

# THE ROLE OF INTERNATIONAL NON-GOVERNMENTAL ORGANISATIONS IN THE UNIVERSAL PERIODIC REVIEW OF PACIFIC ISLAND STATES: CAN ‘DOING GOOD’ BE DONE BETTER?

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*This article explores the benefits and challenges of involvement by international non-governmental organisations (‘NGOs’) in the Universal Periodic Review (‘UPR’) of 12 Pacific Island states before the United Nations Human Rights Council. An interesting feature of NGO involvement in the UPR for Pacific states is that, in most cases, the number of submissions from international NGOs exceeds the number of submissions from national Pacific NGOs. International NGOs therefore have a significant input into the UPR for Pacific states. This article queries whether the dominance of international NGOs has a distorting effect, such that Pacific perspectives on current human rights challenges are not being heard in Geneva. The article considers what steps might be taken so that international NGOs ‘do good better’ in order to contribute to the ultimate goal of the UPR — improving the human rights situation on the ground in the Pacific.*

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## I INTRODUCTION

Pacific Island states have traditionally had minimal engagement with United Nations human rights mechanisms. They have a comparatively low rate of ratification of the core human rights treaties and, where treaties have been ratified, states are often overdue with their periodic reports. Most Pacific states

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do not maintain permanent diplomatic representation in Geneva. In this context, the active and open engagement of Pacific states in the UN Human Rights Council's ('HRC') Universal Periodic Review ('UPR') is a welcome development. In addition, a number of national non-governmental organisations ('NGOs') based in the Pacific have taken the opportunity to make stakeholder submissions for the review of their state. For many, this marks their first ever involvement with a UN human rights mechanism. Again, this is a very welcome development.

This article considers the input of international NGOs into the 18 reviews to date of 12 Pacific Island states. The states reviewed are the island members of the Pacific Islands Forum who are also UN members.<sup>1</sup> These are (in order of their review) Tonga, Tuvalu, Vanuatu, Fiji, Kiribati, Marshall Islands, Federated States of Micronesia ('FSM'), Nauru, Palau, Solomon Islands, Samoa and Papua New Guinea ('PNG'). All states have been reviewed once during the first UPR cycle, and the first six have had their second review, with Marshall Islands reviewed most recently in May 2015. To date, the number of stakeholder submissions has ranged from three on Tonga and Tuvalu II to 17 on Fiji. An interesting feature of the stakeholder submissions is that, for most states, the number of submissions from international NGOs exceeded the number of national NGO submissions. International NGOs therefore have a significant input into the Office of the High Commissioner for Human Rights' ('OHCHR') stakeholder summary for Pacific states and thus into the UPR itself.

This article queries whether the involvement of international NGOs has a distorting effect such that perspectives of Pacific civil society on current human rights challenges are not being heard in Geneva. The article explores the undoubted benefits of NGO involvement in the UPR of Pacific states, and considers what steps might be taken to facilitate a deeper and more productive relationship between national Pacific NGOs and international NGOs in order to better contribute to the ultimate goal of the UPR — 'improvement of the human rights situation on the ground'<sup>2</sup> in the Pacific.

Part II of this article provides an overview of human rights and the UPR in the Pacific. Part III examines the role envisaged for NGOs in the UPR. Part IV outlines the actual input of NGOs into the UPR of Pacific states. Part V analyses the benefits of participation by these international NGOs and considers some of the challenges. Part VI considers how international NGOs might improve their work in the Pacific; how they might 'do good better'. The article concludes that while the involvement of international NGOs in the UPR of Pacific states is useful in a number of respects, it also brings with it the risk of diluting the Pacific civil society voice in Geneva and perhaps even contributing to a distorted human rights 'picture' of a particular state. Some suggestions are made as to

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<sup>1</sup> Australia and New Zealand are also members of the Pacific Islands Forum ('PIF'). However, they are excluded from the scope of this paper because they are deeply engaged with United Nations human rights mechanisms and their Universal Periodic Review ('UPR') experience was quite different. The Cook Islands and Niue are also members of PIF in their own right but because they are not UN members, they were not reviewed via the UPR.

<sup>2</sup> Human Rights Council, *Institution-Building of the United Nations Human Rights Council*, GA Res 5/1, UN GAOR, 5<sup>th</sup> sess, 9<sup>th</sup> mtg, UN Doc A/HRC/RES/5/1 (18 June 2007) annex ('*United Nations Human Rights Council: Institution-Building*') para 4(a).

practical steps which could be taken by international NGOs to engage with Pacific NGOs in their UPR advocacy.

## II THE UNIVERSAL PERIODIC REVIEW AND THE PACIFIC: AN OVERVIEW

The UPR, first initiated in 2008, involves a review by the HRC of the human rights records of all 193 UN member states once every four and a half years. The first full cycle of the UPR was completed in 2012 and the second cycle is currently underway. While assessments of the success of the UPR mechanism have varied, on the whole it has been regarded as a generally positive development.<sup>3</sup> This has certainly been the experience in the Pacific, with the UPR generating an enthusiasm and momentum for engagement with international human rights machinery which has been largely absent in relation to the treaty mechanisms.<sup>4</sup> In this Part, the current human rights challenges in the Pacific are outlined as well as the strengths and limitations of the UPR process in the Pacific context in order to set the scene for a closer examination of the role of international NGOs in Pacific states' UPR.<sup>5</sup>

### A *Human Rights Challenges in the Pacific*

The Pacific is not a region known for gross violations of human rights. The most glaring human rights issue in recent years was the 2006 coup d'état in Fiji, which resulted in not only the loss of democracy but also attendant human rights violations. There have also been periods of civil unrest in other states including PNG (2009 and 2011), Solomon Islands (1998–2003, 2007), Tonga (2006) and Vanuatu (2007). An 'imported' and deeply concerning current human rights

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<sup>3</sup> For example, see Alex Conte, 'Reflections and Challenges: Entering into the Second Cycle of the Universal Periodic Review Mechanism' (2011) 9 *New Zealand Yearbook of International Law* 187; Elvira Domínguez-Redondo, 'The Universal Periodic Review — Is There Life beyond Naming and Shaming in Human Rights Implementation?' [2012] *New Zealand Law Review* 673; Rosa Freedman, 'New Mechanisms of the UN Human Rights Council' (2011) 29 *Netherlands Quarterly of Human Rights* 289; Edward McMahon and Marta Ascherio, 'A Step ahead in Promoting Human Rights? The Universal Periodic Review of the UN Human Rights Council' (2012) 18 *Global Governance* 231; Constance de la Vega and Tamara N Lewis, 'Peer Review in the Mix: How the UPR Transforms Human Rights Discourse' in M Cherif Bassiouni and William A Schabas (eds), *New Challenges for the UN Human Rights Machinery: What Future for the UN Treaty Body System and the Human Rights Council Procedures?* (Intersentia, 2011) 353; Hilary Charlesworth and Emma Larking (eds), *Human Rights and the Universal Periodic Review: Rituals and Ritualism* (Cambridge University Press, 2014). For a contrasting view, see Christian Tomuschat, 'Universal Periodic Review: A New System of International Law with Specific Ground Rules?' in Ulrich Fastenrath et al (eds), *From Bilateralism to Community Interest: Essays in Honour of Judge Bruno Simma* (Oxford University Press, 2011) 609.

<sup>4</sup> For other commentary on the Pacific experience with the UPR, see Natalie Baird, 'The Universal Periodic Review as a Legacy of the *Universal Declaration of Human Rights*: Potential Pacific Impact' in Roderic Alley (ed), *Celebrating Human Rights: Sixty Years of the Universal Declaration: Proceedings of the Wellington Conference* (New Zealand Institute of International Affairs and New Zealand Human Rights Commission, 2009) 53; Rhona K M Smith, 'The Pacific Island States: Themes Emerging from the United Nations Human Rights Council's Inaugural Universal Periodic Review?' (2012) 13 *Melbourne Journal of International Law* 569.

<sup>5</sup> This summary is drawn in part from: Natalie Baird, 'The Universal Periodic Review: Building a Bridge between the Pacific and Geneva?' in Hilary Charlesworth and Emma Larking (eds), *Human Rights and the Universal Periodic Review: Rituals and Ritualism* (Cambridge University Press, 2014) 187.

issue is the detention of Australia's asylum seekers in Nauru and on Manus Island in PNG.

A major current human rights concern is the adverse impact of climate change. Other common issues are the right to equality and non-discrimination for women. A particular issue is the high levels of violence against women and children and the very low levels of women in leadership positions. A feature of many states is the tension that sometimes arises between traditional custom and human rights.<sup>6</sup> Traditional patriarchal structures sometimes have a negative impact on the rights of women, youths and children. For example, in some states women are unable to inherit title to land. In others, there are conflicts between the freedoms of movement and religion on the one hand and the authority of traditional leaders and the custom of banishment on the other. Sometimes freedom of expression conflicts with notions of respect for traditional leaders. Another issue receiving increasing attention in the region is the treatment of people with disabilities.

Most states also face very real and practical challenges in terms of lack of resources to protect and promote human rights. Indeed, many human rights issues in the Pacific can be traced to a lack of financial and human resources rather than deliberate violation. There are numerous other competing priorities for scarce state resources. Most states do not have a fully-fledged national human rights institution; some do not even have a national focal point for human rights. Treaty ratification is comparatively low, with many states yet to ratify the *International Covenant on Civil and Political Rights*<sup>7</sup> and the *International Covenant on Economic, Social and Cultural Rights*.<sup>8</sup> Indeed, the challenges associated with simply engaging with treaty mechanisms and complying with onerous reporting obligations, let alone the more important task of implementing those obligations, may outweigh the benefits.<sup>9</sup>

### B *Strengths of the UPR Process*

A significant strength of the UPR process in the Pacific has been that states and NGOs have — for the most part — engaged enthusiastically with the new mechanism. With the exception of Fiji, whose experience as a post-coup state was quite different, Pacific states have engaged in the process in good faith. There is a high degree of honesty, openness and self-reflection evident in the national reports and the interactive dialogue. With the encouragement of the triumvirate of the OHCHR's Pacific Office ('OHCHR Pacific'), the Pacific Regional Rights Resource Team ('RRRT'), based at the Secretariat of the Pacific Community and the Pacific Islands Forum Secretariat ('PIFS'), Pacific states have approached the UPR as an opportunity to 'tell the Pacific's human rights

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<sup>6</sup> See New Zealand Law Commission, *Converging Currents: Custom and Human Rights in the Pacific*, Study Paper No 17 (2006).

<sup>7</sup> *International Covenant on Civil and Political Rights*, opened for signature 19 December 1966, 999 UNTS 171 (entered into force 23 March 1976).

<sup>8</sup> *International Covenant on Economic, Social and Cultural Rights*, opened for signature 16 December 1966, 993 UNTS 3 (entered into force 3 January 1976).

<sup>9</sup> See Natalie Baird, 'To Ratify or Not to Ratify? An Assessment of the Case for Ratification of International Human Rights Treaties in the Pacific' (2011) 12 *Melbourne Journal of International Law* 249.

stories to the world'.<sup>10</sup> A particular success in this regard is the focus given to the impact of climate change on human rights in the Pacific.

In terms of NGO engagement in Pacific states' UPR, three points are worth noting at this stage. First, despite the geographical challenges, the Pacific experience confirms the accessibility of the UPR process to national grassroots organisations. Secondly, for most of the 18 Pacific reviews, again with the exception of Fiji and Fiji II, consultation between the government and civil society was robust and productive. Before each state's review, workshops involving both government officials and civil society representatives were facilitated by OHCHR Pacific, RRRT and PIFS. These were especially instrumental in supporting consultation on the national report and paving the way for national NGO reports. Thirdly, and as noted above, both national and international NGOs made stakeholder submissions on Pacific states' reviews. In terms of bare numbers, these ranged from three stakeholder submissions on Tonga and Tuvalu II to 17 stakeholder submissions on Fiji. For most states, there were more submissions from international NGOs than national NGOs.

A number of features of the UPR process appear well-suited to Pacific NGOs and states. In particular, the UPR is not to be 'overly burdensome'<sup>11</sup> and should not be 'overly long'.<sup>12</sup> It should also 'take into account the level of development and specificities of countries'.<sup>13</sup> The requirement that the interactive dialogue be 'conducted in an objective, transparent, non-selective, constructive, non-confrontational and non-politicized manner'<sup>14</sup> rather than 'naming and shaming' also appears beneficial to Pacific states.<sup>15</sup> It enables limitations and shortcomings to be openly acknowledged, without fear of harsh judgment. As noted by RRRT, the UPR 'is a supportive process, conducted much like the Pacific way, in the form of a dialogue or an exchange of views'.<sup>16</sup> More controversially, but no less important, the emphasis on interactive dialogue enables interesting exchanges on the meaning of rights in the local context. A number of Pacific states thus acknowledged tensions between traditional customs and human rights, while also emphasising the commonality between the underlying values of custom and human rights.

The outcome of the UPR, namely a clear list of recommendations to which the state under review ('SuR') has agreed, is also of particular use in the Pacific. Most Pacific states do not have a national human rights institution and so the list of recommendations agreed to by the SuR therefore emerges from the UPR as a de facto national human rights action plan. It can be used by the state itself to plan initiatives for the next four and a half years, by the international community

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<sup>10</sup> This is a reference to the title of: Secretariat of the Pacific Community, 'Telling Pacific Human Rights Stories to the World: A Road Map for Reporting before the UN Human Rights Council's Universal Periodic Review Process' (Report, 2010) ('*Pacific Human Rights Stories*').

<sup>11</sup> *United Nations Human Rights Council: Institution-Building*, UN Doc A/HRC/RES/5/1, annex para 3(h).

<sup>12</sup> *Ibid* para 3(i).

<sup>13</sup> *Ibid* para 3(l).

<sup>14</sup> *Ibid* para 3(g).

<sup>15</sup> For the benefits of the UPR approach, see generally Domínguez-Redondo, above n 3.

<sup>16</sup> *Pacific Human Rights Stories*, above n 10, 10.

to identify areas for technical assistance and by civil society to engage in advocacy.

There are some promising signs of implementation of UPR recommendations. A positive early sign is the 10 standing invitations to the UN special procedures issued by Fiji, the Marshall Islands, Nauru, Palau, PNG, Samoa, Solomon Islands, Tonga, Tuvalu and Vanuatu.<sup>17</sup> In 2012, three special procedures also undertook country visits in the Pacific, with the Special Rapporteur on Toxic Waste visiting the Marshall Islands, the Special Rapporteur on Water and Sanitation visiting Kiribati and Tuvalu and the Special Rapporteur on Violence against Women visiting PNG and Solomon Islands. In 2014, the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions visited PNG.

Another positive sign is the number of treaty ratifications since states have had their first review, with all states except Tonga taking some sort of positive treaty action. Fiji has signed the *Convention on the Rights of Persons with Disabilities* ('CRPD')<sup>18</sup> and its *Optional Protocol*.<sup>19</sup> Kiribati has ratified the *CRPD* and the *Convention against Corruption*.<sup>20</sup> The Marshall Islands has ratified the *Convention against Corruption* and acceded to the *CRPD*. Solomon Islands has ratified the *Convention against Corruption*. FSM has also ratified the *Convention against Corruption* and the *Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography*<sup>21</sup> and signed the *CRPD*. Nauru has ratified the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* ('CAT'),<sup>22</sup> the *CRPD*, the *Convention Relating to the Status of Refugees*<sup>23</sup> and the *Convention against Corruption*. Nauru has also acceded to the *Convention on the Elimination of All Forms of Discrimination against Women* ('CEDAW'),<sup>24</sup> and the *Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*.<sup>25</sup> In 2011, Palau, which had then only ratified the *Convention on the Rights of the Child*, signed the outstanding eight core human rights treaties and followed this up with ratification of *CRPD* and its *Optional Protocol* in 2013. PNG and Tuvalu have

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<sup>17</sup> See Office of the High Commissioner for Human Rights, *Standing Invitations* (1 June 2015) <<https://perma.cc/96QB-RLCV?type=source>>.

<sup>18</sup> *Convention on the Rights of Persons with Disabilities*, opened for signature 30 March 2007, 2515 UNTS 3 (entered into force 3 May 2008).

<sup>19</sup> *Optional Protocol to the Convention on the Rights of Persons with Disabilities*, opened for signature 30 March 2007, 2518 UNTS 283 (entered into force 3 May 2008).

<sup>20</sup> *United Nations Convention against Corruption*, opened for signature 9 December 2003, 2349 UNTS 41 (entered into force 14 December 2005).

<sup>21</sup> *Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography*, opened for signature 25 May 2000, 2171 UNTS 227 (entered into force 18 January 2002).

<sup>22</sup> *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, opened for signature 10 December 1984, 1465 UNTS 85 (entered into force 26 June 1987).

<sup>23</sup> *Convention relating to the Status of Refugees*, opened for signature 28 July 1951, 189 UNTS 137 (entered into force 22 April 1954).

<sup>24</sup> *Convention on the Elimination of All Forms of Discrimination against Women*, opened for signature 1 March 1980, 1249 UNTS 13 (entered into force 3 September 1981).

<sup>25</sup> *Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, opened for signature 4 February 2003, 2375 UNTS 237 (entered into force 22 June 2006).

ratified the *CRPD*. Samoa has signed the *CRPD*, and in 2012, became the first Pacific state to ratify the *International Convention for the Protection of All Persons from Enforced Disappearance*.<sup>26</sup> Vanuatu has ratified the *CAT*, the *Convention against Corruption* and the *Rome Statute of the International Criminal Court*.<sup>27</sup>

In terms of engagement with treaty bodies, a number of overdue reports have been submitted. Fiji has submitted its 18<sup>th</sup> to 20<sup>th</sup> combined report to the Committee on the Elimination of Racial Discrimination and its second to fourth combined report to the Committee on the Rights of the Child ('CRC'). Samoa has submitted its second to fourth combined report to the CRC. Solomon Islands has submitted its first to third combined report to the Committee on the Elimination of Discrimination against Women ('CEDAW Committee'). Tuvalu has completed its Common Core Document, submitted its first report to the CRC and its third to fourth combined report to the CEDAW Committee. Vanuatu has submitted its fourth to fifth combined report to the CEDAW Committee and its first report to the Committee on the Rights of Persons with Disabilities.

Beyond this openness to further engagement with UN human rights machinery, initiatives which will undoubtedly make a difference to human rights on the ground include Tonga's constitutional and political reforms of 2010, which have resulted in a more democratic form of government, the 2014 return to democracy in Fiji, the establishment of national human rights bodies in Samoa and Vanuatu and the enactment of the family violence legislation in Fiji, Kiribati, PNG, Samoa, Solomon Islands, Tonga and Tuvalu. While strict causation between these developments and the UPR cannot be established, the UPR is likely to have been at least an additional prompt for reform.

### C *Limitations of the UPR Process*

While the Pacific experience with the UPR process to date has been primarily positive, the UPR does have some limitations as a mechanism for positive human rights change. First and foremost, while the UPR has been beneficial in deepening Pacific engagement with the international human rights machinery, the reality is that Geneva is still a long way away. Until recently, no Pacific state had permanent diplomatic representation in Geneva. This limits the ability of Pacific states to participate in the reviews of other states and to benefit from informal opportunities in and around Geneva. Similar concerns arise for Pacific NGOs. To date, only two Pacific side events have been held in Geneva, with only a handful of civil society representatives travelling from the Pacific for the UPR. Since April 2012, the international NGO UPR Info has held pre-session meetings in Geneva for NGOs and National Human Rights Institutions ('NHRIs') to present to interested states before the formal UPR interactive dialogue. Encouragingly, pre-session meetings have been held for Fiji II, Kiribati II and Tuvalu II, but only in the case of Fiji did national NGOs attend.<sup>28</sup>

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<sup>26</sup> *International Convention for the Protection of All Persons from Enforced Disappearance*, opened for signature 20 December 2006, 2716 UNTS 3 (entered into force 23 December 2010).

<sup>27</sup> *Rome Statute of the International Criminal Court*, opened for signature 17 July 1998, 2187 UNTS 90 (entered into force 1 July 2002).

<sup>28</sup> Email from Roland Chauville (UPR Info) to Natalie Baird, 30 January 2015.

A second limitation of the process is that one is sometimes left with a sense that the Pacific reality is not well understood in Geneva. For example, during Tuvalu's interactive dialogue, a northern European country asked Tuvalu to explain why it condoned large-scale torture in Tuvalu. This caused much amusement to the Tuvaluan delegation given the absence of torture in Tuvalu (and the significant freedom of movement accorded to Tuvaluan prisoners) but it does highlight the apparent lack of knowledge of the Pacific in Geneva.<sup>29</sup> Of deeper concern are the oft-repeated recommendations from other states that Pacific states 'ratify all outstanding [human rights] treaties' in the face of clear statements by the Pacific SuR that it has limited resources and capacity to do so.<sup>30</sup> These types of exchanges suggest a shallow and rhetorical engagement by other states with the human rights concerns of Pacific states and a failure to appreciate the very real challenges which they face. Such rhetorical and ritualistic behaviour arises not only in the Pacific, or indeed only under the auspices of the UPR mechanism, but has been identified as a feature of international human rights mechanisms generally.<sup>31</sup>

A final limitation of the UPR is the risk that the full human rights story of a Pacific state may not be heard in Geneva. There are a number of reasons for this. The agenda for the UPR is very much set by the self-reporting of the SuR in its national report. Unlike many other states, however, Pacific states participate in the UPR as relative unknowns. They have a low international profile and limited diplomatic engagement with other states. States involved in the interactive dialogue of Pacific states are thus unlikely to have their own ready store of information on which to base their interventions. This is one reason why the role of NGOs in Pacific states' UPR is particularly important. The stakeholder summary, prepared by OHCHR from the stakeholder submissions, is important to counter the national report and arm other states with information for the interactive dialogue. However, with the dominance of international NGOs making submissions on Pacific states, there is a risk that the stakeholder summary may present a distorted view of human rights challenges on the ground. It is the operation of this aspect of the UPR in the Pacific that is put under closer examination in this article.

### III THE ROLE OF NGOS IN THE UPR

Before looking more closely at the role of NGOs in the UPR process, a note on terminology may be helpful. For the purposes of this article, an NGO is defined as a 'not-for-profit, voluntary citizens' group, which is organized on a local, national or international level to address issues in support of the public good'.<sup>32</sup> This article seeks to draw a distinction between 'international NGOs' and 'national NGOs'. 'International NGOs' are regarded as those whose activities involve at least two states while 'national NGOs' are those whose

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<sup>29</sup> *Pacific Human Rights Stories*, above n 10, 48.

<sup>30</sup> See Baird, 'To Ratify or not to Ratify?', above n 9, 23–4.

<sup>31</sup> See Charlesworth and Larking (eds), above n 3.

<sup>32</sup> Adam McBeth, Justine Nolan and Simon Rice, *The International Law of Human Rights* (Oxford University Press, 2011) 318.

activities involve only one state.<sup>33</sup> However, it is important to keep in mind that there is not always a clear-cut distinction between a national NGO and an international NGO. For example, national NGOs may turn to international NGOs when they are unable to ‘achieve accountability for human rights violations through domestic means of redress’.<sup>34</sup> International NGOs may partner with national NGOs for the purposes of fact-finding and on the ground research. Increasingly, the distinction between international and national NGOs is — appropriately — blurred. This point will be revisited later in this article.

NGOs are formally recognised in art 71 of the *Charter of the United Nations* which provides that ‘[t]he Economic and Social Council may make suitable arrangements for consultation with non-governmental organizations which are concerned with matters within its competence’. These arrangements, which are a major gateway for NGO involvement in UN processes, are known as ‘Economic and Social Council (‘ECOSOC’) consultative status’. Over 4000 organisations have ECOSOC consultative status,<sup>35</sup> but the North–South balance is slightly skewed with only 34 per cent having their headquarters in the Global South.<sup>36</sup> Although the HRC is a subsidiary body of the General Assembly rather than ECOSOC, it continues to use ECOSOC consultative status as a requirement for NGO participation in some of its activities.<sup>37</sup> There are, however, opportunities for NGO input into HRC processes that do not require ECOSOC consultative status. In particular, in terms of the focus of this article, the key opportunity for NGO involvement in the UPR — the submission of a stakeholder report — is available to all NGOs, including those who do not hold ECOSOC consultative status.

#### A *NGO Input into the UPR Process*

The institution-building package of the HRC describes one of the principles of the UPR as being to ‘[e]nsure the participation of all relevant stakeholders’.<sup>38</sup> Stakeholders are said to include NGOs, NHRIs, human rights defenders, academic institutions and research institutes, regional organisations and civil

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<sup>33</sup> This demarcation is drawn from art 1(c) of the *European Convention on the Recognition of the Legal Personality of International Non-Governmental Organisations*, which essentially defines international non-governmental organisations (‘NGOs’) as those which ‘carry on their activities with effect in at least two States’: *European Convention on the Recognition of the Legal Personality of International Non-Governmental Organisations*, opened for signature 24 April 1986, ETS No 124 (entered into force 1 January 1991).

<sup>34</sup> Michael H Posner and Candy Whittome, ‘The Status of Human Rights NGOs’ (1994) 25 *Columbia Human Rights Law Review* 269, 274.

<sup>35</sup> As at 1 September 2014, the webpage of the NGO branch of the UN Department of Economic and Social Affairs lists 4045 organisations with consultative status. See United Nations Department of Economic and Social Affairs, *Basic Facts about ECOSOC Status NGO Branch* <<http://perma.cc/VQ4R-FFRL>>.

<sup>36</sup> United Nations Department of Economic and Social Affairs, *Number of NGOs in Consultative Status with the Council by Region* NGO Branch <<http://perma.cc/YP56-69A9>>.

<sup>37</sup> *Human Rights Council*, GA Res 60/251, UN GAOR, 60<sup>th</sup> sess, 72<sup>nd</sup> plen mtg, Agenda Items 46 and 120, Supp No 49, UN Doc A/RES/60/251 (3 April 2006) para 11.

<sup>38</sup> *United Nations Human Rights Council: Institution-Building*, UN Doc A/HRC/RES/5/1, annex para 3(m).

society representatives.<sup>39</sup> There are five main opportunities for stakeholder involvement in the UPR process. The first opportunity is by participating in state consultations on the national report. States are encouraged to prepare the information they submit ‘through a broad consultation process at the national level with all relevant stakeholders’.<sup>40</sup>

The second and most significant opportunity for NGO involvement in the UPR is the ability to make written submissions for the stakeholder summary. The large majority of stakeholder submissions come from NGOs, with a report from the national NHRI where one exists and occasional reports from academic institutions. Stakeholders send their submissions to the OHCHR which is charged with preparing a 10-page report summarising ‘[a]dditional, credible and reliable information provided by other relevant stakeholders’.<sup>41</sup> As noted, ECOSOC consultative status is not required in order to make a stakeholder submission. The guidelines for stakeholders provide that a submission by a single stakeholder must be no longer than 2815 words (or five pages) and a joint submission by two or more stakeholders must be no longer than 5630 words (or 10 pages).<sup>42</sup> No matter the total number or length of stakeholder submissions, they are all summarised by OHCHR into a single ‘stakeholder summary’ which is a maximum of 10 pages. Since the beginning of the second cycle, information provided by an accredited NHRI is contained in a separate section of the OHCHR summary.<sup>43</sup> The original stakeholder reports are available as background documents by way of a footnote on the official UPR documentation webpage for each state.

There are no formal opportunities for NGO participation in the crucial interactive dialogue between the SuR and the UPR Working Group. That is limited to state participation only, although NGOs with consultative status are able to attend the Working Group session as observers.<sup>44</sup> NGOs with consultative status may also organise ‘Information Meetings’ on the UPR process, with a view to sharing information and best practices.<sup>45</sup> The NGO in charge of organising the meeting is able to invite guests without consultative status to attend. There are also informal opportunities for lobbying in the hallways of the *Palais des Nations*. Opportunities also exist in the home state to

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<sup>39</sup> Office of the High Commissioner for Human Rights, ‘Information and Guidelines for Relevant Stakeholders on the Universal Periodic Review Mechanism’ (Report, July 2008) 1 n 1 (*Guidelines for Relevant Stakeholders*). See also *ibid.* This gives NGOs and National Human Rights Institutions (‘NHRIs’) as illustrations of stakeholders.

<sup>40</sup> *United Nations Human Rights Council: Institution-Building*, UN Doc A/HRC/RES/5/1, annex para 15(a).

<sup>41</sup> *Ibid.* para 15(c).

<sup>42</sup> Office of the High Commissioner for Human Rights, ‘A Practical Guide for Civil Society: Universal Periodic Review’ (Report, July 2014) 14 (*Practical Guide for Civil Society*).

<sup>43</sup> Human Rights Council, *Review of the Work and Functioning of the Human Rights Council*, GA Res 16/21, UN GAOR, 16<sup>th</sup> sess, Agenda Item 1, UN Doc A/HRC/RES/16/21 (12 April 2011) annex (*Outcome of the Review of the Work and Functioning of the United Nations Human Rights Council*) para 9.

<sup>44</sup> *United Nations Human Rights Council: Institution-Building*, UN Doc A/HRC/RES/5/1, annex para 18(c); *Guidelines for Relevant Stakeholders*, above n 39, 6 [18]; *Practical Guide for Civil Society*, above n 42, 4.

<sup>45</sup> Office of the High Commissioner for Human Rights, *Contributions and Participation of ‘Other Stakeholders’ in the UPR* (17 March 2015) <<https://perma.cc/TR7L-YC38?type=source>>.

lobby diplomatic representatives of states likely to take a role in the interactive dialogue in Geneva.

At the final adoption of the outcome report by the HRC plenary, some months after the interactive dialogue, there is a fourth, albeit minor, opportunity for NGO input. One hour is allocated for consideration of the outcome report and NGOs with consultative status are allocated 20 minutes for making verbal comments.<sup>46</sup> Since 2012, the HRC has permitted these statements to be made by video.<sup>47</sup> However, such statements have little substantive impact because the content of the outcome report is essentially settled by this stage. A summary of general comments made by stakeholders is included in the report of the relevant HRC session.<sup>48</sup> Statements by NGOs at this point in the process have received little attention in the commentaries on the UPR to date — due, no doubt, to their limited efficacy.<sup>49</sup>

The fifth and final opportunity for NGO involvement is in the follow-up to the review. While the outcome of the review should be implemented primarily by the SuR, states are encouraged to conduct broad consultations with relevant stakeholders.<sup>50</sup> NGOs can clearly play an important role in the follow-up to the review. National NGOs are particularly well-placed to use the UPR outcome as a lobbying tool at home to ensure that recommendations accepted by the state are implemented.

### B *Do NGO Submissions Matter?*<sup>51</sup>

This article focuses on stakeholder submissions as the key opportunity for NGOs to influence the content of the UPR. Before looking at the detail of the Pacific UPR experience, it is relevant to consider the extent to which NGO submissions actually make a difference to the UPR process. Measuring or assessing the impact of NGOs in any context is difficult<sup>52</sup> and is more

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<sup>46</sup> *United Nations Human Rights Council: Institution-Building*, UN Doc A/HRC/RES/5/1, annex para 31; *Guidelines for Relevant Stakeholders*, above n 39, 6 [19]; *Practical Guide for Civil Society*, above n 42, 2, 4.

<sup>47</sup> Human Rights Council, *Task Force on Secretariat Services, Accessibility for Persons with Disabilities and Use of Information Technology*, GA Res 19/119, UN GAOR, 19<sup>th</sup> sess, Agenda Item 1, UN Doc A/HRC/DEC/19/119 (25 April 2012) annex (*Report of the Human Rights Council Task Force on Secretariat Services, Accessibility for Persons with Disabilities and Use of Information Technology*) para 47(a).

<sup>48</sup> Human Rights Council, *Follow-Up to President's Statement 8/1*, 9<sup>th</sup> sess, UN Doc A/HRC/PRST/9/2 (24 September 2008) 1. This document sets out the word limit and provides that the report of the Human Rights Council plenary session at which the Outcome Report is adopted will be up to 3210 words/country with the '[n]umber of words prorated to speaking time used by each category of speaker within agreed time limits': at annex (*Universal Periodic Review Documentation*) n a.

<sup>49</sup> The list of NGOs making statements at the plenary session is not available on the official Office of the High Commissioner for Human Rights ('OHCHR') documentation pages for the UPR, but a list of submitters and the text of the statement (where supplied by the NGO) is available at the website of UPR Info.

<sup>50</sup> *United Nations Human Rights Council: Institution-Building*, UN Doc A/HRC/RES/5/1, annex para 33; *Outcome of the Review of the Work and Functioning of the United Nations Human Rights Council*, UN Doc A/HRC/RES/16/21, annex para 17.

<sup>51</sup> This title draws on: Edward McMahon et al, 'The Universal Periodic Review: Do Civil Society Organization-Suggested Recommendations Matter?' (Report, Friedrich-Ebert-Stiftung, November 2013).

<sup>52</sup> See Shamima Ahmed, 'The Impact of NGOs on International Organizations: Complexities and Considerations' (2011) 36 *Brooklyn Journal of International Law* 817.

challenging in the case of advocacy NGOs than service NGOs. In the context of the UPR, only limited research on this point has been undertaken to date. However, the research which has been done suggests that although the UPR is, at its heart, a state-run and state-led process, 'the civil society/CSO perspective has the potential to enrich the process and strengthen impacts'.<sup>53</sup>

A study by Lawrence Moss of the second session of the UPR in May 2008 suggested that NGOs had substantial success in injecting their human rights concerns into the UPR process, but that states showed considerable resistance to accepting NGO recommendations.<sup>54</sup> A 2010 study by the Child Rights Information Network ('CRIN') found that in its national report, the SuR tended to give prominence to 'safer' issues such as children's education, whereas NGOs and UN bodies (the latter reflected in OHCHR's compilation of UN information prepared for each SuR) had more balance between softer issues such as education and more controversial issues such as corporal punishment. While states made a number of recommendations on children's education, the number of recommendations on corporal punishment was much higher than the number of references by the SuR on corporal punishment, suggesting that NGO submissions (and the UN compilation) made a difference and prompted other states to make recommendations on this issue.<sup>55</sup>

More recent research by political scientist Professor Edward McMahon examines the extent to which state recommendations in the UPR reflected draft recommendations proposed by civil society organisations. McMahon's research suggests that two-thirds of NGO recommendations are reflected in state recommendations.<sup>56</sup> While this finding does not suggest a causal link between NGO and state recommendations, it does show that state recommendations encompass NGO recommendations to a significant extent. McMahon concludes that this suggests that NGO engagement is worthwhile and that the high correlation between NGO and state recommendations supports the overall legitimacy of the UPR process.<sup>57</sup>

#### IV INVOLVEMENT OF NGOs IN THE UPR OF PACIFIC STATES

I now turn to consider the involvement of NGOs in the UPR of Pacific states. The focus here is on stakeholder submissions. This is the key opportunity to influence the interactive dialogue, the content of the outcome report and the substance of the recommendations. I will also consider more briefly the NGO statements made during the adoption of the outcome report at the relevant HRC plenary session.

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<sup>53</sup> McMahon et al, 'The Universal Periodic Review', above n 51, 12–13.

<sup>54</sup> Lawrence C Moss, 'Opportunities for Nongovernmental Organization Advocacy in the Universal Periodic Review Process at the UN Human Rights Council' (2010) 2 *Journal of Human Rights Practice* 122, 123.

<sup>55</sup> Ed Renshaw, 'Universal Periodic Review: The Status of Children's Rights: An Analysis of Trends/Review of NGO Participation' (Report, Child Rights Information Network, 2010) 16–17.

<sup>56</sup> McMahon et al, 'The Universal Periodic Review', above n 51, 7.

<sup>57</sup> *Ibid* preface.

### A Stakeholder Submissions

Table One summarises the stakeholder submissions made during the UPR for Pacific states. Some explanation and caution are needed when considering the Table. First, the categorisation of an NGO as ‘national’ or ‘international’ involved some difficult choices. In accordance with the definition set out earlier, the approach taken is to categorise an NGO as ‘national’ if, although being an international organisation, it has a separate local section or branch which undertakes its activities solely in the state concerned. For example, Save the Children Fiji and Transparency International Vanuatu were categorised as ‘national’ NGOs although they are each linked to an international NGO. On the other hand, the Pacific Concerns Resource Centre, which made a submission on Fiji and has its only office in Fiji, was categorised as an international NGO as it undertakes its activities across the Pacific region. A second caveat is in relation to joint submissions. Joint submissions are made by two or more stakeholders and are actively encouraged by OHCHR.<sup>58</sup> As can be seen, a number of both national and international submissions were joint submissions. Therefore, care needs to be taken when referring to the bald number of reports alone as it may hide a joint submission by a number of NGOs. Where there is a joint submission, the number of organisations joining that submission is indicated in parentheses. Finally, for the sake of clarity, it is also noted that the phenomenon evident in other parts of the world, whereby NGOs join multiple coalitions and add their name to more than one joint submission, has not yet been widely adopted in the Pacific. Only six national NGOs have to date formally signed on to more than one submission.<sup>59</sup>

**Table One: Stakeholder Submissions for Pacific States**

State (Year of Review)	Total Number of Stakeholder Submissions (National + International + Coalition)	Stakeholder Submissions by National NGOs	Stakeholder Submissions by International NGOs	Stakeholder Submissions by Coalitions of National and International NGOs
<b>Tonga (2008)</b>	3 (1+2+0)	1 single	1 single 1 joint (4 orgs)	-
<b>Tuvalu (2008)</b>	6 (3+3+0)	3 single	3 single	-
<b>Vanuatu (2009)</b>	6 (2+4+0)	1 single 1 joint (7 orgs)	3 single 1 joint (3 orgs)	-

<sup>58</sup> *Guidelines for Relevant Stakeholders*, above n 39, 5 [13]; *Practical Guide for Civil Society*, above n 42, 15 [16].

<sup>59</sup> The Nauru Island Association of NGOs was part of a joint national coalition and a joint national/international coalition. Nuanua o le Alofa (Samoa) made its own submission and was one of the supporting organisations for the joint submission by the Samoan Umbrella for NGOs. The Fiji Women’s Crisis Centre and the Fiji Women’s Rights Movement both made individual submissions for Fiji II and were part of a joint submission by 12 Fijian NGOs. Te Toa Matoa (Kiribati) made its own submission for Kiribati II and was one of the supporting organisations for the joint submission by Aia Maea Ainen Kiribati. Women United Together Marshall Islands made a joint national NGO submission for Marshall Islands II and was one of the supporting organisations for the joint submission by the Center for Political Ecology.

<b>Fiji (2010)</b>	17 (9+8+0)	8 single 1 joint (2 orgs)	8 single	-
<b>Kiribati (2010)</b>	8 (2+6+0)	1 single 1 joint (2 orgs)	4 single 1 joint (3 orgs) 1 joint (3 orgs)	-
<b>Marshall Islands (2010)</b>	6 (3+2+1)	2 single 1 joint (4 orgs)	2 single	1 joint (5 orgs)
<b>Micronesia (2010)</b>	4 (0+2+2)	-	2 single	1 joint (2 orgs) 1 joint (5 orgs)
<b>Nauru (2011)</b>	9 (6+2+1)	4 single 1 joint (4 orgs) 1 joint (2 orgs)	1 single 1 joint (3 orgs)	1 joint (7 orgs)
<b>Palau (2011)</b>	5 (1+4+0)	1 single	2 single 1 joint (3 orgs) 1 joint (4 orgs)	-
<b>Solomon Islands (2011)</b>	9 (2+7+0)	1 single 1 joint (9 orgs)	4 single 1 single (4 orgs) 1 single (2 orgs) 1 single (3 orgs)	-
<b>Samoa (2011)</b>	6 (2+4+0)	1 single 1 joint (100 orgs) <sup>60</sup>	2 single 1 joint (4 orgs) 1 joint (3 orgs)	-
<b>PNG (2011)</b>	10 (1+9+0)	1 single	6 single 1 joint (3 orgs) 1 joint (3 orgs) 1 joint (3 orgs)	-
<b>Tonga II (2013)</b>	4 (1+3+0)	1 joint (7 orgs)	3 single	-
<b>Tuvalu II (2013)</b>	3 (2+1+0)	2 single	1 single	-
<b>Vanuatu II (2014)</b>	4 (3+1+0)	3 single	1 single	-
<b>Fiji II (2014)</b>	10 (3+7+0)	2 single 1 joint (12 orgs)	5 single 1 joint (315 orgs) 1 joint (2 orgs)	-
<b>Kiribati II (2015)</b>	10 (5+5)	4 single 1 joint (35 orgs)	4 single <sup>61</sup> 1 joint (3 orgs)	-
<b>Marshall Islands II (2015)</b>	4 (1+2+1)	1 joint (2 orgs)	2 single	1 joint (11 orgs)
<b>Total</b>	<b>124</b> <b>(47+72+5)</b>	<b>47</b>	<b>72</b>	<b>5</b>

<sup>60</sup> The submission of the Samoan Umbrella for NGOs was characterised by the OHCHR as a single submission even though it is a 10-page submission and footnote one of the original submission lists over 100 organisations as comprising its membership.

<sup>61</sup> One of the international NGOs was the Commonwealth Human Rights Initiative, characterised by the OHCHR as a 'regional intergovernmental organisation': Human Rights Council, *Summary Prepared by the Office of the United Nations High Commissioner for Human Rights in accordance with Paragraph 15 (c) of the Annex to Human Rights Council Resolution 5/1 and Paragraph 5 of the Annex to Council Resolution 16/21*, 21<sup>st</sup> sess, UN Doc A/HRC/WG.6/21/KIR/3 (27 October 2014) 9 n 1. However, it is in fact an international NGO with Economic and Social Council consultative status.

Keeping those caveats in mind, we can now look at what Table One reveals about NGO involvement in the review of Pacific states. In terms of the total number of stakeholder submissions on any one state, they range from three submissions on Tonga and Tuvalu II to 17 submissions on Fiji. These numbers are fairly modest compared to other parts of the world with Venezuela having 579 (!), the United States having 103 and India at 51. Within the Pacific region, Australia had 14 for its first review while New Zealand had 17 for its first review and 54 for its second.

The number of submissions by international NGOs mostly exceeds the number of national submissions. This is especially glaring for PNG which had just one submission from a national NGO and nine submissions from international NGOs. So far, in only five reviews (Fiji, Marshall Islands, Nauru, Tuvalu II and Vanuatu II) has the number of national submissions exceeded the number of submissions from international NGOs.

As noted, joint submissions by two or more stakeholders are permitted, encouraged and increasingly common. Looking behind the joint submissions, some substantial coalitions can be detected. For example, at the national level, there were just two national NGO submissions for Vanuatu, but one of these was a submission by a coalition of seven NGOs. Similarly, there were two national submissions from Solomon Islands, but one of these was from a coalition of nine national NGOs. For both the Tonga and Tonga II reviews, there was just one national submission, but for Tonga II, this was a joint submission of seven organisations suggesting greater engagement from national NGOs for the second review. Similarly for Fiji, there were nine national submissions representing a total of 10 national NGOs; for Fiji II there were only three national submissions but they represented a total of 12 national NGOs.

Of particular interest are the joint submissions from coalitions involving both national and international NGOs. To date, there have been just five such submissions, all from the Micronesian sub-region — two for FSM and one each for the Marshall Islands, Marshall Islands II and Nauru. Three of these five submissions were coalitions coordinated by Earthjustice. In Nauru, the Earthjustice coalition involved six international NGOs and the national Nauru Island Association of NGOs. The Earthjustice coalitions for the Marshall Islands and FSM involved the same five organisations — four international NGOs and the Pohnpei Women's Advisory Council, which is based in FSM.<sup>62</sup> The fourth joint submission was for FSM and involved the international Sexual Rights Initiative and the national Sexual Rights Information of Micronesia. The fifth was for Marshall Islands II and was coordinated by the Center for Political Ecology and included Women United Together Marshall Islands.

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<sup>62</sup> Because the Pohnpei Women's Advisory Council ('PWAC') made a submission on more than one country, it could be categorised as an 'international' NGO. However, PWAC is based in the Federated States of Micronesia ('FSM') and its activities otherwise focus solely on FSM. Although it agreed to participate in the Earthjustice coalition for the Marshall Islands, this is its only known activity outside FSM. Email from Martin Wagner (Earthjustice) to Natalie Baird, 18 October 2013.

### B Who Are These International NGOs?

Table Two sets out the international NGOs which have made submissions on the 18 Pacific reviews. Again, some explanation of the data is required. First, Table Two includes all submissions by international NGOs, ie the 72 submissions by international NGOs and the five submissions by coalitions of international and national NGOs. Secondly, there were three coalitions of NGOs which have regularly made submissions. Although the makeup of each coalition was not always consistent, there is sufficient commonality to treat each of these as one group. These are the Earthjustice coalition, the International Lesbian Gay, Bisexual, Trans and Intersex Association ('ILGA')/ARC International coalition and the Marist and Franciscans coalition. In these cases, the headquarters of the coordinating NGO(s) have been noted in the Table, with those of coalition partners in footnotes. Thirdly, while the headquarters of each NGO have been noted, with a view to indicating whether they hail from the Global North or South, determining the 'headquarters' was sometimes a difficult task. Generally, the country of headquarters indicates where the NGO is incorporated or where the primary office is located. However, some NGOs actively seek to be truly global organisations. For example, the ILGA, while headquartered in Brussels, is a global association of more than 600 lesbian, gay, bisexual, transgender and intersex groups in over 110 countries. The US-incorporated 350.org, one of the partners in the Earthjustice coalition, is a global grassroots organisation with staff, supporters and activists in 188 countries around the world. The Sexual Rights Initiative explicitly 'seeks to provide a more global perspective based on the experiences of SRI partner organizations' in light of the fact that NGO participation at the HRC remains largely dominated by organisations based in the Global North.<sup>63</sup>

**Table Two: Submissions by International NGOs on Pacific States**

<b>International NGO</b>	<b>Headquarters of International NGO<sup>64</sup></b>	<b>Number of Submissions on Pacific States (Maximum 18)</b>	<b>States Submitted on (In Order of Their Review)</b>
Global Initiative to End All Corporal Punishment of Children	UK	17	Tonga, Tuvalu, Vanuatu, Fiji, Kiribati, Marshall Islands, FSM, Palau, Solomon Islands, Samoa, PNG, Tonga II, Tuvalu II, Vanuatu II, Fiji II, Kiribati II, Marshall Islands II

<sup>63</sup> See Sexual Rights Initiative, *Who We Are* <<http://perma.cc/AM82-M9HR>>.

<sup>64</sup> For coalitions, the headquarters of the coordinating NGO(s) alone is noted in Table Two.

Earthjustice <sup>65</sup> or Earthjustice coalition <sup>66</sup>	US	11	Tuvalu, Vanuatu, Fiji, Kiribati, Marshall Islands, FSM, Nauru, Palau, Solomon Islands, Samoa, PNG
ARC International <sup>67</sup> or ILGA/ARC International coalition <sup>68</sup>	Canada/Belgium	8	Tonga, Fiji, Kiribati, Nauru, Palau, Solomon Islands, Samoa, PNG
Amnesty International	UK	7	Tuvalu, Vanuatu, Fiji, Kiribati, Solomon Islands, PNG, Fiji II
Oceania Human Rights	US	5	Nauru, Palau, Samoa, PNG, Tonga II
Marist and Franciscans coalition <sup>69</sup>	Italy/Switzerland	5	Vanuatu, Kiribati, Solomon Islands, PNG, Kiribati II
Institute on Religion and Public Policy	US	3	Fiji, Kiribati, FSM
Society for Threatened Peoples	Germany	3	Marshall Islands, Solomon Islands, PNG
Human Rights Watch	US	3	Fiji, PNG, Fiji II
International Center for Advocates Against Discrimination	US	2	Fiji II, Kiribati II
Child Rights International Network	UK	2	Tonga II, Kiribati II
Pacific Concerns Resource Centre	Fiji	1	Fiji
Fundacion Mundial Dejame Vivir en Paz	Costa Rica	1	Fiji
Sexual Rights Initiative coalition <sup>70</sup>	UN	1	FSM
University of Oklahoma College of Law International Human Rights Clinic	US	1	PNG
International Centre for Transitional Justice	US	1	Solomon Islands
Minority Rights Group	UK	1	Fiji II
International Trade Union Confederation <sup>71</sup>	Belgium	1	Fiji II

<sup>65</sup> Earthjustice made a single submission without coalition partners on Fiji, Kiribati, Tuvalu and Vanuatu.

<sup>66</sup> Coalition partners (and their headquarters) were 350.org (US), Greenpeace International (Netherlands), Human Rights Advocates (US), IndyAct (Lebanon), Many Strong Voices (Norway), Nauru Island Association of NGOs (Nauru) and the Pohnpei Women's Advisory Council (FSM).

<sup>67</sup> ARC International made a single submission without coalition partners on Fiji.

<sup>68</sup> Coalition partners (and their headquarters) were ILGA-Europe (Belgium) and the International Gay and Lesbian Human Rights Commission (US).

<sup>69</sup> Coalition partners (and their headquarters) were Edmund Rice International (Switzerland), Marist Asia — Pacific Solidarity Office (Australia), the Marist Oceania Solidarity Commission (Australia) and the World Council of Churches (Switzerland).

<sup>70</sup> The coalition partner (and its headquarters) was Sexual Rights Information of Micronesia (FSM).

Reporters Sans Frontières coalition <sup>72</sup>	France	1	Fiji II
Commonwealth Human Rights Initiative	India	1	Kiribati II
Kaleidoscope Australia Human Rights Foundation	Australia	1	Marshall Islands II
Center for Political Ecology coalition <sup>73</sup>	US	1	Marshall Islands II

As can be seen, the London-based Global Initiative to End All Corporal Punishment of Children ('GIEACPC') has commented on the reviews of all Pacific states to date except that of Nauru.<sup>74</sup> The Earthjustice coalition and the ILGA/ARC International coalition have both commented on a large number of states, representing a concerted advocacy effort. However, it appears that the Earthjustice coalition and the ILGA/ARC coalition were only active for the first UPR cycle, as they have not submitted on any of the six Pacific states reviewed during the second cycle. The two most well-known international human rights NGOs appear to have chosen to make submissions on those states with arguably the most serious human rights issues. Human Rights Watch has made submissions on Fiji, Fiji II and PNG. Amnesty International has submitted on those three reviews plus Solomon Islands, Vanuatu and the two climate change threatened states of Kiribati and Tuvalu.

Nearly all of the international NGOs which have made submissions on Pacific states are based in the Global North. Just three international NGOs (from a total of 22) are based in the Global South. Two of these submitted on Fiji — the Pacific Concerns Resources Centre ('PCRC') and *Fundación Mundial Déjame Vivir en Paz* ('FMDVP'). PCRC is a regional Pacific NGO with ECOSOC consultative status based in Fiji. It was first established in Hawaii in 1980 with a focus on political independence and a nuclear-free Pacific and relocated to New Zealand in 1986 and then to Fiji in 1993.<sup>75</sup> FMDVP was established in 2009. Its two-sentence submission on Fiji focused on the rights of sexual minorities.<sup>76</sup> The third international NGO based in the Global South was the Commonwealth

<sup>71</sup> Coalition partners are 315 national affiliates whose headquarters are not separately listed.

<sup>72</sup> The coalition partner (and its headquarters) was the Pacific Media Centre (New Zealand).

<sup>73</sup> Coalition partners (and their headquarters) were Cultural Survival (US), Enewetak-Enjebi Sustainability Leadership Organisation (Marshall Islands), Enewetak, Rongelap, Utrik, Bikini Survivors (Marshall Islands), Indigenous World Association (US), International Network on Displacement and Resettlement (US), International Physicians for the Prevention of Nuclear War (US), International Women's Anthropology Conference (US), Japan Council Against A and H Bomb (Japan), Northern Star Rongelap Women's Club (Marshall Islands) and Women United Together Marshall Islands (Marshall Islands).

<sup>74</sup> Global Initiative to End All Corporal Punishment of Children ('GIEACPC') did in fact make a stakeholder submission on Nauru but it was overlooked for the stakeholder summary. Email from Sharon Owen (GIEACPC) to Natalie Baird, 16 October 2013.

<sup>75</sup> Pacific Concerns Resource Centre, 'Pacific Concerns Resource Centre's Submission to the Session of the Working Group on the Universal Periodic Review (UPR) on Fiji, February 2010 in Geneva', Stakeholder Submission to the Office of the High Commissioner for Human Rights in the Universal Periodic Review, 1 September 2009, 1 [1].

<sup>76</sup> Fundación Mundial Déjame Vivir en Paz, 'Stakeholder Submission on Bolivia, Nicaragua, El Salvador, Angola, Egypt, Madagascar, Gambia, Qatar, Fiji, Iran, Iraq, Kazakhstan, Italy, San Marino, Slovenia, Bosnia and Herzegovina', Stakeholder Submission to the Office of the High Commissioner for Human Rights in the Universal Periodic Review, 3-4.

Human Rights Initiative which made a submission on Kiribati II. In addition to these three submissions from the Global South, as noted above, the Earthjustice coalition in three of its submissions, the Center for Political Ecology coalition in its one submission and the Sexual Rights Initiative coalition in its one submission included national NGOs.

### C *Stakeholder Plenary Statements*

Stakeholders may make statements at the HRC plenary session before the outcome report is adopted. Although the focus of this article is on NGO stakeholder submissions, a review of the plenary statements made by stakeholders confirms the dominance of international NGOs. This is to be expected given that only NGOs with ECOSOC consultative status may make these statements. Virtually no national Pacific NGOs have this status. As noted by RRRT, '[i]t is ironic that regional and international NGOs have more recognition to make statements on Pacific Island countries than national NGOs from our region'.<sup>77</sup> Perhaps fortunately then, these stakeholder plenary statements have little impact on the substantive UPR outcomes. Nevertheless, for completeness, Table Three sets out a list of the NGOs (all international) which have made statements during the plenary sessions for the adoption of the outcome reports for Pacific states. The number of plenary statements ranged from four for Fiji II, Solomon Islands and Tonga to one for Kiribati II, Palau, Tonga II and Tuvalu II. One point of particular note are two plenary statements made by international NGOs on behalf of national NGOs. The European Disability Forum statement was expressly made on behalf of Nuanua o Le Alofa ('NOLA'),<sup>78</sup> a Samoan disability rights NGO which had made its own stakeholder submission and participated in the May 2011 Pacific side event in Geneva.<sup>79</sup> Similarly, the Minority Rights Group International noted that its statement was on behalf of the Fiji NGO Coalition on Human Rights.<sup>80</sup>

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<sup>77</sup> *Pacific Human Rights Stories*, above n 10, 51.

<sup>78</sup> European Disability Forum, 'Statement Made by European Disability Forum on behalf of Nuanua O Le Alofa (Samoa): Adoption of the Working Group Report on Samoa', Plenary Statement to the Human Rights Council in the Universal Periodic Review, 24 September 2011.

<sup>79</sup> Secretariat of the Pacific Community, 'Pacific Island States & the Universal Periodic Review: A Toolkit for Pacific Island States to Measure Progress and Compliance against Universal Periodic Review Recommendations' (Report, 2012) 22–3 ('*Toolkit for Pacific Island States*').

<sup>80</sup> Minority Rights Group International, '28<sup>th</sup> Session of the UN Human Rights Council: Universal Periodic Review Adoption of Outcome (Fiji)', Plenary Statement to the Human Rights Council in the Universal Periodic Review, 17 March 2015.

**Table Three: Stakeholder Plenary Statements<sup>81</sup>**

<b>International NGO</b>	<b>Headquarters of International NGO</b>	<b>Number of Statements on Pacific States (Maximum 17)<sup>82</sup></b>	<b>States Commented on (In Order of Their Review)</b>
Amnesty International	UK	9	Tonga, Tuvalu, Vanuatu, Fiji, Kiribati, Solomon Islands, PNG, Tonga II, Fiji II
Canadian HIV/AIDS Legal Network	Canada	7	Tonga, Tuvalu, Vanuatu, Kiribati, Palau, Samoa, PNG
World Association for the School as an Instrument of Peace	Geneva	4	Fiji, Marshall Islands, FSM, Nauru
Franciscans International <sup>83</sup>	Geneva	5	Vanuatu, Solomon Islands, Tuvalu II, Vanuatu II, Kiribati II
United Nations Watch	Geneva	3	Marshall Islands, FSM, Vanuatu II
Women's Coalition	Various	1	Tonga
Oceania Human Rights	US	1	Tonga
Earthjustice	US	1	Tuvalu
Women's International League for Peace and Freedom	Geneva	1	Fiji
ILGA-Europe	Belgium	1	Nauru
Save the Children	UK	1	Solomon Islands
European Disability Forum (on behalf of Nuanua o Le Alofa)	Belgium	1	Samoa
Rencontre Africaine pour la défense des Droits de l'Homme	Senegal	1	PNG
Commonwealth Human Rights Initiative	India	1	Fiji II
Minority Rights Group International (on behalf of Fiji NGO Coalition on Human Rights)	UK	1	Fiji II
Human Rights Watch	US	1	Fiji II

<sup>81</sup> The information in Table Three is drawn from the records of the website of UPR Info. The page for each state's review lists the NGOs making plenary statements and contains the text of the statements themselves.

<sup>82</sup> The Marshall Islands' second review is not yet complete. The interactive dialogue for Marshall Islands was held on 11 May 2015. The adoption of the outcome report and the opportunity for stakeholder plenary statements occurs some four to five months later.

<sup>83</sup> The Franciscans International statements on Tuvalu II and Vanuatu II are also on behalf of Edmund Rice International and Earthjustice; the statement on Kiribati II is on behalf of Edmund Rice International.

## V EXPLORING THE ROLE OF INTERNATIONAL NGOS

I now explore some of the benefits and challenges arising from the involvement of international NGOs in the UPR of Pacific Island states. At the outset, I note that the common assumption is that NGO input per se is a good thing. Certainly, the international human rights system would not be where it is today without the input of NGOs. However, what I aim to do here is explore the role of international NGOs in and around Pacific states' UPR — looking at both the benefits of this input and the challenges.

A *Benefits of Involvement of International NGOs*

A key benefit of the involvement of international NGOs is that they can, on occasion, fill a major gap in stakeholder information. For example, if international NGOs had not made submissions on PNG and FSM, there would have been very limited stakeholder information, with just one national stakeholder report on PNG and none on FSM (although two national FSM NGOs did participate in joint submissions). Similarly, corporal punishment of children is a significant human rights issue in the Pacific. The stakeholder submissions of GIEACPC on 17 Pacific reviews were successful in bringing this issue to the attention of the HRC. Corporal punishment was noted in the stakeholder summary for all 17 reviews and recommendations on corporal punishment were made in ten of these.<sup>84</sup> For Nauru, where GIEACPC's submission was overlooked for the stakeholder summary, the issue of corporal punishment is notably absent from the review.

A second, and related, benefit is the expertise that some international NGOs may bring. One of the purposes of the UPR is the '[s]haring of best practices'.<sup>85</sup> International NGOs, especially those with a single-issue focus, may be able to draw on a wealth of experience to inform the interactive dialogue and suggest solutions to complex issues. For example, the International Center for Transitional Justice focused its Solomon Islands submission on the government response to the 1998–2003 'Tensions' including the work of the Truth and Reconciliation Commission ('TRC') and prosecutions for Tension-related crimes. It identified that none of the Tension trials had encompassed prosecution for gender-based violence and linked this to low levels of domestic violence prosecutions generally.<sup>86</sup> These important issues were touched on briefly by just one other international stakeholder. Ultimately two recommendations were made

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<sup>84</sup> Global Initiative to End All Corporal Punishment of Children, 'Corporal Punishment of Children in the Universal Periodic Review: Analysis of Sessions 1 to 20 (2008–2014)' (Report, December 2014). This report does not contain information on recommendations made in the Kiribati II and Marshall Islands II reviews. A recommendation on corporal punishment was made in the Marshall Islands review. See Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Marshall Islands*, 30<sup>th</sup> sess, Agenda Item 6, UN Doc A/HRC/30/13 (20 July 2015) 18 [75.74].

<sup>85</sup> *United Nations Human Rights Council: Institution-Building*, UN Doc A/HRC/RES/5/1, annex para 27(b).

<sup>86</sup> Human Rights Council, *Summary Prepared by the Office of the High Commissioner for Human Rights in accordance with Paragraph 15 (c) of the Annex to Human Rights Council Resolution 5/1: Solomon Islands*, 11<sup>th</sup> sess, UN Doc A/HRC/WG.6/11/SLB/3 (16 February 2011) 5 [30].

to, and accepted by, Solomon Islands concerning ongoing funding for the work of the TRC.<sup>87</sup>

Another example of the expertise contributed by international NGOs was the five stakeholder submissions of the Marist and Franciscans coalition. Four of these submissions focused on the issue of children's education, with three of them (PNG, Solomon Islands and Vanuatu) including firsthand information drawn from surveys of children and young people. All four submissions made detailed and practical suggestions for realising the right to education. For example, the Vanuatu submission recommended a parent awareness program to educate parents on the importance of primary education for children.<sup>88</sup> The Kiribati submission highlighted concerns at the narrowness of the school curriculum, especially at the secondary level, and the impact of this on low enrolment levels.<sup>89</sup> The PNG submission drew on survey data and the voices of children themselves to identify poor health, abuse of drugs and cultural attitudes towards girls' education as factors hindering education.<sup>90</sup> The submission on Solomon Islands recommended that 'teachers receive their salaries regularly and on time'.<sup>91</sup> Children's right to education featured in the recommendations ultimately made to all four states, albeit not at the level of detail specified in the Marist and Franciscans' submissions.<sup>92</sup>

A third benefit of international NGO input into Pacific reviews is that international NGOs may be able to make submissions that national NGOs are unable to make because of safety concerns. International NGOs will generally have less need to factor in domestic political concerns than national NGOs. This concern is not one which arises in most of the Pacific, but this was a real issue in the case of Fiji's review in 2010. Commodore Voreqe Bainimarama made threats

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<sup>87</sup> Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Solomon Islands*, 18<sup>th</sup> sess, Agenda Item 6, UN Doc A/HRC/18/8 (11 July 2011) 19 [81.42]–[81.43] ('*Report of Working Group: Solomon Islands*').

<sup>88</sup> Marist Asia — Pacific Solidarity Office, Fondazione Marista per la Solidarietà Internazionale and Franciscans International, 'ONG Submission for the Universal Periodic Review: Republic of Vanuatu', Stakeholder Submission to the Office of the High Commissioner for Human Rights in the Universal Periodic Review, [4], recommendation 2.

<sup>89</sup> Franciscans International, Marist Foundation for International Solidarity and Marist Oceania Solidarity Commission, 'Human Rights Council: Universal Periodic Review (UPR) of the Republic of Kiribati — 8<sup>th</sup> Session', Stakeholder Submission to the Office of the High Commissioner for Human Rights in the Universal Periodic Review, November 2009, 3–4 [13], 4 [16], 4 [18], 6 recommendation 6.

<sup>90</sup> Franciscans International, Edmund Rice International and Foundation for Marist Solidarity International, 'Universal Periodic Review (UPR) for Independent State of Papua New Guinea: 11<sup>th</sup> Session (May 2011)', Stakeholder Submission to the Office of the High Commissioner for Human Rights in the Universal Periodic Review, October 2010, 2 [8]–[10], 3 [13], 4 [16.8].

<sup>91</sup> Foundation for Marist Solidarity International and Franciscans International, 'Universal Periodic Review (UPR) for Solomon Islands: 11<sup>th</sup> Session (May 2011)', Stakeholder Submission to the Office of the High Commissioner for Human Rights in the Universal Periodic Review, 8 November 2010, 5 [31(5)].

<sup>92</sup> Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Vanuatu*, 12<sup>th</sup> sess, Agenda Item 6, UN Doc A/HRC/12/14 (4 June 2009) 15 [56.20]; Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Kiribati*, 15<sup>th</sup> sess, Agenda Item 6, UN Doc A/HRC/15/3 (17 June 2010) 16 [66.68]; Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Papua New Guinea*, 18<sup>th</sup> sess, Agenda Item 6, UN Doc A/HRC/18/18 (11 July 2011) 20 [79.59]–[79.66]; *Report of Working Group: Solomon Islands*, UN Doc A/HRC/18/8, 20 [81.56]–[81.58].

on national radio against the two NGO leaders who had participated in the NGO side event on Fiji in Geneva.<sup>93</sup> In situations like that of Fiji, it may be that international NGOs are able to make submissions that national NGOs simply cannot. Put another way, transnational advocacy networks involving both international and national NGOs are an effective way to challenge serious norm-violating states such as Fiji.<sup>94</sup>

A related, but slightly different, benefit is where an international NGO demonstrates solidarity by making a submission which echoes the concerns raised by national NGOs. This was clearly seen in the case of Fiji's first review where the large majority of both national and international submissions raised serious concerns with Fiji's loss of democracy. This solidarity between national and international NGOs, with international NGOs echoing concerns of national NGOs, implicitly gives national NGOs and their concerns greater credibility.

Sometimes the concerns raised by international NGOs support not just the position of national NGOs but the position of the SuR itself. For example, climate change is a very real threat for many Pacific states, including Kiribati and Tuvalu. The submissions of the Earthjustice coalition and the Franciscans coalition on these two states supported the position of the states themselves in calling for international responsibility and collective action.<sup>95</sup> Earthjustice urged the HRC to recognise the responsibility of major greenhouse gas emitting states for human rights violations suffered by Tuvaluans and I-Kiribati due to climate change. While Kiribati and Tuvalu could take some actions to provide their citizens with information and ensure opportunities for public participation in decision-making concerning responses to climate change, Earthjustice, citing art 22 of the *Universal Declaration of Human Rights*, urged the international community to recognise its responsibility. These submissions echoed the approach of Tuvalu and Kiribati in their national reports and interactive dialogue.

Collaborations between international NGOs and national grassroots organisations may enable national NGOs to both make a submission and at the same time help to overcome their comparative invisibility. One commentator has suggested that one of the weaknesses of the UPR process is that 'any unaccredited "Tom, Dick or Harry" can make a submission, which is then duly summarized by the OHCHR without further analysis or verification and published on the internet'.<sup>96</sup> The implication is that the stakeholder summary is riddled with unreliable and unsubstantiated information. While this implication is not necessarily supported here, national grassroots organisations may have low

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<sup>93</sup> Fiji Women's Rights Movement, 'Annual Report 2010' (Annual Report, 2010) 2.

<sup>94</sup> See generally Margaret E Keck and Kathryn Sikkink, *Activists beyond Borders: Advocacy Networks in International Politics* (Cornell University Press, 1998).

<sup>95</sup> Earthjustice, 'Universal Periodic Review of Tuvalu, December 2008: Submission of Earthjustice', Stakeholder Submission to the Office of the High Commissioner for Human Rights in the Universal Periodic Review, 21 July 2008, 5 [19]; Earthjustice, 'Universal Periodic Review of the Republic of Kiribati, 2010: Submission of Earthjustice', Stakeholder Submission to the Office of the High Commissioner for Human Rights in the Universal Periodic Review, 2 November 2009; Franciscans International, Edmund Rice International and Commission of the Churches on International Affairs of the World Council of Churches, 'The Human Rights Situation in Kiribati', Stakeholder Submission to the Office of the High Commissioner for Human Rights in the Universal Periodic Review, June 2014.

<sup>96</sup> Joanna Harrington, 'Canada, the United Nations Human Rights Council, and Universal Periodic Review' (2009) 18 *Constitutional Forum* 79, 85.

visibility and limited capacity for preparing a stakeholder submission. In this context, collaboration between grassroots organisations and international NGOs can enable grassroots concerns to be presented appropriately and accorded the weight they deserve. In the Pacific, Earthjustice partnered with the Pohnpei Women's Advisory Council and Sexual Rights Initiative partnered with Sexual Rights Information of Micronesia. Both these national organisations have low visibility outside the Micronesian region with no established internet presence and no previous engagement with UN human rights mechanisms. Their participation in these collaborations enabled their concerns to be framed in human rights terms and treated seriously.

A final benefit of the involvement of international NGOs is that they are more likely to have a Geneva presence, ECOSOC consultative status and the ability to undertake advocacy on the ground in Geneva. Research by CRIN highlights a marked difference between international and national NGOs here, with international NGOs generally taking the opportunity to lobby in Geneva and national NGOs reporting that while they would like to do this, they 'simply do not have the capacity, contacts or Geneva representation'.<sup>97</sup> Of the 18 Pacific reviews so far, only two side events have been held in Geneva. The first event was held in February 2010 before Fiji's interactive dialogue. It was hosted by the International Commission of Jurists with presentations by two Fijian NGOs who had made individual stakeholder submissions — the Citizens Constitutional Forum and the Fiji Women's Rights Movement. The stakeholder submissions had been filed in September 2009, but in the intervening five months, the human rights situation in Fiji had deteriorated considerably and it was important to provide an update on the situation.<sup>98</sup>

The second event was held in May 2011 when Palau, PNG, Samoa and Solomon Islands all had their interactive dialogue in Geneva. It was jointly run by the RRRT, the World Young Women's Christian Association ('YWCA') and Asia Pacific Women Law and Development. Funding for two Pacific representatives to attend was provided by the Democracy Coalition Project.<sup>99</sup> The presenters included two staffers from PIFS and RRRT (the former was also a member of the state delegations for Palau, Samoa and Solomon Islands, and the latter for Samoa) and three civil society representatives from the YWCA Solomon Islands, NOLA from Samoa and the Bougainville Human Rights Committee and Women's Human Rights Defenders Network (from PNG).<sup>100</sup> The event heightened interest in key Pacific human rights issues including climate change, trafficking and violence against women.<sup>101</sup> The NOLA participant also reported that she met with a representative of the International Disability Alliance who introduced her to diplomats so she could lobby them on particular issues<sup>102</sup> and she arranged for the European Disability Forum to deliver a statement at the plenary on behalf of NOLA. These two side events

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<sup>97</sup> Renshaw, above n 55, 41.

<sup>98</sup> *Pacific Human Rights Stories*, above n 10, 49.

<sup>99</sup> *Toolkit for Pacific Island States*, above n 79, 17.

<sup>100</sup> *Ibid* 21.

<sup>101</sup> *Ibid* 8–10.

<sup>102</sup> *Ibid* 23.

were excellent examples of collaboration and networking between national and international NGOs.

### B *Challenges concerning the Role of International NGOs*

A benefit of the UPR process during the first cycle was the opportunity to ‘tell the Pacific’s human rights stories to the world’.<sup>103</sup> For Pacific NGOs, as has been the case in other parts of the world, the UPR has been far more successful than the treaty bodies in terms of mobilising civil society at the national level.<sup>104</sup> In part this is likely because of the momentum which surrounds the UPR process as a result of fixed dates and clear parameters for length of stakeholder reports. It is also likely to be a result of the excellent preparatory workshops provided by RRRT, OHCHR Pacific and PIFS across the region. However, despite strong engagement from national NGOs, the dominance of international NGOs in Pacific states’ UPR has perhaps diluted the Pacific civil society voice. The stakeholder summary simply reflects the particular interests of the organisations that choose to make submissions. It does not purport to be a comprehensive civil society perspective on the full range of human rights issues.<sup>105</sup> The dominance of international NGOs may therefore mean that the stakeholder summary does not reflect the human rights issues which are in fact of most importance to individuals and communities in the Pacific. Local Pacific NGOs are more likely to be ‘connected to the people’<sup>106</sup> and their concerns than international NGOs.

This risk of dilution or distortion is perhaps compounded by the number of single-issue international NGOs. The three NGOs which made the most number of submissions were each focused on a single issue — corporal punishment of children, climate change and the rights of sexual minorities. The result is that these three issues all feature quite prominently in the relevant stakeholder summary. While all three issues are important in the Pacific, particularly climate change and corporal punishment of children, their prominence may not reflect their importance to Pacific peoples in their day-to-day lives. Their inclusion in the stakeholder summary may perhaps have crowded out other serious human rights challenges, such as greater focus on the rights of women and the challenges facing people with disabilities.

A related issue is the tendency of some international NGOs to focus on formal limitations of rights rather than actual reported human rights violations. The stakeholder submissions of international NGOs are often prepared from a distance, without the benefit of in-country research or experience. Research is desk-based only and so may give a false picture of human rights concerns on the ground. An example of this is the submission by the New York-based International Center for Advocates against Discrimination (‘ICAAD’), for

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<sup>103</sup> See *Pacific Human Rights Stories*, above n 10.

<sup>104</sup> See Heather Collister, ‘Rituals and Implementation in the Universal Periodic Review and the Human Rights Treaty Bodies’ in Hilary Charlesworth and Emma Larking (eds), *Human Rights and the Universal Periodic Review: Rituals and Ritualism* (Cambridge University Press, 2014) 109.

<sup>105</sup> Indeed, during the first UPR cycle, the cover page of each stakeholder summary explicitly provided that ‘[l]ack of information or focus on specific issues may be due to the absence of submissions by stakeholders regarding these particular issues’.

<sup>106</sup> Makau Mutua, ‘Standard Setting in Human Rights: Critique and Prognosis’ (2007) 29 *Human Rights Quarterly* 547, 612.

Kiribati II. ICAAD conducted a desk-based review of Kiribati case law on sexual and gender based violence ('SGBV') and recommended that Kiribati should remove the possibility of customary redress in SGBV being considered as a mitigating factor in criminal sentencing for SGBV. This submission, which essentially advocates a 'trumping' of human rights over custom, appears to take no account of the strong role of custom in I-Kiribati society. There were two submissions from national NGOs (representing 36 national women's NGOs) addressing SGBV, neither of which raised this as an issue.<sup>107</sup>

Another example of undue focus on formal limits on rights is the issue of abolition of the death penalty in Tonga. During Tonga's first UPR in 2008, Italy made a recommendation that Tonga abolish the death penalty, to which Tonga responded that '[t]he death penalty remains the ultimate criminal sanction lawfully available to the State and has only been imposed in the most heinous of cases some 26 years ago'.<sup>108</sup> During Tonga's second review in January 2013, the issue received more prominence. The stakeholder submission of CRIN noted that child offenders in Tonga could be sentenced to the death penalty.<sup>109</sup> CRIN did note that no executions had in fact been carried out since 1982 and that in 2005 the Supreme Court had concluded that the norm for sentencing should be life imprisonment, with capital punishment being reserved for especially heinous crimes.<sup>110</sup> CRIN nevertheless recommended that the Tongan Government explicitly prohibit the death penalty for persons under 18.<sup>111</sup> The issue of the death penalty was not raised by the Tongan Human Rights Taskforce in its national stakeholder submission and nor was it addressed in the Tongan national report. Eight states nevertheless made recommendations to Tonga on abolition of the death penalty.<sup>112</sup> This number of recommendations no doubt reflects both the inclusion of this issue in the stakeholder summary as well as the strong international movement towards abolition. However, despite being abolitionist in practice, Tonga nevertheless rejected all eight recommendations.<sup>113</sup> In doing so it noted that it would continue to retain the death penalty as the ultimate sanction under its criminal justice system. It also referred to the 2005 Supreme Court case

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<sup>107</sup> Aia Maea Ainen Kiribati, 'Stakeholder Submission on Kiribati', Stakeholder Submission to the Office of the High Commissioner for Human Rights in the Universal Periodic Review; Kiribati Women Activists Network, 'Kiribati — NGO Submission to the United National Universal Periodic Review', Stakeholder Submission to the Office of the High Commissioner for Human Rights in the Universal Periodic Review, May 2010.

<sup>108</sup> Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Tonga*, 8<sup>th</sup> sess, Agenda Item 6, UN Doc A/HRC/8/48 (5 June 2008) 18 [66] ('*Report of Working Group: Tonga*').

<sup>109</sup> Human Rights Council, *Summary Prepared by the Office of the High Commissioner for Human Rights in accordance with Paragraph 5 of the Annex to Human Rights Council Resolution 16/21: Tonga*, 15<sup>th</sup> sess, UN Doc A/HRC/WG.6/15/TON/3 (29 October 2012) 4–5 [17]–[20] ('*Tonga Summary*').

<sup>110</sup> *Rex v Vola* [2005] TOSC 31, 10 November 2005 (Supreme Court of Tonga).

<sup>111</sup> *Tonga Summary*, UN Doc A/HRC/WG.6/15/TON/3, 5 [20].

<sup>112</sup> Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Tonga*, 23<sup>rd</sup> sess, Agenda Item 6, UN Doc A/HRC/23/4 (21 March 2013) 16–17 [81.15]–[81.22].

<sup>113</sup> Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Tonga — Views on Conclusions and/or Recommendations, Voluntary Commitments and Replies Presented by the State under Review*, 23<sup>rd</sup> sess, Agenda Item 6, UN Doc A/HRC/23/4/Add.1 (3 June 2013) 3–4 [13]–[17] ('*Report of Working Group: Tonga — Views*').

which had set the guiding policy that the death penalty will only be used ‘in the rarest of rare cases when the alternative option is unquestionably foreclosed’.<sup>114</sup> In Tonga’s view, the death penalty had been effective as a deterrent given its low murder rate. Ultimately, ‘Tonga understands that it may be seen as a de facto abolitionist of the death penalty, however in reality it reserves its position on utilisation of the death penalty’.<sup>115</sup>

What can we learn from this example? First and foremost, consideration of this issue in the UPR has made no improvement to human rights on the ground in Tonga. This issue was simply not a live issue. It was not raised in the national NGO stakeholder submissions in either 2008 or 2013. No one has been executed in Tonga for 33 years. The Supreme Court has recently considered the issue and provided a strong caution against future imposition of the death penalty. Rather than improving the human rights situation on the ground, raising this issue in the UPR may in fact have undermined the situation. In its response to the 2013 recommendations, Tonga essentially moved itself from a de facto abolitionist state to a retentionist state. An NGO strategy which focuses on formal limitations of rights rather than actual reported human rights violations may thus backfire. The ultimate aim of the UPR is improvement of the human rights situation on the ground, but the focus on formal limitations will not necessarily improve the lived reality for individuals and communities on the ground. Of course, formally abolishing the death penalty is useful and would contribute to emerging international solidarity on this issue, but the strong focus on this issue in Tonga’s case had the opposite effect and appears instead to have strengthened Tonga’s commitment to the death penalty.

Submissions from international NGOs appear to be most pertinent when they are based on in-country research and information rather than desk-based research alone. Indeed, the OHCHR guidelines encourage NGOs to include ‘first-hand information’.<sup>116</sup> For example, Amnesty International’s submission on Solomon Islands raised two key issues of violence against women and the right to water and sanitation in informal settlements in Honiara. Its submissions on these issues were based on firsthand accounts and fieldwork conducted just three months before filing its stakeholder submission.<sup>117</sup> This submission and Amnesty International’s submissions on Fiji, Fiji II and PNG, which are also based partly on fieldwork and firsthand accounts, are more compelling than its submissions on Kiribati, Tuvalu and Vanuatu.

As noted above, the large majority of international NGOs who made stakeholder submissions on Pacific states are based in the Global North. This may mean that the particular approach they take to human rights reflects a ‘Western’ bias. Traditionally, most international NGOs have concentrated more on civil and political rights rather than economic, social and cultural rights (‘ESCR’). This civil and political rights focus may in turn mean a bias towards

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<sup>114</sup> Ibid 3–4 [14].

<sup>115</sup> Ibid.

<sup>116</sup> *Practical Guide for Civil Society*, above n 42, 14 [7].

<sup>117</sup> Amnesty International, ‘Solomon Islands: Weak Human Rights Infrastructure, Discrimination and Violence against Women, and Restricted Access to Water and Sanitation’, Stakeholder Submission to the Office of the High Commissioner for Human Rights in the Universal Periodic Review, May 2011.

male concerns.<sup>118</sup> This has, however, changed in recent years with a good example being Amnesty International's 2001 expansion of its mandate to include ESCR. Despite this welcome expansion by Amnesty International and the growth in international NGOs who prioritise ESCR, there undoubtedly remains a strong focus by international NGOs on individual civil and political rights. An interesting contrast here is between the submission of Human Rights Watch and the submission of the joint national coalition (comprising 12 NGOs) on Fiji's second review. Both submissions raised issues relating to freedom of expression, human rights defenders, impunity for security forces, workers' rights, independence of the judiciary and the 2014 elections. However, the submission of the joint national coalition also covered land rights of communities and the rights of women and children.

The vast body of literature on NGOs suggests that NGOs from the Global South may also be more likely to see human rights issues from a different perspective to NGOs from the Global North, identifying, for example, 'the underlying human rights problem as one of North–South economic relations' and perhaps working towards more 'transformative goals for society'.<sup>119</sup> In fact, this is not evident in the Pacific context and indeed there is perhaps some evidence of convergence of North–South approaches. For example, an ongoing and sometimes divisive debate between HRC member states has involved the desire by many states from the Global South to recognise and develop 'third generation' human rights such as the right to peace, the right to international solidarity and the right to a healthy environment.<sup>120</sup> However, as noted above, the strong stakeholder submissions of the Earthjustice coalition and others on the human rights impacts of climate change and the responsibility of other states to address this has been one of the successes of Pacific states' UPR.

One of the more contentious issues for a number of Pacific (and other) states in the UPR has been the issue of decriminalisation of same-sex consensual conduct.<sup>121</sup> Although Nauru and Palau accepted recommendations to decriminalise same-sex conduct,<sup>122</sup> six other states (Kiribati, PNG, Samoa, Solomon Islands, Tonga/Tonga II and Tuvalu/Tuvalu II) have rejected similar recommendations. This issue was very much on the UPR agenda during the first UPR cycle — in the Pacific and elsewhere — as a result of the advocacy effort

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<sup>118</sup> Daniel A Bell and Joseph H Carens, 'The Ethical Dilemmas of International Human Rights and Humanitarian NGOs: Reflections on a Dialogue between Practitioners and Theorists' (2004) 26 *Human Rights Quarterly* 300, 311.

<sup>119</sup> Henry J Steiner, *Diverse Partners: Non-Governmental Organizations in the Human Rights Movement* (Harvard Law School Human Rights Program and Human Rights Internet, 1991) 29.

<sup>120</sup> For an interesting discussion, see Joanna Harrington, 'Canada and the United Nations Human Rights Council: Dissent and Division' (2009) 60 *University of New Brunswick Law Journal* 78, 98–106.

<sup>121</sup> See generally Frederick Cowell and Angelina Milon, 'Decriminalisation of Sexual Orientation through the Universal Periodic Review' (2012) 12 *Human Rights Law Review* 341.

<sup>122</sup> Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Nauru — Views on Conclusions and/or Recommendations, Voluntary Commitments and Replies Presented by the State under Review*, 17<sup>th</sup> sess, Agenda Item 6, UN Doc A/HRC/17/3/Add.1 (30 May 2011) 4 [31]; Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Palau*, 18<sup>th</sup> sess, Agenda Item 6, UN Doc A/HRC/18/5/Add.1 (28 July 2011) 7.

of the ILGA/ARC International coalition. This coalition made submissions on eight Pacific reviews. Aside from Save the Children Solomon Islands, no other national NGO identified this issue in their stakeholder submission. Of particular interest here was the joint stakeholder submission of the Tonga Civil Society Organisation Human Rights Taskforce representing seven national NGOs.<sup>123</sup> One of the stakeholders was the Tonga Leitis Association which advocates for improving the rights of ‘leitis’ in Tonga.<sup>124</sup> Yet, the stakeholder submission did not raise the issue of decriminalisation of same-sex consensual conduct. This perhaps suggests that this is not currently an area of controversy or priority on the ground in Tonga and indeed this is the tenor of the Tongan Government response on this issue.<sup>125</sup> On an issue such as this where different cultural norms and domestic constituent concerns are highly relevant to the prospects of future reform, for the sole NGO voice to be an international one is less than desirable.<sup>126</sup> It could also undermine the sense of a genuinely ‘international’ human rights movement in which participants from both the North and South share a common agenda.<sup>127</sup> Seeking to challenge local cultural norms in order to meet the campaigning agenda of the international NGO may convey a tone of ‘moral superiority’<sup>128</sup> and runs the risk of meeting the charge of ‘cultural imperialism’.<sup>129</sup> A ‘softer’ approach, more consistent with the ‘Pacific way’, which encourages domestic discussion away from the international spotlight, may be more likely to lead, in the long run, to a positive human rights outcome.

A further possible challenge is the prospect of international NGOs and national Pacific NGOs taking patently divergent positions on particular issues. This could hamper the search for common ground, be a distraction, or worse, result in the marginalisation of the indigenous Pacific voice. One issue which is an illustration of this concern is the question of institutional machinery for protecting human rights in the Pacific region. Given their size and capacity limitations, there is a very real issue as to whether establishment of an NHRI fully compliant with the *Principles relating to the Status of National Institutions* (‘Paris Principles’)<sup>130</sup> is feasible, or indeed sensible, especially for the smaller

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<sup>123</sup> Tonga Civil Society Organisation and Human Rights Task Force, ‘Tonga Civil Society Organisations (CSO) — Human Rights Task Force (HRTF) Universal [sic] Periodic Review Submission’, Stakeholder Submission to the Office of the High Commissioner for Human Rights in the Universal Periodic Review, 2012 (‘*Tonga CSO Submission*’).

<sup>124</sup> See Asia Pacific Coalition on Male Sexual Health, *Spotlight: Tongan Leitis Association, Tonga* <<http://perma.cc/2VCM-AKNH>>. The Tonga Leitis Association defines ‘leiti’ as inclusive of the broad range of men who have sex with other men (‘MSM’), transgender people, gay and bisexual men and non-identifying MSM.

<sup>125</sup> *Report of Working Group: Tonga — Views*, UN Doc A/HRC/23/4/Add.1, 2–3 [8]–[9].

<sup>126</sup> For a discussion of the same issue in the context of Nigeria, see Bell and Carens, above n 118, 304–5.

<sup>127</sup> *Ibid* 315.

<sup>128</sup> *Ibid* 315.

<sup>129</sup> *Ibid* 307.

<sup>130</sup> *National Institutions for the Promotion and Protection of Human Rights*, GA Res 48/134, UN GAOR, 3<sup>rd</sup> Comm, 48<sup>th</sup> sess, 85<sup>th</sup> plen mtg, Agenda Item 114(b), UN Doc A/RES/48/134 (4 March 1994, adopted 20 December 1993) annex (‘*Principles relating to the Status of National Institutions*’).

Pacific states.<sup>131</sup> Instead, a regional human rights mechanism may be a more practical solution. This issue has received some focus in the region in recent years, although not yet any political commitment or momentum to support such a development.<sup>132</sup> Although some Pacific states have indicated a preference for a regional mechanism in their UPR reports or the interactive dialogue,<sup>133</sup> the issue has received little attention from other states, being instead dwarfed by the ‘one-size-fits-all’ approach, with numerous recommendations that Pacific states establish NHRIs compliant with the *Paris Principles*. At the NGO level, a number of national NGOs also indicated interest in a regional mechanism.<sup>134</sup> Although the international NGO Oceania Human Rights has supported calls for a

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<sup>131</sup> See generally Pacific Islands Forum Secretariat and New Zealand Human Rights Commission, ‘National Human Rights Institutions: Pathways for Pacific States’ (Report, 2007).

<sup>132</sup> For an overview of recent developments, see Kathryn Hay, ‘“The Canoe Will Sail When the Wind is Right”: Moving toward Sub-Regional Human Rights Arrangements in the Pacific?’ (2010) 8 *New Zealand Yearbook of International Law* 171. For arguments in favour of a regional mechanism, see P Imrana Jalal, ‘Why Do We Need a Pacific Regional Human Rights Commission?’ (2009) 40 *Victoria University of Wellington Law Review* 177. For arguments in favour of NHRIs, see Catherine Renshaw, Andrew Byrnes and Andrea Durbach, ‘Human Rights Protection in the Pacific: The Emerging Role of National Human Rights Institutions in the Region’ (2010) 8 *New Zealand Journal of Public and International Law* 117.

<sup>133</sup> See, eg, *Report of Working Group: Tonga*, UN Doc A/HRC/8/48, 17 [63(25)]; Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Tuvalu*, 10<sup>th</sup> sess, Agenda Item 6, UN Doc A/HRC/10/84 (9 January 2009) 15 [65]; Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Kiribati — Views on Conclusions and/or Recommendations, Voluntary Commitments and Replies Presented by the State under Review*, 15<sup>th</sup> sess, Agenda Item 6, UN Doc A/HRC/15/3/Add.1 (30 September 2010) 4–5 [30]–[36]; *Report of Working Group: Solomon Islands*, UN Doc A/HRC/18/8, 6 [27].

<sup>134</sup> See, for example, the following stakeholder submissions: *Tonga CSO Submission*, above n 123 (on Tonga II); Coalition for NGOs Marshall Islands, ‘PRNGO Submission to the United Nations Universal Periodic Review’, Stakeholder Submission to the Office of the High Commissioner for Human Rights in the Universal Periodic Review, November 2010 (on Marshall Islands); Evergreen Concern Group, ‘Evergreen Concern Group Submission to the United Nations Universal Periodic Review’, Stakeholder Submission to the Office of the High Commissioner for Human Rights in the Universal Periodic Review, 2011 (on Nauru); Kiribati Women Activists Network, ‘NGO Submission to the United Nations Universal Periodic Review’, Stakeholder Submission to the Office of the High Commissioner for Human Rights in the Universal Periodic Review, May 2010 (on Kiribati); Legal Literacy Project and Tuvalu National Council of Women, ‘NGO Submission to the United Nations Universal Periodic Review’, Stakeholder Submission to the Office of the High Commissioner for Human Rights in the Universal Periodic Review, December 2008 (on Tuvalu); Marshall Islands Special Parents Association, ‘NGO Submission to the United Nations Universal Periodic Review’, Stakeholder Submission to the Office of the High Commissioner for Human Rights in the Universal Periodic Review, November 2010 (on Marshall Islands); Samoan Umbrella for Non-Governmental Organisations, ‘Joint NGO Submission to the Universal Periodic Review of Samoa’, Stakeholder Submission to the Office of the High Commissioner for Human Rights in the Universal Periodic Review, May 2011 (on Samoa); Te Toa Matoa and the School for the Disabled, ‘NGO Submission to the United Nations Universal Periodic Review’, Stakeholder Submission to the Office of the High Commissioner for Human Rights in the Universal Periodic Review (on Kiribati).

regional mechanism,<sup>135</sup> most other international NGOs have either not engaged with this issue at all, or instead simply reiterated calls for an NHRI.<sup>136</sup> Although the stakeholder summary faithfully notes the stakeholder calls for a regional human rights mechanism, this has not translated into this being a live issue in the interactive dialogue. An issue which is therefore of some interest to Pacific NGOs (and Pacific states) appears to have been lost in the rhetoric around NHRIs.

A final issue concerning the involvement of international NGOs is whether their dominance undermines the credibility of national NGOs. One concern is that, because of their generally higher profile in Geneva, more weight may be given by OHCHR to the stakeholder submissions made by international NGOs. Existing literature disagrees on this point. Moss has suggested that:

Well-known and highly regarded international NGOs that have a presence in Geneva, consultative status with the UN, and are known to OHCHR staff will be more likely to be deemed credible and can be more certain that the information that they submit will be deemed credible and reliable by OHCHR staff.<sup>137</sup>

A contrasting view was, however, expressed in 2009, where, in response to the same concern that OHCHR might be inclined to ‘rely on information provided by international NGOs at the expense of lower profile national NGOs’, it was noted that most national NGOs appeared to be satisfied with the OHCHR summary.<sup>138</sup>

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<sup>135</sup> See the following stakeholder submissions of Oceania Human Rights on Nauru, Palau, Papua New Guinea (‘PNG’), Samoa and Tonga II, respectively: OceaniaHR, ‘Nauru: Creating a Culture of Human Rights & Protecting the Environment for Future Generations’, Stakeholder Submission to the Office of the High Commissioner for Human Rights in the Universal Periodic Review; OceaniaHR, ‘Palau: The Struggle for Self-Determination in an Age of Climate Change along with the Challenges of Globalization on Small Island State Emerging from Violence in the Pursuit of a Nuclear Free Peace Constitution’, Stakeholder Submission to the Office of the High Commissioner for Human Rights in the Universal Periodic Review; OceaniaHR, ‘Papua New Guinea: A Resource Rich State Surviving the Resource Curse to Secure Human Rights for Its Citizens in a Post-Colonial State’, Stakeholder Submission to the Office of the High Commissioner for Human Rights in the Universal Periodic Review; OceaniaHR, ‘Samoa: A Strong State with a Potential for Stronger Role in Regional Human Rights Recognizing Traditional Models of Governance’, Stakeholder Submission to the Office of the High Commissioner for Human Rights in the Universal Periodic Review; OceaniaHR, ‘Tonga: The Pacific Kingdom Promoting Greater Human Rights in Region’, Stakeholder Submission to the Office of the High Commissioner for Human Rights in the Universal Periodic Review.

<sup>136</sup> See, for example, the stakeholder submissions of Amnesty International (on Solomon Islands and PNG) and International Center for Transitional Justice (on Solomon Islands), respectively: Amnesty International, ‘Solomon Islands — Amnesty International Submission to the UN Universal Periodic Review’, Stakeholder Submission to the Office of the High Commissioner for Human Rights in the Universal Periodic Review, May 2011; Amnesty International, ‘Papua New Guinea — Amnesty International Submission to the UN Universal Periodic Review’, Stakeholder Submission to the Office of the High Commissioner for Human Rights in the Universal Periodic Review, May 2011; International Center for Transitional Justice, ‘Solomon Islands — Submission to the Universal Periodic Review of the United Nations Human Rights Council’, Stakeholder Submission to the Office of the High Commissioner for Human Rights in the Universal Periodic Review, 8 November 2010.

<sup>137</sup> Moss, above n 54, 132.

<sup>138</sup> Gareth Sweeney and Yuri Sato, ‘An NGO Assessment of the New Mechanisms of the UN Human Rights Council’ (2009) 9 *Human Rights Law Review* 203, 207.

OHCHR has its own internal standards and practices for determining what NGO information will be included in the stakeholder summary (ie what information is ‘reliable and credible’), but these guidelines are not publicly available.<sup>139</sup> Much may depend here on the attitude and approach of the individual OHCHR drafter tasked with preparing contributions to the stakeholder summary for a particular state. Julie Billaud has noted that OHCHR drafters are ‘acutely aware of their responsibility to remain true to the message people living somewhere else in the world had asked them to pass on to the international community’.<sup>140</sup> It is difficult to make an overall assessment of this issue in the Pacific context, although it can be noted that, given the modest number of NGO submissions for Pacific states, the OHCHR drafters have more space to accommodate NGO views than is the case where there are a higher number of NGO submissions.

A different credibility concern is the possible scepticism of some states in the Global South towards information provided by international NGOs. Lucia Nader has noted that more participation by NGOs from the Global South in the work of the HRC generally is vital not only because most major human rights violations occur in the Global South, but also because of the geographic composition of the HRC and the political implications of this for its operations. African, Asian and Caribbean states hold 34 of the 47 seats in the HRC and ‘[m]any of these countries question the legitimacy of the action and the credibility of the information issued by NGOs that are not from their respective countries or regions’.<sup>141</sup>

## VI HOW CAN INTERNATIONAL NGOS ‘DO GOOD BETTER’?

This Part considers how international NGOs can work more productively with national Pacific NGOs in the context of the UPR in order to respond to the concern that international NGOs may, albeit with the best of intentions, be contributing to a distortion of civil society concerns in the OHCHR summaries prepared for Pacific states’ reviews. It seeks to offer some thoughts in answer to the question: how can international NGOs ‘do good better’? The continued involvement of international NGOs in the UPR of Pacific states is undoubtedly important. This Part therefore has the aim of exploring how international NGOs might develop and improve their work in the Pacific. An underlying theme is that the greater profile and influence of international NGOs brings with it a certain responsibility. Another theme is that international NGOs need to continue to engage with the challenge of connecting the ‘global’ with the ‘local’ and ensuring that what happens in Geneva is based on the real human rights concerns of individuals and communities in the Pacific. Underlying all this, there may be a need for the ‘cultivation of humility’ by international NGOs.<sup>142</sup> There might

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<sup>139</sup> However, see the interesting discussion of the drafting process in: Julie Billaud, ‘Keepers of the Truth: Producing “Transparent” Documents for the Universal Periodic Review’ in Hilary Charlesworth and Emma Larking (eds), *Human Rights and the Universal Periodic Review: Rituals and Ritualism* (Cambridge University Press, 2014) 63.

<sup>140</sup> *Ibid* 71.

<sup>141</sup> Lucia Nader, ‘The Role of NGOs in the UN Human Rights Council’ (2007) 7 *SUR — International Journal on Human Rights* 7, 10.

<sup>142</sup> Mutua, above n 106, 579.

even be scope for ‘institutional learning’ by an international NGO resulting from engagement with Pacific NGOs.<sup>143</sup>

A first point to consider (if only to dismiss it) is whether it should simply be accepted that the roles of national and international NGOs in relation to the UPR are in fact already suitably complementary. Research by CRIN in 2010 identified a ‘clear distinction’ between those NGOs ‘who engage at the Geneva level (primarily international NGOs) and those far from Geneva (national NGOs ...’<sup>144</sup> Rather than trying to overcome this, perhaps this division should be acknowledged and used as a foundation for future action. International NGOs with consultative status could focus their UPR input on the Geneva elements of the UPR process — stakeholder submissions, advocacy and statements at the HRC plenary. National NGOs could focus on activities at the national level — participating in national consultations and, perhaps most importantly, using the outcome report to engage in advocacy at home. As noted by Moss, some of the most significant opportunities for NGO advocacy associated with the UPR ‘lie not in the proceedings in the Human Rights Committee in Geneva, but internally in societies around the world’.<sup>145</sup> While the work of international NGOs is important, it can never be a substitute for local advocacy efforts as it is these which will make the most difference on the ground. This understanding of the UPR perhaps suggests that international and national NGOs should actively seek to complement the work of each other, rather than duplicate (or diverge) within the same (limited) space. Importantly though, in order for this division of labour to work, there would need to be proactive and collaborative partnerships between the two, so that the activity of international NGOs in Geneva truly reflects Pacific concerns. Without such close and deep partnerships, there is a risk that what happens in Geneva becomes increasingly divorced from the lived human rights reality on small Pacific islands on the other side of the world. It is therefore suggested that simple complementarity is not the way forward, but rather opportunities for greater collaboration between national and international NGOs should be developed.

An obvious area for improving collaboration between national and international NGOs is for international NGOs to actively engage national Pacific NGOs in the making of joint stakeholder submissions. Although international and national NGOs may have different priorities, they presumably share a common underlying aim in this context — improvement of human rights on the ground in the Pacific. However, as noted above, to date only five of the 124 submissions on Pacific states were made by coalitions of national and international NGOs. Some OHCHR staff have reportedly suggested that national NGOs gain credence and inclusion in the OHCHR stakeholder summary by making joint stakeholder submissions — either together with other national NGOs or with an international NGO.<sup>146</sup> Joint submissions may also result in a more cohesive approach to advocacy and minimise duplication between

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<sup>143</sup> Bell and Carens, above n 118, 308.

<sup>144</sup> Renshaw, above n 55, 2.

<sup>145</sup> Moss, above n 54, 148.

<sup>146</sup> *Ibid* 133. See also UPR Info, ‘Beyond Promises: The Impact of the UPR on the Ground’ (Report, 2014) 63–4.

submissions.<sup>147</sup> In countries such as Fiji, it may not be safe to report individually, but submitting as part of a coalition may be possible. Another advantage of joint submissions for smaller national NGOs who may be unfamiliar with reporting guidelines is that they could submit information to the report coordinator, with the coordinator responsible for ensuring compliance with the reporting guidelines, relieving smaller national NGOs of this responsibility.<sup>148</sup>

For international NGOs, collaboration with national NGOs will add legitimacy to their work. Although the value of international NGOs is primarily in their role as ‘policy entrepreneurs’ rather than representatives of any sector of society,<sup>149</sup> the nature of the UPR submission process is that international NGOs do in some way speak for or on behalf of peoples or problems in the Pacific. This is arguably problematic from an accountability perspective.<sup>150</sup> Collaboration with national NGOs who have local knowledge and presence will at least go some way towards ensuring that submissions reflect Pacific voices. It may help to overcome the ‘worrying disconnection’ between the advocacy of international NGOs and the best interests of the peoples that they proclaim to serve.<sup>151</sup> In collaborating on a joint stakeholder submission, international NGOs will, however, still need to be careful to avoid imposing their own will as this ‘could alienate the victims sought to be protected, undermine community spirit, and even weaken local human rights protections’.<sup>152</sup> International NGOs that encourage national NGOs to determine priorities and draw on local expertise are likely to be more effective in the long-term.<sup>153</sup>

Aside from making a stakeholder submission, the second key element of the Geneva side of the UPR is lobbying and advocacy. While national NGOs can seek to lobby diplomats based in their own country and urge that the information is passed on to Geneva, the most effective lobbying is of diplomats in Geneva who will actually participate in the interactive dialogue. National Pacific NGOs, like others from the Global South, have virtually no capacity to do this. Challenges include the lack of ECOSOC status, limited funding, visa restrictions, language issues and lack of Geneva ‘know-how’. There is real scope here for one or more international NGOs to take an ‘agency’ approach whereby national NGOs effectively ‘piggy-back’ on the consultative status of an international

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<sup>147</sup> Renshaw, above n 55, 33.

<sup>148</sup> *Ibid* 33.

<sup>149</sup> Steve Charnovitz, ‘Opening the WTO to Nongovernmental Interests’ (2000) 24 *Fordham International Law Journal* 173, 209–10.

<sup>150</sup> For a useful general discussion of this point, see Garry W Jenkins, ‘Nongovernmental Organizations and the Forces against Them: Lessons of the Anti-NGO Movement’ (2012) 37 *Brooklyn Journal of International Law* 459, 486–8.

<sup>151</sup> *Ibid* 488, quoting Hetty Kovach, ‘Addressing Accountability at the Global Level: The Challenges Facing International NGOs’ in Lisa Jordan and Peter van Tuijl (eds), *NGO Accountability: Politics, Principles and Innovations* (Routledge, 2006) 195.

<sup>152</sup> George E Edwards, ‘Assessing the Effectiveness of Human Rights Non-Governmental Organizations (NGOs) from the Birth of the United Nations to the 21<sup>st</sup> Century: Ten Attributes of Highly Successful Human Rights NGOs’ (2010) 18 *Michigan State Journal of International Law* 165, 209.

<sup>153</sup> Jenkins, above n 150, 523, citing V P Gagnon Jr, ‘International NGOs in Bosnia-Herzegovina: Attempting to Build Civil Society’ in Sarah E Mendelson and John K Glenn (eds), *The Power and Limits of NGOs — A Critical Look at Building Democracy in Eastern Europe and Eurasia* (Columbia University Press, 2002) 207.

NGO.<sup>154</sup> For example, it is possible to envisage a system whereby an international NGO offers a service to national NGOs to appear at side events on its behalf, undertake one-on-one lobbying of individual missions and make a statement at the HRC plenary session. Currently, this occurs informally and on an ad hoc basis but a more structured system may enable the voices of national grassroots NGOs to be heard more strongly in Geneva.

As well as an agency mechanism, there may be opportunities for existing mechanisms for NGO advocacy in Geneva to be used more creatively. For example, UPR Info facilitates pre-session side events for NGOs and interested states before each UPR session. However, attendance at these meetings is currently in person only. Perhaps in the future it would be possible for national NGOs to participate via Skype, or, more practically given the different time zones, to at least send in short video messages which could be played at this pre-session.

For those national NGOs who do manage to travel to Geneva, there are numerous practical challenges involved in ‘navigating’ Geneva — both physically and metaphorically. These include the high financial costs and impact on staff availability by participating in HRC sessions in Geneva, the lack of familiarity with the procedure of the HRC and the lack of access to information.<sup>155</sup> A government delegate from Tuvalu who travelled to Geneva for the adoption of Tuvalu’s outcome report tells the tale of her ‘travel nightmare’ which included not only getting to Geneva from Tuvalu but then taking two hours to find the way from her hotel to the ‘nearby’ UN headquarters.<sup>156</sup> Many international NGOs are well-placed to help national NGOs navigate some of the challenges on the ground in Geneva and there is much assistance already available. Mandat International runs an information service for NGOs attending conferences and meetings in Geneva.<sup>157</sup> Its ‘Welcome Desk’ service provides information and support to facilitate participation of delegates at the HRC.<sup>158</sup> The International Service for Human Rights works to support the work of human rights defenders.<sup>159</sup> UPR Info aims at raising awareness on the UPR and providing capacity-building tools to different actors in the process, including NGOs.<sup>160</sup> Clearly then, there is much that international NGOs are already doing to help national NGOs on the ground in Geneva.

Although the second cycle of the UPR is now well underway, it is still a comparatively new mechanism. For many national NGOs from the Pacific, a stakeholder submission may be their first engagement with the UN human rights system. International NGOs can play a role in continuing to raise awareness of this new mechanism, how it operates and how national NGOs can successfully engage with it. As noted by CRIN, ‘[m]any organisations have been developing their own strategies, toolkits and evaluations, and have collected a certain

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<sup>154</sup> Kerstin Martens, ‘Bypassing Obstacles to Access: How NGOs Are Taken Piggy-Back to the UN’ (2004) 5(3) *Human Rights Review* 80.

<sup>155</sup> Nader, above n 141, 10.

<sup>156</sup> *Pacific Human Rights Stories*, above n 10, 66.

<sup>157</sup> See Mandat International, *Support in Geneva* <<http://perma.cc/RY8W-7K8Q>>.

<sup>158</sup> See Mandat International, *Role of the Welcome Desk* <<http://perma.cc/3CR4-93J2>>.

<sup>159</sup> See International Service for Human Rights, *What We Do* <<http://perma.cc/TWG2-274E>>.

<sup>160</sup> See UPR Info, *Vision & Mission* <<http://perma.cc/R7JN-5ZM2>>.

amount of “learning” that could benefit many smaller, less experienced organisations around the world’.<sup>161</sup> Engagement by international NGOs with national NGOs in the context of the UPR will strengthen the ability and capacity of the latter to engage effectively with other UN mechanisms, including the treaty bodies.

Finally, aside from deeper collaboration between national and international NGOs in and around the UPR, more fundamental structural change of international NGOs themselves could improve their input to the UPR process for Pacific states and others from the Global South. Many international NGOs already seek to ensure that their staff are globally diverse and they actively devolve authority to offices located in the Global South. Increasingly too, sophisticated organisations are being formed which aim to ensure that they are truly ‘global’ in outlook with staff located around the world, grassroots members worldwide and a deep commitment to bridging North–South perspectives. Such developments are to be applauded and encouraged.

## VII CONCLUSION

A key aim of this article was to explore whether the involvement of international NGOs in the UPR of Pacific states has a distorting effect on the interactive dialogue in Geneva and, in particular, whether it dilutes the impact of the Pacific civil society voice. While it is clear that there are many benefits from the input of international NGOs into Pacific states’ reviews, there are also challenges. Some international NGOs have tended to focus on formal limitations on rights rather than actual human rights violations. Where an international NGO is lobbying on specialised issues such as abolition of the death penalty, the prominence given to these issues in the UPR may be disproportionate to the actual human rights concerns on the ground. The limited number of joint stakeholder submissions from coalitions of national and international NGOs is of concern in this regard.

However, the unprecedented involvement of national Pacific NGOs in the UPR makes it clear that human rights are not simply being imposed from the top-down by an international elite. Indeed, the enthusiasm of national NGOs illustrates that the demand for human rights is issuing from civil society within the Pacific. International NGOs are therefore urged to ensure that they are not distorting this authentic local voice. Rather, they should do all that they can to support national Pacific NGOs so that their concerns are reflected in the UPR.

As the UPR process matures during the second cycle, there needs to be evolution in the relationship between international and national NGOs. The good intentions of international NGOs are not always sufficient to produce desirable results.<sup>162</sup> With the support of international NGOs, increased involvement of Pacific NGOs in the UPR would result in the deliberations of the HRC becoming, to borrow the words of former UN Secretary-General Kofi Annan, ‘richer and more diverse, yet grounded in reality’.<sup>163</sup> International NGOs are

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<sup>161</sup> Renshaw, above n 55, 2.

<sup>162</sup> Bell and Carens, above n 118, 302.

<sup>163</sup> *Strengthening of the United Nations System — Report of the Secretary-General*, 59<sup>th</sup> sess, Agenda Item 55, UN Doc A/59/354 (13 September 2004) 2 [4].

urged to rise to the challenge of connecting the global with the local; to ‘do good better’ in order to contribute to the ultimate goal of the UPR — improving the human rights situation on the ground in the Pacific.