After the age of 13 years, the incidence of school drop-outs increases, with girls having better school attendance than boys at the ages of 14 to 18 years.²²⁹⁴ Pupils sit an exam at the end of primary school to win a place in a secondary school. Those who do not pass, estimated to be 40% in 2017, have free vocational training options. The high exam failure rate has been attributed to the limited capacity of teachers.²²⁹⁵

Teenage mothers are now allowed to return to school after having children and are no longer expelled due to pregnancy, which has in the past severely limited their opportunities for the future.²²⁹⁶ Teenage boys who fathered children can continue at school. UN agencies have consistently expressed concern over corporal punishment in schools and the 2018 UPR recommended adopting public policies to eradicate violence against children, including legal measures to prohibit corporal punishment both in school and in the family.²²⁹⁷

The CEDAW Committee recommended that Tuvalu integrate principles of non-discrimination and equality of women and men into educational policies, the national core curriculum and related documents, as well as into basic and continuing education for teachers, healthcare professionals and other service providers.²²⁹⁸

Women and children's rights

Tuvalu has ratified CEDAW and it signed the Beijing Platform for Action in 1995. The Beijing+25 Report, released recently, noted progress for women in a number of areas including in gender mainstreaming across government. Partnerships between the Gender Affairs Department (GAD) and a number of government ministries and CSOs have strengthened, resulting in women's needs and rights being progressively included across government and in all levels of society.²²⁹⁹ A major challenge was the limited resourcing available to support GAD and gender equality initiatives in general.²³⁰⁰ However, traditionally male dominated sectors and trades are being opened up to women. In the past five years, young women have been accepted for enrolment in the maritime school, there are more women police officers including one assigned to the patrol boat, and women's role in fisheries and natural resource management has been recognised.²³⁰¹

The Family Protection and Domestic Violence Act 2014 criminalised domestic violence and a domestic violence unit has been established within the police force; however, women's rights and gender equality continue to be areas which require further improvement.²³⁰² Marital rape is still not a criminal offence and a complainant is still required to prove the lack of consent in cases of sexual assault. The Act has been the subject to community awareness initiatives. The government has established a Family Protection Fund with AUD 50,000 to support survivors of violence.²³⁰³ Counselling and referral systems for psychosocial support for survivors of domestic violence, as well as for perpetrators, are recent initiatives.²³⁰⁴

2293 Ministry of Finance, Economic Planning and Industries 2017. Tuvalu population and housing mini-census 2017: Preliminary report. Available at: https://spccfpstore1.blob.core.windows.net/digitallibrary-docs/files/c3/c3939105b2da293c9fc4395da48a556f.pdf?sv=2015-12-11&sr=b&sig=X6lTmaj5hXS4EINJrYgPbFhKYBTp1FQ8i5JEGd%2B3QF8%3D&se=2020-02-17T22%3A29%3A27Z&sp=r&rscc=public%2C%20max-age%3D864000%2C%20max-stale%3D86400&rsct=application%2Fpdf&rscd=inline%3B%20filename%3D%22Tuvalu_2017_Mini_Census_Preliminary_Report_1.pdf%22

2294 Ibid.

2295 Op cit.

2296 UN Women 2019. Beijing 25+ National Review Report: Tuvalu. Note. 2225.

2297 A/HRC/39/8. Available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G18/209/66/PDF/G1820966.pdf?OpenElement>(accessed 10 July 2019).

2298 CEDAW/C/TUV/CO/3-4. Note. 2155.

2299 UN Women 2019. Beijing 25+ National Review Report: Tuvalu. Note. 2225.

2300 Ibid.

2301 Ibid.

2302 EU annual report on Human Rights and Democracy in Tuvalu 2018. Available at:http://eueuropaeas.fpfis.slb.ec.europa.eu:8084/delegations/fiji/62472/eu-annual-report-human-rights-and-democracy-tuvalu-2018_ru

2303 UN Women. 2019. Beijing 25+ National Review Report: Tuvalu. Note. 2225.

2304 Op cit.

A pool of local counsellors has been trained to provide support throughout the islands. These achievements have been found to have increased understanding of the issue of domestic violence and served to challenge existing social norms.²³⁰⁵

Tuvalu's Human Rights Action Plan 2016-2020 covers several important issues related to violence against women and girls. The plan includes activities for evaluating new legislation, reviewing the Penal Code and expanding access to judicial services.²³⁰⁶ The DV Unit began tracking domestic violence cases and reported in 2019 that 88 cases in Funafuti resulted in perpetrators being charged with a domestic violence offence.²³⁰⁷

Equal access to land ownership remains an issue. Under current legislation, women have equal rights to *kaitasi* land (extended family ownership); however, in practice, the titleholder is a man the majority of the time. Women are over-represented in the subsistence economy and under-represented in the formal employment sector; also, women generally earn less than men and are perceived as care givers and responsible for domestic duties.²³⁰⁸

There is a disparity in parliamentary representation and participation in government with only one woman currently elected to the Parliament, although in 2019, Tuvalu appointed its first female Acting Governor-General. Women are usually not allowed to attend the decision-making meetings of the *Falekaupule* (local government). It has been reported that the government has drafted laws to modify this rule, authorising women to participate on an equal footing.²³⁰⁹ Additionally, the National Strategy for Sustainable Development 2016-2020 (*Te Kakeega III* Plan) will strive to expand seats for women in Parliament, as well as include gender as a prohibited ground of discrimination in the Bill of Rights.

Nearly all government departments are under-resourced and this undermines the delivery of services and systems for children.²³¹⁰ The 2017 UNICEF Situation Analysis of Children noted that a lack of disaggregated data prevented a comprehensive equity analysis.²³¹¹ Noted gaps in the legal and policy framework were in the protection of girls with disabilities and the protection of boys from sexual offences.²³¹² Another identified gap was comprehensive social protection and other social welfare services limiting the ability of the government to lift vulnerable persons out of poverty and support economic growth. Additionally, limited opportunities for adolescents and young people was said to perpetuate cycles of poverty and unhealthy behaviours, such as drug and alcohol abuse, as well as mental health issues. Further, the indirect and direct costs of accessing education were denying children from socio-economically deprived families from realising their right to education.²³¹³ Community attitudes towards violence against children and corporal punishment were seen to pose a particular child protection risk, including child sexual abuse.²³¹⁴ An area of progress is the Island Courts Amendment Act which provides for more protection for children within the Island Court setting and for the treatment of young offenders. In 2018, the UPR Working Group urged Tuvalu to continue with the integration of the CRC and CEDAW into national laws and policies, and in particular to adopt legislative and other measures to prevent and combat violence against women and girls.²³¹⁵

2305 Ibid.

2306 Government of Tuvalu 2016. Tuvalu human rights national action plan 2016 – 2020. Available at: https://rrrt.spc.int/sites/default/files/resources/2019-01/Tuvalu_National_HumanRights_Action_Plan.pdf

2307 Statistics provided by Domestic Violence Unit on 29 July 2019.

2308 Milan A. et al 2016) Tuvalu: Climate change and migration – Relationships between household vulnerability, human mobility and climate change Report No.18. Bonn: United Nations University Institute for Environment and Human Security (UNU-EHS). Available at: https://collections.unu.edu/eserv/UNU:5856/Online_No_18_Tuvalu_Report_161207_.pdf

2309 Ibid.

2310 UNICEF 2017. Situation analysis of children in Tuvalu. Note. 2165.

2311 Op cit.

2312 Ibid.

2313 Ibid.

2314 Ibid.

2315 A/HRC/39/8. Available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G18/209/66/PDF/G1820966.pdf?OpenElement>

Rights of persons with disabilities (PWD)

Tuvalu ratified the CRPD in 2013 and submitted its first periodic report in 2018. In its submission to the CRPD Committee, the government outlined support mechanisms for PWDs including: (a) the draft national disability policy; (b) the National Disability Coordinating Committee; (c) the disability pension for eligible persons; (d) the Tuvalu National Plan of Action on Human Rights; (e) the inclusion of children living with disabilities in mainstream schools; (f) a special school for adults and children with disabilities; and (g) the Fusi Alofa Association (National Disability Organisation).²³¹⁶

A survey conducted in 2017 interviewed 466 (195 male, 271 female) PWDs (4.5% of the total population) across the nine islands of Tuvalu.²³¹⁷ The survey commented that the total number of PWDs is likely to be slightly higher due to limitations of the survey.²³¹⁸ Thirteen percent of those surveyed identified at least one communication difficulty due to a physical, mental or emotional health condition.²³¹⁹ Disability is not acknowledged as grounds for discrimination in the constitution and PWDs continue to face multiple barriers that prevent the full realisation of their rights, including participating in family and community events.²³²⁰

Fusi Alofa Association (FAA) was established in 2009 and is based in Funafuti with branches on three of the outer islands. The school for children with disabilities, which FAA runs in the capital, is not registered with the Ministry of Education, and is considered more of a community centre. Tuvalu has a Draft National Disability Policy 2017-2020 and there is an Education Strategic Plan III 2016-2020 which supports inclusive education in all schools;²³²¹ however, the recent Pacific Women study on PWDs found that this had not been fully realised.²³²² A lack of trained teachers for children with special needs, a lack of infrastructure and inaccessibility of schools were still barriers to education.²³²³

The 2017 disability survey found there is minimal assistance, medical or otherwise, for people with psychosocial disabilities and none of those surveyed reported being on medication.²³²⁴ In cases where the person is presenting violently and no medical intervention is available, they are sent to prison.²³²⁵ One focus area of the Tuvalu-WHO Country Cooperation Strategy 2018-2022 is support for promoting mental health, including preventing mental disorders, alcohol harm and suicide, reducing stigmatisation and discrimination, and promoting human rights across the life course.²³²⁶

Climate justice

Tuvalu's international commitments include: the UN Framework Convention on Climate Change 1992; Kyoto Protocol 1992; Doha Agreement 2012; Paris Agreement 2015; and the Sustainable Development Goals 2015-2030.²³²⁷ The National Climate Change Policy 2017-2020, *Te Vaka Fenua o Tuvalu*, currently in draft form, will replace prior government policies on climate change. The policy is consistent with the Paris Agreement and aligns with Tuvalu's National Sustainable Development Strategy, *Te Kakeega III* 2016-2020, which sees climate change as a priority issue.²³²⁸ The policy has in place strategies to address vulnerabilities of climate change, such as the decline in traditional crops, strengthening the monitoring and control of commercial fishing operations, education on water conservation and the health impacts of climate change, and promoting coastal management

²³¹⁶ CRPD/C/TUV/1. Note. 2206.

²³¹⁷ Tavola H. 2018. Tuvalu study on people with disability. DFAT/Pacific Women Shaping Pacific Development. Note. 2220.

²³¹⁸ Op cit.

²³¹⁹ Ibid.

²³²⁰ Ibid.

²³²¹ CRPD/C/TUV/1. Note. 2206.

²³²² Tavola H. Tuvalu study on people with disability. DFAT/Pacific Women Shaping Pacific Development. Note. 2220

²³²³ Ibid.

²³²⁴ Ibid.

²³²⁵ Ibid.

²³²⁶ WPRO/2017/DPM/024. Available at: <https://apps.who.int/iris/rest/bitstreams/1096384/retrieve> (accessed 10 August 2019).

²³²⁷ Various comments in this section are informed by discussions with the Climate Change Unit.

²³²⁸ Climate Change Policy and Disaster Unit (unpublished). DRAFT *Te Vaka Fenua o Tuvalu* National Climate Change Policy 2017-2020.

and rehabilitation.²³²⁹ The policy also includes strategies to mitigate the effects of climate change through the use of technology. Amongst the conclusions of the UPR Working Group in 2018 was a reminder that disasters disproportionately affect women and girls and exacerbate existing economic and social inequality, making it essential that a gender perspective is integrated into all climate change and disaster risk reduction policies.²³³⁰

Tuvalu was one of the first countries to sign the Financing Framework Agreement to access funds from the Green Climate Fund for coastal protection. The Tuvalu Survival Fund was set up in 2015 to provide emergency relief and assistance with recovery, adaptation and rehabilitation for those affected by the impacts of climate change and natural disasters.²³³¹

A participatory survey conducted in 2015 of 320 households across three islands identified the main risks to livelihoods as: cyclones, drought and irregular rains, floods, saltwater intrusion into crops and drinking water, sea level rises and storm surges.²³³² 97% of household respondents reported being impacted by natural hazards in the previous 10 years, with outer-island households more likely to have been affected than people living in Funafuti.²³³³ Amongst the conclusions drawn were that future migration, both internal and international, is likely to be influenced by environmental change and household economics.²³³⁴

Tuvalu's former Prime Minister, Enele Sopoanga, is a strong advocate for climate justice on the world stage. Tuvalu's delegation to the UPR Working Group in 2018 reported that Tuvalu had advocated for a General Assembly resolution on the protection of the human rights of people displaced by climate change and other human-induced national disasters.²³³⁵ At the 2019 Pacific Islands Forum meeting held in Tuvalu, then Prime Minister Sopoanga argued for a strong Forum Communiqué on climate change, saying to delegates from wealthier countries "You are concerned about saving your economies...I'm concerned about saving my people..."²³³⁶

²³²⁹ Ibid.

²³³⁰ A/HRC/39/8. Available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G18/209/66/PDF/G1820966.pdf?OpenElement>

²³³¹ Climate Change and Disaster Survival Fund Act 2015, s13. Available at: https://www.tuvalu-legislation.tv/cms/images/LEGISLATION/PRINCIPAL/2015/2015-0011/ClimateChangeandDisasterSurvivalFundAct2015_1.pdf (accessed 1 August 2019).

²³³² Milan A. et al 2016. Tuvalu: Climate change and migration – Relationships between household vulnerability, human mobility and climate change. Report No.18. Bonn: United Nations University Institute for Environment and Human Security (UNU-EHS). Available at: https://collections.unu.edu/eserv/UNU:5856/Online_No_18_Tuvalu_Report_161207_.pdf

²³³³ Ibid.

²³³⁴ Ibid.

²³³⁵ A/HRC/39/8. Available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G18/209/66/PDF/G1820966.pdf?OpenElement>

²³³⁶ The Guardian 2019. <https://www.theguardian.com/environment/2019/aug/16/revealed-fierce-pacific-forum-meeting-almost-collapsed-over-climate-crisis> (accessed 20 August 2019).



COUNTRY CHAPTERS

**REPUBLIC OF
VANUATU**

Republic of Vanuatu

Key facts

Capital city	Port Vila	Total land area	12,281 km ²
Population (year)	304,500 (July 2018 est.) ²³³⁷	Population growth % (year)	1.81% (2018 est.) ²³³⁸
GDP per capita (year)	USD 3033 (2018) ²³³⁹	GNI per capita (Atlas method) (year)	USD 2970 (2018) ²³⁴⁰
Type of government	Parliamentary republic ²³⁴¹		
Electoral system	Single non-transferable vote ²³⁴²		
Number of members of parliament (MPs): total/female (year)	52 all male (2018) ²³⁴³		
Religions: by % of population (year)	Protestant 70% (includes Presbyterian 27.9%, Anglican 15.1%, SDA 12.5%, Assemblies of God 4.7%, Church of Christ 4.5%, Neil Thomas Ministry 3.1%, and Apostolic 2.2%), Roman Catholic 12.4%, customary beliefs 3.7% (including Jon Frum cargo cult), other 12.6%, none 1.1%, unspecified 0.2% (2009 est.) ²³⁴⁴		
Ethnic groups: by % of population (year)	Melanesian 99.2%, non-Melanesian 0.8% (2016 est.) ²³⁴⁵		
Languages: by % of population (year)	Local languages (more than 100) 63.2%, Bislama (official; creole) 33.7%, English (official) 2%, French (official) 0.6%, other 0.5% (2009 est.) ²³⁴⁶		
Life expectancy: male/female (year)	72.4 males/ 75.7 females (2018 est.) ²³⁴⁷	% youth aged 15–24 years: total male/female (year)	20.03% male 28,631 /female 29,053 (2018 est.) ²³⁴⁸
% disability: total male/female (year)	12% overall with at least a moderate disability, not disaggregated; higher in rural areas than urban areas and higher in older age brackets (2013). ²³⁴⁹		

2337 CIA World Factbook. <https://www.cia.gov/library/publications/the-world-factbook/geos/nh.html> (accessed 20 August 2019).

2338 Ibid.

2339 World Bank Data. <https://data.worldbank.org/indicator/ny.gdp.pcap.cd> (accessed 23 August 2019).

2340 World Bank Data. <https://data.worldbank.org/indicator/NY.GNP.PCAP.CD?locations=VU>

2341 CIA World Factbook. Note. 2294.

2342 Under the Single Non-Transferable Vote system voters cast a single vote in a multi-member district. The candidates with the highest vote totals are declared elected. Voters vote for candidates rather than political parties.

2343 Pacific Islands Forum Secretariat. <https://www.forumsec.org/wp-content/uploads/2018/04/Governments-Legislate-30-Gender-Representation-in-Pacific-Parliaments.pdf> (accessed 27 August 2019).

2344 CIA World Factbook. Note. 2294.

2345 Ibid.

2346 Ibid.

2347 Ibid.

2348 Ibid.

2349 UNICEF Pacific and Vanuatu National Statistics Office 2014. Children, women and men with disabilities in Vanuatu: What do the data say? Available at: https://www.unicef.org/pacificislands/Children_Women_and_Men_with_Disabilities_in_Vanuatu.pdf

International human rights treaty ratification and reporting obligations²³⁵⁰

Treaty	Date of signature (S) ratification (R) accession (a)	Reservations	Latest report submitted	Reporting status
ICCPR	21 November 2008 (R)			Initial report overdue since 2010
CEDAW	08 September 1995 (a)		4 th and 5 th report 7 October 2014	6 th report due 01 March 2020
CAT	12 July 2011 (a)			Initial Report overdue since 11 August 2012
CRC	07 July 1993 (R)		2 nd report 3 August 2016	3 rd to 7 th reports due 5 February 2022
CRPD	23 October 2008 (R)		Initial Report submitted 2 Aug 2015; review concluded 2019	2 nd to 5 th reports due 23 November 2026
CED	06 Feb. 2007 (S)			
OP-CEDAW	17 May 2007 (R)			N/A
OP-CRC-AC	26 September 2007 (R)	Binding declaration under article 3:18 years	Initial report 3 August 2016	Comments to be included in next periodic report 2022
OP-CRC-SC	17 May 2007 (R)		Initial report 3 August 2016	As above

Special Procedures:

Open invitation extended: 12 May 2009.

- Request for visit by the Independent Expert on the effects of foreign debt and other related international financial obligations of states on the full enjoyment of all human rights. Not accepted to date.²³⁵¹
- Request for visit by the Special Rapporteur on the rights of indigenous peoples. Accepted, proposed visit October – November 2019.²³⁵²
- Request for visit by the Special Rapporteur on minority issues. Accepted, dates were to be confirmed for 2020.²³⁵³
- Request by Special Rapporteur on rights to water and sanitation. Accepted 31 January 2019, then postponed 1 March 2019.²³⁵⁴

Country visits:

Nil

Universal Periodic Review:

1st cycle: 12 May 2009; 2nd cycle: 30 January 2014; 3rd cycle: 24 January 2019; next cycle: 2024.

International Criminal Court:

Ratified the Rome Statute on 2 December 2011.²³⁵⁵

2350 OHCHR. https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=190&Lang=EN

2351 OHCHR. https://spinternet.ohchr.org/_layouts/15/SpecialProceduresInternet/ViewCountryVisits.aspx?Lang=en&country=VUT (accessed 28 August 2019).

2352 Ibid.

2353 Ibid.

2354 Ibid.

2355 International Criminal Court. https://asp.icc-cpi.int/en_menus/asp/states%20parties/asian%20states/Pages/vanuatu.aspx (accessed 23 August 2019).

System of government

The Republic of Vanuatu is a parliamentary democracy headed by a President as head of state and a Prime Minister as the head of government.²³⁵⁶ The President is elected for a five-year term²³⁵⁷ by a two-thirds majority of an electoral college, while the Prime Minister is elected by a majority vote of a three-fourths quorum of the Parliament. The single-chamber Parliament has 52 members, with no incumbent women at this time,²³⁵⁸ and are directly elected every four years by universal suffrage with an element of proportional representation. The Prime Minister appoints a Council of Ministers from among the Members of Parliament.²³⁵⁹

Frequent no-confidence votes disrupt governance and no government since 1995 has completed a full four-year term. The current government, elected in 2016, is the longest-serving since 2008, but it still faces no-confidence motions.²³⁶⁰ Since Independence in 1980, only five women have been elected to Parliament. In May 2018, women leaders presented a petition to the government to enact a 50% quota for women representatives in Parliament. At the same time, the formation of a Democratic Women's Party was announced.²³⁶¹ Vanuatu has six main provinces administered by three municipalities. In 2013, the government amended the Municipal Council Act and introduced temporary special measures by reserving five seats for women in the Port Vila municipality, followed by four reserved seats in Lunganville, Santo.

Judicial system and administration of justice

The judiciary is established under Article 47 [1] of the Constitution, which states: "The administration of justice is vested in the judiciary, who are subject only to the Constitution and the law..." Vanuatu law combines British and French laws which were in existence in 1980 and any customary laws in existence at the time. Agencies of the justice system include the Court of Appeal (COA), Supreme Court, Magistrate and Island Courts, tribunals and correctional centres.²³⁶² The justice sector includes child rights and family protection mechanisms, in addition to various advocacy and services around disability rights, the empowerment of women, and public prosecutions and defence services.²³⁶³ Hindrances to the administration of justice centre on administrative weaknesses of the police and the need for financial and operational support.²³⁶⁴

Vanuatu's courts have demonstrated impartiality in recent years through their adjudication of cases involving senior political figures. In March 2018, Deputy Prime Minister (DPM) Joe Natuman received a two-year suspended prison sentence after he pleaded guilty to interfering with a police inquiry when he was Prime Minister in 2014. Natuman resigned as DPM in May, and the speaker dismissed him from Parliament, declaring his seat vacant. After Natuman challenged that move, the COA confirmed his dismissal in July and a by-election was held in September 2018 to fill the seat.²³⁶⁵ In efforts to modernise its system and strengthen access and transparency, Vanuatu's judiciary now provides updated listings and judgements on its new website.²³⁶⁶

In July 2019, six Chinese nationals were arrested for operating an internet scam in China from their base in Vanuatu. Chinese law enforcement officials arrived in Vanuatu shortly before the arrests and helped identify the premises in Port Vila.²³⁶⁷ Four of the six held Vanuatu passports. According to the Vanuatu Daily Post

2356 Republic of Vanuatu Parliament. <http://parliament.gov.vu/index.php/about-us> (accessed 23 August 2019).

2357 PACLI. http://www.paclii.org/vu/legis/consol_act/cotrov406/ (accessed 27 August 2019).

2358 Pacific Women in Politics. <https://www.pacwip.org/women-mps/national-women-mps/> (accessed 27 September 2019).

2359 The Commonwealth. http://thecommonwealth.org/sites/default/files/inline/VanuatuCOGReport_2016.pdf (accessed 29 August 2019).

2360 Freedom House. Freedom in the World 2018. Available at: <https://freedomhouse.org/report/freedom-world/2018/vanuatu> (accessed 10 September 2019).

2361 Pacific Women in Politics 2018. <https://www.pacwip.org/resources/news/vanuatu-enact-50-quota-for-women-in-parliament/> (accessed 27 August 2019).

2362 Ministry of Justice and Community Service 2014. <http://www.mjcs.gov.vu/index.php/justice-sector> (accessed 23 August 2019).

2363 Ibid.

2364 Ibid.

2365 Freedom House. <https://freedomhouse.org/report/freedom-world/2019/vanuatu>

2366 Vanuatu Judiciary. <https://courts.gov.vu/>

2367 Radio New Zealand. <https://www.rnz.co.nz/international/pacific-news/393336/six-chinese-nationals-arrested-in-vanuatu-over-internet-scam> (accessed 23 September 2019).

newspaper, the six, who were detained without charge on the premises of a Chinese company and without access to the Vanuatu courts, were escorted out of Vanuatu on a privately-owned plane by what appeared to be Chinese and Vanuatu plain-clothes police. The newspaper expressed concern that China appeared to have convinced Vanuatu to enforce Chinese law within its own borders.²³⁶⁸

Access to justice and the right to remedy

A 2016 UN Women report stated that 98% of women and children experiencing violence in Vanuatu do not access the formal justice system due to poverty, the absence of financial assistance, considerable administrative delays, or the lack of coordination from the formal justice system.²³⁶⁹ Vanuatu has implemented measures to promote specialised handling of children as victims, witnesses and offenders.²³⁷⁰ There is currently no specialised unit for dealing with children in conflict with the law, but the establishment of a Juvenile Justice Unit is reportedly being considered, and strengthening juvenile justice is a priority in the Vanuatu Police Force Strategic Plan 2016-2020.²³⁷¹

National human rights institutions (NHRI)

Vanuatu does not have an NHRI. Vanuatu has an Ombudsman's Office that was established by Articles 61-65 of the Constitution. The constitution and the Ombudsman Act allow the Ombudsman to look into the conduct of government, related bodies and leaders. In February 2013, Vanuatu established an overarching National Human Rights Committee to transition into or create a new NHRI.²³⁷² Under the third UPR, the government committed to a scoping study on the feasibility of establishing an NHRI and in July 2019, at the government's request, the MSG Secretariat, SPC HRSD and the Asia Pacific Forum on National Human Rights Institutions conducted a scoping study on the feasibility, desirability and options for establishing a Paris Principles-compliant NHRI.²³⁷³

Security sector

The police force is under the authority of the Ministry of Internal Affairs.²³⁷⁴ It is divided into the Vanuatu Police Force (VPF) and the Vanuatu Mobile Force (VMF), a paramilitary unit.²³⁷⁵ There is also a Police Maritime Wing. The VPF is restructuring to create new units to bolster operational efficiency.²³⁷⁶ The Police Services Commission held a workshop on decentralising security services in all six provinces of Vanuatu to train provincial police officers on how to manage each community post in their respective jurisdictions.²³⁷⁷

The Professional Standards Unit (PSU) was created in 2014 to investigate allegations of police misconduct. The PSU operates directly under the authority of the Police Commissioner. At the time, the PSU had six investigators, including an experienced female investigator (more recent information could not be found). In 2018, the PSU received 50 complaints, nearly half the number received in previous years. Of those complaints, 34 were dealt with internally and 16 were referred to the court.²³⁷⁸

2368 Vanuatu Daily Post 2019. https://dailypost.vu/news/six-chinese-deported/article_1016b6a7-2a6e-5c21-84b8-6f97928bd384.html (accessed 23 September 2019).

2369 UN Women 2016. Women and children's access to the formal justice system in Vanuatu. Available at: https://www2.unwomen.org/-/media/field%20office%20eseasia/docs/publications/2016/07/women_childrens_access_formal_justice_vanuatu_web.pdf?la=en&vs=5212.

2370 UNICEF Pacific 2017. Situation analysis of children in Vanuatu. Available at: https://www.unicef.org/pacificislands/15_Situation_Analysis_of_Children_Vanuatu.pdf

2371 Ibid.

2372 A/HRC/WG.6/18/VUT/2. Available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G13/183/75/PDF/G1318375.pdf?OpenElement>

2373 Vanuatu Daily Post 2019. https://dailypost.vu/news/scoping-study-on-national-human-rights-institution/article_05100131-a8e6-512a-8d03-b1de086d4c7f.html (Accessed: 28 August 2019).

2374 Government of Vanuatu. <https://governmentofvanuatu.gov.vu/internalaffairs.html> (accessed 20 August 2019).

2375 ANU Press. <http://press-files.anu.edu.au/downloads/press/p49351/mobile/ch05s02.html> (accessed 28 September 2019).

2376 Vanuatu Daily Post 2014. http://dailypost.vu/news/local_news/new-structure-for-vanuatu-police/article_119673b4-fcd7-5923-8639-c423bc3cc657.html (accessed 23 August 2019).

2377 Vanuatu Daily Post 2019. https://dailypost.vu/news/police-service-commission-targets-decentralization-of-security-services/article_115b662e-df1b-11e9-b150-df0271e7a06c.html (accessed 26 September 2019).

2378 US State Department, Vanuatu 2018 human rights report. Available at: <https://www.state.gov/wp-content/uploads/2019/03/VANUATU-2018.pdf> (accessed 28 August 2019).



The VPF also has a Family Protection Unit that deals with all issues relating to domestic and family violence, especially in obtaining restraining orders for survivors of domestic violence.

The VMF is reported to have a reputation for heavy-handed treatment of citizens and civilian authorities have not been effective in punishing and preventing cases of police brutality.²³⁷⁹ Prisons suffer from overcrowding, violence, poor living conditions and lax management, all of which contribute to frequent escapes. A new correctional facility funded by the New Zealand government opened in 2017; escapes from the site were reported later in the year.²³⁸⁰ The Corrections Department has developed a Use of Force Policy that is aligned with human rights standards and has reviewed its operational manuals and standard operational procedures to comply with the UN Minimum Standards on places of detention. There is also a Rehabilitation Policy 2017 and a Medical Policy and Correctional Services (Temporary Removal) Regulation Order No. 197 of 2017.²³⁸¹

Refugees and asylum seekers

The government cooperated with UNHCR in providing protection and assistance to internally displaced persons, refugees, asylum seekers, stateless persons and other persons of concern.²³⁸² The law does not provide for granting asylum or refugee status, but the government developed an ad hoc system of protection and granted temporary refugee status and asylum to those seeking it while awaiting resettlement by UNHCR.²³⁸³ Between 2009 and 2018, six individuals with refugee status determination sought asylum in Vanuatu.²³⁸⁴ The Committee on the Rights of the Child recommended that Vanuatu put in place mechanisms to identify refugee, asylum seeking and migrant children, including unaccompanied children who may have been involved in hostilities, and provide them with appropriate assistance for their physical and psychological recovery and social reintegration.²³⁸⁵ Vanuatu supported the recommendation to become a party to the Convention relating to the Status of Refugees (1951) and its Protocol (1967), and to update its Immigration Act to include a provision on refugee protection.²³⁸⁶

Migration

According to the UN Population Division's International migrant stock database, just over 8800 people born in Vanuatu lived in other countries in 2013, with 6000 of these living in French territories.²³⁸⁷

In July 2018, the government ordered the compulsory evacuation of the island of Ambae due to increasing volcanic activity. During the first week of August, the people of Ambae were either evacuated to nearby Maewo Island by the government or chose to make their own way to the island of Santo. Approximately 2600 evacuees relocated to Maewo and 6500 to Santo.²³⁸⁸ Vanuatu accepted the recommendation under the 2019 UPR cycle to take steps towards the ratification of more core human rights conventions, including the CRMW.²³⁸⁹

2379 Freedom House. Freedom in the World 2018. <https://freedomhouse.org/report/freedom-world/2018/vanuatu>

2380 Ibid.

2381 A/HRC/WG.6/32/VUT/1. Available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G18/333/69/PDF/G1833369.pdf?OpenElement>

2382 US State Department. Vanuatu 2018 human rights report. Note. 2335.

2383 Ibid.

2384 UNHCR HDX. <https://data.humdata.org/dataset/unhcr-asylum-seekers-determination-vut> (20 August 2019).

2385 A/HRC/WG.6/32/VUT/2. Available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G18/334/33/PDF/G1833433.pdf?OpenElement>

2386 A/HRC/41/10. Available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G19/099/76/PDF/G1909976.pdf?OpenElement>

2387 ILO 2015. https://www.ilo.org/suva/areas-of-work/WCMS_407379/lang--en/index.htm (accessed 28 August 2019).

2388 Reliefweb 2019. <https://reliefweb.int/report/vanuatu/vanuatu-ambae-volcano-eruption-2018-emergency-plan-action-final-report-n-mdrvu006> (accessed 10 September 2019).

2389 A/HRC/41/10. Available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G19/099/76/PDF/G1909976.pdf?OpenElement>

Human Trafficking, Forced Labour, and Contemporary Forms of Slavery

The 2019 Trafficking in Persons report commented that Vanuatu is a destination country for victims of trafficking; however, information on the anti-trafficking efforts of the government and the nature and scope of trafficking in persons were insufficient to achieve a full assessment in the report. Information was to be gathered to assess what, if any, reporting is appropriate for the 2020 report.²³⁹⁰

In May 2019, IOM confirmed dozens of Bangladeshi men in Vanuatu were victims of trafficking. The statement corroborated witness accounts from 101 migrants who said they were promised jobs, only to be tortured and enslaved.²³⁹¹ By July, 76 had been returned to Bangladesh with assistance from IOM and many of those who remained were there to provide evidence against the traffickers, although some others had refused to leave.²³⁹² Four Bangladeshi men were imprisoned on remand for committing trafficking offences and appeared in court in September 2019, pleading not guilty to the charges. They are continuing to be held without bail due to the risk of flight.²³⁹³

The government called on other countries in the Pacific to support the development of a common system to protect borders from the threat of trafficking.²³⁹⁴ In the 2019 UPR Cycle, Vanuatu submitted on the recent issues it faced relating to forced labour and human trafficking. While section 7 of the Employment Act prohibits forced labour, Vanuatu was committed to reviewing and developing specific legislation to better address human trafficking and forced labour.²³⁹⁵

Civil society and human rights defenders

NGOs are required to register with the Vanuatu Financial Service Commission under one of the service areas of charitable associations. However, each NGO must comply with the particular legal structure under which it falls,²³⁹⁶ such as charitable organisation, trade union or other categories.²³⁹⁷ There are numerous NGOs, CSOs and faith-based organisations working in many areas, including health, education, gender inequality and eliminating violence against women and children.²³⁹⁸ The Disability Promotion and Advocacy Association advocates for the rights and acceptance of PWDs.²³⁹⁹ The Vanuatu Association of NGOs in Port Villa maintains a database of members working in the different service areas.²⁴⁰⁰ Several international NGOs are also active. NGOs contribute to national reporting to UN treaty bodies, including the UPR, through alternative reports. In November 2019, Vanuatu's Daily Post reported that the Minister for Home Affairs stressed that the government will not tolerate foreign NGO's interfering with political issues of the country.²⁴⁰¹

²³⁹⁰ US Department of State 2019. Trafficking in persons report June 2019. Available at: <https://www.state.gov/wp-content/uploads/2019/06/2019-Trafficking-in-Persons-Report.pdf> (accessed 10 August 2019).

²³⁹¹ Reuters 2019. <https://www.reuters.com/article/us-bangladesh-vanuatu-trafficking/dozens-of-bangladesh-migrants-trafficked-to-vanuatu-stuck-in-limbo-idUSKCN1R61OV> (accessed 10 August 2019).

²³⁹² Radio New Zealand 2019. <https://www.rnz.co.nz/international/pacific-news/394056/dozens-of-trafficked-bangladeshis-leave-vanuatu> (accessed 10 August 2019).

²³⁹³ Radio New Zealand 2019. <https://www.rnz.co.nz/international/pacific-news/399675/bangladeshi-men-plead-not-guilty-to-human-trafficking-charges-in-vanuatu> (accessed 25 September 2019).

²³⁹⁴ Radio New Zealand 2019. <https://www.rnz.co.nz/international/pacific-news/394056/dozens-of-trafficked-bangladeshis-leave-vanuatu> (accessed 25 September 2019).

²³⁹⁵ A/HRC/41/10. Available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G19/099/76/PDF/G1909976.pdf?OpenElement>

²³⁹⁶ Commonwealth Network. http://www.commonwealthofnations.org/sectors-vanuatu/civil_society/national_ngos_civil_society/ (accessed 28 August 2019).

²³⁹⁷ Vanuatu Financial Services Commission. <https://www.vfsc.vu/> (accessed 9 October 2019).

²³⁹⁸ Commonwealth Network. http://www.commonwealthofnations.org/sectors-vanuatu/civil_society/national_ngos_civil_society (accessed 28 August 2019).

²³⁹⁹ Op cit.

²⁴⁰⁰ Op cit.

²⁴⁰¹ Daily Post 2019. https://dailypost.vu/news/minister-warns-ngos/article_6d8cb280-fc36-11e9-9d27-9fc6c21b3baa.html

Domestic law and human rights

Chapter 2 of the Constitution provides protection for fundamental rights of all individuals, including life, liberty, security of person, protection of the law, freedom from inhuman treatment and forced labour, freedom of conscience and worship, freedom of expression, freedom of assembly and association, freedom of movement, and protection for the privacy of the home and other property.²⁴⁰² The constitution also protects the enjoyment of fundamental rights by ensuring individuals' rights to apply directly to the Supreme Court for enforcing constitutional rights and freedoms in case of violations.²⁴⁰³

According to Vanuatu's State Law Office and the UPR state report, Vanuatu has enacted several laws for the protection of human rights, including: Employment (Amendment) Act No 25 of 2010; Municipalities (Amendment) Act No 11 of 2013; and Decentralization (Amendment) Act No 16 of 2013. Updated land rights laws have been recently enacted, including several constitutional amendments to the Land Reform Act and the Land Leases Act, and a new Customary Land Management Act.²⁴⁰⁴ Drafting is underway for several new laws relating to health and children, although the drafting process is faced with many hindrances, including understaffing.²⁴⁰⁵ Most of the necessary institutional structures are in place, but political changes have affected the availability of resources and the implementation of activities.

Human rights policies

Vanuatu's Priorities and Action Agenda 2006-2015 embodies the national vision for economic growth and provides the framework for development in Vanuatu.²⁴⁰⁶ This widely encompassing policy document provides for the betterment of the private sector and economic forces, but also focuses on improving the provision of basic services, improving social development and improving the health and education sectors.

Other policies recently developed include:

- National Child Protection Policy 2016-2026;
- Child Safeguarding Policy 2017-2020;
- National Disability Inclusive Development Policy 2018-2025;
- National Gender Equality Policy 2015-2019;
- Vanuatu Child Online Protection National Strategy Framework for the Republic of Vanuatu 2014-2021;
- Child Safeguarding Policy 2017;
- Revised Gender Equity in Education Policy 2018;
- Education Authority and School Registration Policy 2017;
- WASH in Schools – Call to Action 2016;
- Draft Education and Training Sector Analysis 2019-2030;
- Post-Secondary and Tertiary Education Policy;
- Health Sector Strategy 2017-2020;
- Vanuatu National Nutrition Policy & Strategic Plan 2016-2020;
- Vanuatu Non-Communicable Disease Policy and Strategic Plan 2016-2020;

2402 Constitution of Vanuatu. Available at: https://www.constituteproject.org/constitution/Vanuatu_2013.pdf?lang=en

2403 Vanuatu National Report to the 2nd Cycle of the Universal Periodic Review guarantees the enforcement of fundamental rights by stipulating the right to apply to the Supreme Court for enforcing Constitutional rights and freedoms in case of infringement.

2404 East Asia Forum 2015. <http://www.eastasiaforum.org/2015/03/14/vanuatu-embraces-landmark-reforms/> (accessed 29 August 2019).

2405 A/HRC/WG.6/32/VUT/1. Available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G18/333/69/PDF/G1833369.pdf?OpenElement>

2406 ADB. <http://www.adb.org/sites/default/files/linked-documents/cobp-van-2015-2017-sd.pdf>

- National Strategic Plan of HIV and STI 2017-2021;
- National Policy and Strategy for Healthy Islands 2018-2020;
- Healthy Vanuatu School Food Guidelines/Gudfala Kakae Policy 2017-2030;
- Vanuatu Reproductive, Maternal, New Born, Child and Adolescent Health Policy and Implementation Strategy 2017-2020;
- Draft Digital Health Strategy Information for Action 2019-2021;
- Comprehensive Violence against Women, Children, Vulnerable and Marginalized Groups Training Manual for Health Care Professionals and Participants Guide 2017; and
- Climate Change and Disaster Induced Displacement Policy and Strategic Plan 2016-2020 which is currently being implemented.²⁴⁰⁷

Right to life, liberty and security of person

The constitution protects the right to life, liberty and security of person.²⁴⁰⁸ Due process rights are guaranteed by law; however, police do not always uphold legal safeguards against arbitrary arrest and detention. Long periods of pre-trial detention are common, largely due to case backlogs in the courts.²⁴⁰⁹ In June 2019, the Ombudsman's Office facilitated a training workshop which provided practical skills on handling prisoner complaints, investigating systemic prisoner issues, conducting inspections and writing effective reports under the CAT Optional Protocol.²⁴¹⁰ Under the 2019 UPR, Vanuatu submitted that while torture is prohibited under the constitution and almost no cases of torture have been recorded by the police or corrections office, the government will consider revisiting its laws to ensure that legislation is adequate to criminalise torture. There have been several training sessions for both the police and the Corrections Department on CAT.²⁴¹¹

Equality and non-discrimination

Reports indicate that the most vulnerable groups are LGBTI people, women, children and PWDs.²⁴¹² Women are guaranteed legal equality, but in practice they continue to face societal discrimination that affects their access to employment and economic opportunity,²⁴¹³ along with access to political and decision-making opportunities. In response to Vanuatu's social and economic needs and corresponding with the Priorities and Action Agenda, the ILO in consultation with tripartite constituents, developed a Decent Work Country Programme for the promotion of satisfactory employment opportunities, particularly for young women and men, inclusive of PWD. New provisions will be included to prohibit discrimination and sexual harassment in the workplace and to eliminate child labour.²⁴¹⁴ In the 2019 UPR cycle, Vanuatu supported the recommendation to promote gender equality and protect the rights of women, children, PWDs and other vulnerable groups.²⁴¹⁵

Freedom of information (FOI)

In September 2019, the third and final Order of the Right to Information Act was signed by the Prime Minister. All government agencies and relevant private entities are now required by law to respond to information requests by members of the public in a timely manner, the information must be accurate and must be delivered to the

2407 A/HRC/WG.6/32/VUT/1. Note. 2362.

2408 PACLII. . http://www.paclii.org/vu/legis/consol_act/cotrov406/ (accessed 28 Aug 2019).

2409 Freedom House. Freedom in the World 2018. Note. 2317.

2410 International Ombudsman Institute 2019. <https://www.theioi.org/loi-news/current-news/ombudsman-provides-training-for-prison-inspections-in-vanuatu> (accessed 28 August 2019).

2411 A/HRC/WG.6/32/VUT/1. Note. 2362.

2412 A/HRC/WG.6/32/VUT/2. Available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G18/337/72/PDF/G1833772.pdf?OpenElement>

2413 Freedom House. Freedom in the World 2018. Note. 2317.

2414 The ILO in Vanuatu. https://www.ilo.org/wcms5/groups/public/-/-asia/-/-ro-bangkok/-/-ilo-suva/documents/publication/wcms_366547.pdf (accessed 28 August 2019).

2415 A/HRC/41/10. Available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G19/099/76/PDF/G1909976.pdf?OpenElement>

person making the request.²⁴¹⁶ The first Order was signed in 2017 to enforce public access to information in seven government agencies, and a further 52 government agencies were added in the second Order signed in 2018. The third and final order legally enforces public access to government-held information to all the other government agencies and relevant private entities that were not included in the first and second orders.²⁴¹⁷

Freedom of expression, association and peaceful assembly

The constitution provides for the freedoms of assembly and association. The freedom of expression is also provided for by the constitution, including for the press, and the government generally respects this right, although elected officials have sometimes been accused of threatening journalists for critical reporting.²⁴¹⁸ Publicly and privately owned newspapers publish in English and French. There are a small number of private broadcasters but the state-owned broadcaster has a dominant position in the sector. Foreign news services are also available and about a quarter of the population has access to the internet, mostly in urban areas.²⁴¹⁹ The government does not monitor personal communications and individuals are able to discuss politics and other matters without interference.²⁴²⁰ In November 2019, Vanuatu Trading Post Director's work permit was rejected by the government, for reasons he says were due to his "negative reporting."²⁴²¹

Public demonstrations are permitted and generally go without incident. Workers can join unions, bargain collectively and strike, although the right to strike is impaired to a degree by notification rules and the government's ability to bar such actions in essential services; violations can draw criminal penalties. The Vanuatu Council of Trade Unions is an affiliate of the ITU Confederation.²⁴²²

The constitution's preamble states that the republic is founded on Christian principles, although there is no official religion and adherents of other faiths can worship freely. Authorities do not enforce a legal registration requirement for religious groups.²⁴²³

Economic rights

Economic growth is being driven by a construction boom that is the result of major new infrastructure projects and disaster reconstruction since Cyclone Pam in 2015. The rural economy is primarily agrarian and operates at a subsistence level, aside from some copra, beef, cocoa and kava which are produced for export.²⁴²⁴ Key constraints to implementing development assistance include Vanuatu's remoteness, small market size, underdeveloped institutions and limited absorptive capacity.

UN Women's Markets for Change Project, funded by the Australian and Canadian governments, has seen an increase in the number of women market vendors joining formal market vendors associations. Three new associations have been set up in the past five years (Silae Vanua, Northern Islands and Marobe Tanvasoko Market Vendors' Associations), with women occupying 100% of the leadership roles.²⁴²⁵ The objective of Markets for Change is the economic empowerment of women who sell food products at local markets.

The CEDAW Committee in 2016 noted that most women are self-employed or employed in the informal sector, without appropriate legal protection or social security coverage, and recommended Vanuatu take actions to

2416 Government of Vanuatu 2019. <https://www.gov.vu/en/public-information/933-prime-minister-signs-final-right-to-information-act-enforcement-order> (accessed 25 September 2019).

2417 Op cit.

2418 Freedom House. Freedom in the World 2018. Note. 2317.

2419 Op cit.

2420 Ibid.

2421 Asia Pacific Report 2019. <https://asiapacificreport.nz/2019/11/09/vanuatu-daily-posts-dan-mcgarry-gutted-by-vanuatu-governments-action-to-reject-his-work-permit/>

2422 Freedom House. Freedom in the World 2018. Note. 2317.

2423 Ibid.

2424 Asian Development Bank Member Fact Sheet July 2019. Available at: <https://www.adb.org/sites/default/files/publication/27812/van-2018.pdf> (accessed 28 August 2019).

2425 UN Women 2019. Beijing +25 National Review Report Government of Vanuatu. Available at: <https://www.unwomen.org/-/media/headquarters/attachments/sections/csw/64/national-reviews/vanuatu.pdf?la=en&vs=4050>

address women's unemployment and promote their access to employment in the formal sector with adequate social security coverage.²⁴²⁶ The Vanuatu government has not yet acceded to ICESCR but committed to doing so in the 2019 UPR Cycle.²⁴²⁷

In 2017, the government endorsed, through the Council of Ministers, a Gender Responsive Budget.²⁴²⁸

Right to health and education

Health sector development is guided by an overarching NSDP 2016-2030.²⁴²⁹ Based on the universal health coverage index, major challenges remain in infectious disease and NCD prevention and control, particularly in the prevalence of raised blood pressure and access to improved sanitation.²⁴³⁰ The Vanuatu Health Sector Strategy 2017-2020 sought to guide the development of Vanuatu's health sector until 2020, following targets set out in Vanuatu's NSDP 2016-2030. The strategy was developed by the Ministry of Health in consultation with a wide range of stakeholders, and sets out Vanuatu's health sector objectives, guiding principles, challenges and intended outcomes, and actions going forward.²⁴³¹

Child mortality rates in Vanuatu have been declining since the early 1990s, and are on track to meet international child mortality reduction goals by 2030.²⁴³² The maternal mortality ratio stands at 78 deaths per 100,000 live births, which is above the SDGs target for 2030. Even though Vanuatu has reported a relatively low number of HIV infections, high rates of sexually transmitted infections indicate that the underlying behavioural risks for HIV transmission are high.²⁴³³

Education in Vanuatu is accessible by most, except for a small percentage of children in very remote locations.²⁴³⁴ The absence of free, compulsory early childhood education is one of the major barriers to children's enrolment in schools in Vanuatu, in addition to a lack of value placed on education by parents. Age-inappropriate learning environments are a challenge, not only due to poor infrastructure, but also because of mixed-age classrooms, particularly in rural and remote areas.²⁴³⁵

Women and children's rights

Women's representation in Parliament is among the lowest in the world; currently there are no women in Vanuatu's National Parliament.²⁴³⁶ Sociocultural norms and traditional perceptions around gender roles act as barriers to the realisation of children's and women's rights, including through permitting violence against women and girls, and discouraging the reporting of such violence.²⁴³⁷ Laws that protect women include the Family Protection Act, the Penal Code 1981 and amendments, the Employment Act, Matrimonial Clauses, Maintenance of Children, Control of Marriage and Divorce Bill.²⁴³⁸ The Department of Women's Affairs has formulated key gender policies, having given due consideration to CEDAW and the CRPD.

²⁴²⁶ CEDAW/C/VUT/CO/4-5. Available at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fc%2fVUT%2fCO%2f4-5&Lang=en.

²⁴²⁷ A/HRC/WG.6/32/VUT/1. Note. 2362.

²⁴²⁸ Ibid.

²⁴²⁹ 2428 WHO, UHC and SDG Country Profile 2018, Vanuatu. Available at: <https://iris.wpro.who.int/bitstream/handle/10665.1/14065/WPR-2018-DHS-026-vut-eng.pdf> (accessed 25 August 2019).

²⁴³⁰ Ibid.

²⁴³¹ Australian Government Department of Foreign Affairs and Trade 2017. <https://dfat.gov.au/about-us/publications/Pages/vanuatu-health-sector-strategy-2017-2020.aspx> (accessed 25/9/2019).

²⁴³² UNICEF Pacific 2017. Situation analysis of children in Vanuatu. Note. 2327.

²⁴³³ Ibid.

²⁴³⁴ Nations Encyclopaedia. <http://www.nationsencyclopedia.com/Asia-and-Oceania/Vanuatu-EDUCATION.html> (accessed 25 August 2019).

²⁴³⁵ UNICEF 2017. Situation analysis of children in Vanuatu. Note. 2327.

²⁴³⁶ SPC National Minimum Development Indicator Database. <http://www.spc.int/nmdi/> (accessed 25 September 2019).

²⁴³⁷ Ibid.

²⁴³⁸ Pacific Islands Legal Information Institute. <http://www.paclii.org/vu/indices/legis> (accessed 28 August 2019).

These include the Vanuatu National Gender Equality Policy 2015-2019; National Disability Inclusive Development Policy 2018-2025; Vanuatu Child Online Protection National Strategy Framework 2014-2021; Vanuatu National Child Protection Policy 2016-2026; and the Strategy for the Justice and Community Services Sector 2018-2021.²⁴³⁹

Corporal punishment is prohibited in schools by Article 38 of the Education Act 2001; however, it remains a serious issue in the home. According to a UNICEF Baseline Report on Vanuatu, corporal punishment is widespread with 51% of caregivers viewing physical violence as necessary to raising children. At 30%, levels of sexual abuse of girls aged below 15 are amongst the highest in the Pacific. The potential for grooming, fraud, cyber bullying and online child pornography is significant, as per research undertaken worldwide around internet-related child abuse. The welfare, protection and best interests of children are often not given adequate consideration, including in cases of child abuse.²⁴⁴⁰ The Vanuatu National Child Protection Policy 2016-2026 is the first to set a strategic and high level direction for child protection and for the development and strengthening of the child protection system in the country.²⁴⁴¹

In the 2019 UPR cycle, Vanuatu reported that the Ministry of Education had added a new curriculum focusing on ratification of international human rights treaties, gender equity, inclusive education, climate change, disaster risk reduction, water and sanitation, understanding the working of the judiciary, child rights, family life education, health and physical education.²⁴⁴²

Rights of persons with disabilities (PWDs)

In its initial CRPD report, Vanuatu reported that the National Disability Inclusive Development Policy 2018-2025 had been prepared after a nationwide consultation and reflected the contributions of PWDs; its implementation was coordinated by the Ministry of Justice and Community Services Sector.²⁴⁴³ The policy provides the government's strategic interventions towards realising the rights of PWDs.²⁴⁴⁴ Vanuatu further reported that the Mental Health Policy and Strategic Plan specifies actions to improve mental health services and progresses the rights of persons with mental illness across Vanuatu. The National Community Based Rehabilitation Action Plan 2014-2024 is in place, while inclusion and equity were the broad aspirations of the NSDP, with goals organised around the three main pillars of society, environment and economy. The government and its international partners frequently work with CSOs that actively support disability-inclusive development, such as the Vanuatu Disability Promotion and Advocacy Association, the Vanuatu Society for People with Disabilities, the Rainbow Theatre and the Sanma Frangipani Association.²⁴⁴⁵

The CRPD Committee in 2019 expressed concern that PWDs, particularly those with intellectual or psychosocial disabilities, were denied their legal capacity on the grounds of disability in law and in practice. Amongst the recommendations was the establishment of a monitoring mechanism to ensure that persons with psychosocial or intellectual disabilities are not subjected to arbitrary and forced treatment, particularly treatment that results in confinement.²⁴⁴⁶

²⁴³⁹ A/HRC/WG.6/32/VUT/1. Note. 2362.

²⁴⁴⁰ UNICEF Pacific (2017). Situation analysis of children in Vanuatu. Note 2327.

²⁴⁴¹ Ministry of Justice and Community Services. Strategy for the Justice and Community Services Sector 2018-2021. Available at: https://mjcs.gov.vu/images/reporting/JCSSS_2018-2021_-_28.03.18.pdf

²⁴⁴² A/HRC/WG.6/32/VUT/1. Note. 2362.

²⁴⁴³ United Nations Human Rights Committee. <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24395&LangID=E> (accessed 28 August 2019).

²⁴⁴⁴ A/HRC/WG.6/32/VUT/1. Note. 2362.

²⁴⁴⁵ Ibid.

²⁴⁴⁶ CRPD/C/VUT/CO/1. Available at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRPD%2fC%2fVUT%2fCO%2f1&Lang=en

Climate Justice

Vanuatu faces an increasing risk of extreme weather and natural disasters due to its location within the Pacific Ring of Fire and to climate change-related weather conditions. A key finding in a 2017 UNICEF Situation Analysis identified that climate change and disaster risks have a considerable impact on all sectors in relation to the realisation of children's and women's rights.²⁴⁴⁷

Vanuatu has been a vocal Small Island Developing State, raising the threat of climate change to humanity and to sustainable development. The National Policy on Climate Change and Disaster Risk Reduction 2016-2030 provides the framework for ensuring that communities, the environment and the economy are resilient to the impacts of climate change and disaster risks. The policy ensures that risks are identified, assessed, reduced and managed.²⁴⁴⁸

While in New York at the 2019 UN Climate Summit, Vanuatu representatives planned to meet with a team of legal experts willing to help the government sue fossil fuel companies over their contribution to climate change in order to obtain compensation for climate loss and damage through events like Cyclone Pam in 2015.²⁴⁴⁹

2447 UNICEF Pacific 2017. Situation analysis of children in Vanuatu. Available at: https://www.unicef.org/pacificislands/15_Situation_Analysis_of_Children_Vanuatu.pdf

2448 A/HRC/WG.6/32/VUT/1. Note. 2362.

2449 ABC Pacific Beat 2019. <https://www.abc.net.au/radio-australia/programs/pacificbeat/vanuatu-government-assembling-climate-change-litigation-team/11537266> (accessed 26 September 2019).



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