

THE PACIFIC ISLAND STATES: THEMES EMERGING FROM THE UNITED NATIONS HUMAN RIGHTS COUNCIL'S INAUGURAL UNIVERSAL PERIODIC REVIEW?

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This commentary reviews the Universal Periodic Review experience of the Pacific Island states. Under the auspices of the new United Nations Human Rights Council, every UN member state, including the 12 Pacific Island states holding UN membership, underwent the Universal Periodic Review in 2011. This new process seeks to review compliance with fundamental human rights through, in effect, 'peer review'. Pacific Island states were reviewed but rarely participated in the review of other states. The UN documentation on the reviews of the Pacific Island states is perused to identify common themes: the desirability of more extensive engagement with the international human rights system (increased ratification of core treaties for example); and a need to transform international human rights into a meaningful reality informing national laws and policies. These are considered further with reference to the relevant review reports. The commentary concludes by looking towards the second review cycle and mooted some realistic areas of improvement.

CONTENTS

I	Introduction	1
II	The UN Human Rights Council and UPR.....	2
III	Pacific Island States and the First Cycle of UPR	5
IV	Areas Identified as Requiring Further Attention from All or Most Pacific Island States.....	10
	A More Engagement with International Human Rights	10
	1 Universal Ratification of Core Human Rights Treaties.....	11
	2 Interaction with UN Special Procedures.....	15
	3 Technical Assistance	16
	B More Embedding of Human Rights at National Level	18
	1 National Human Rights Institutions	18
	2 Legislative and Constitutional Provisions	20
	3 Human Rights Programs.....	22
V	Looking Towards the Second Cycle of Universal Periodic Review	24

I INTRODUCTION

In September 2011, the final four Pacific Island states (herein defined as the member states of the United Nations) underwent Universal Periodic Review ('UPR') before the UN Human Rights Council ('HRC'). By this review process, the UN membership hopes to obtain a better picture of international compliance

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with fundamental human rights and freedoms and to identify areas in which progress can be made, through for example the provision of technical assistance to a state. This commentary extracts themes emerging from the inaugural UPR process of those Pacific Island states. Accordingly, the review process will be explained, by way of background. Thereafter, attention will turn to the actual review outcomes of the identified states to ascertain common ground. Selected areas found to be of concern will then be further analysed to provide a more complete legal analysis. It is clear that, despite their myriad of differences, many Pacific Island states share more than an ocean. Finally, some tentative conclusions on avenues of progress will be presented in anticipation of the second cycle of UPR.

II THE UN HUMAN RIGHTS COUNCIL AND UPR

In 2006, the General Assembly opted to create a new body ‘responsible for promoting universal respect for the protection of all human rights and fundamental freedoms for all, without distinction of any kind and in a fair and equal manner’:¹ the HRC. Although the international community was broadly supportive of this initiative, not least given the growing criticism of, and disillusionment with, the former Commission on Human Rights,² Palau and the Marshall Islands joined Israel and the United States in voting against the enabling resolution in the General Assembly.³ Part of the enabling resolution required the HRC to undertake a UPR of all states, evaluating compliance with contemporary international human rights and international humanitarian laws.⁴ UPR of all member states was carried out over a four year period,⁵ with the entire process (and indeed the HRC itself) then undergoing an evaluation by the General Assembly in order to determine its future role and status.

¹ *Human Rights Council*, GA Res 60/251, UN GAOR, 60th sess, 72nd plen mtg, Agenda Items 46 and 120, UN Doc A/RES/60/251 (3 April 2006) art 2. See generally Bertrand Ramcharan, *The Human Rights Council* (Routledge, 2011); Gerd Oberleitner, *Global Human Rights Institutions: Between Remedy and Ritual* (Polity Press, 2007); Kevin Boyle, ‘The United Nations Human Rights Council: Origins, Antecedents, and Prospects’ in Kevin Boyle (ed), *New Institutions for Human Rights Protection* (Oxford University Press, 2009) 11; Yvonne Terlingen, ‘The Human Rights Council: A New Era in UN Human Rights Work?’ (2007) 21 *Ethics and International Affairs* 167; Philip Alston, ‘Reconceiving the UN Human Rights Regime: Challenges Confronting the New UN Human Rights Council’ (2006) 7 *Melbourne Journal of International Law* 185.

² See generally High-Level Panel on Threats, Challenges and Change, *A More Secure World: Our Shared Responsibility — Report of the High Level Panel on Threats, Challenges and Change*, UN GAOR, 59th sess, Agenda Item 55, UN Doc A/59/565 (2 December 2004); *In Larger Freedom: Towards Development, Security and Human Rights for All — Report of the Secretary-General*, UN GAOR, 59th sess, Agenda Items 45 and 55, UN Doc A/59/2005 (21 March 2005) [181] et seq; Paul Lauren, ‘“To Preserve and Build on its Achievements and to Redress its Shortcomings”: The Journey from the Commission on Human Rights to the Human Rights Council’ (2007) 29 *Human Rights Quarterly* 307; Nico Schrijver, ‘The UN Human Rights Council: A New “Society of the Committed” or Just Old Wine in New Bottles?’ (2007) 20 *Leiden Journal of International Law* 809.

³ For voting record and the text of related speeches, see UN GAOR, 60th sess, 72nd plen mtg, UN Doc A/60/PV.72 (15 March 2006).

⁴ *Human Rights Council*, GA Res 60/251, UN GAOR, 60th sess, 72nd plen mtg, Agenda Items 46 and 120, UN Doc A/RES/60/251 (3 April 2006) [5(e)].

⁵ Human Rights Council, *Institution Building of the United Nations Human Rights Council*, UN Doc A/HRC/Res/5/1 (18 June 2007) annex (‘*United Nations Human Rights Council: Institution Building*’) [14].

The modalities of UPR are contained in a resolution of the HRC.⁶ In essence, the purpose of the procedure is to engage each state in constructive dialogue aimed at improving the human rights therein, and, as appropriate, enhancing the state's capacity and sharing good practice.⁷

UPR represents a unique opportunity for every UN member state to be scrutinised in turn on a regular basis, as many states have not yet ratified all the core international human rights treaties (all states accept one or more of the core treaties).⁸ In terms of each core treaty, compliance is currently monitored by a committee of independent experts specifically established for that purpose. These committees are, with one exception, established and governed by the salient treaty.⁹ Each treaty thus provides for the membership, workload and powers of the committee. In general, committees meet regularly in Geneva with secretariat support provided by the Office of the High Commissioner for Human Rights ('OHCHR'). States party to the relevant treaty submit periodic reports to the committee demonstrating their compliance with the terms of the treaty or their progress towards fulfilling their treaty obligations.¹⁰ These reports are considered by the committee, with the state able to make representations thereto. Concluding observations on the compliance of the state with the treaty are then issued, with the state given an opportunity to respond thereto.¹¹

⁶ See generally *ibid.*

⁷ *Ibid* [4].

⁸ *International Covenant on Economic, Social and Cultural Rights*, opened for signature 19 December 1966, 993 UNTS 3 (entered into force 3 January 1976) ('ICESCR'); *International Covenant on Civil and Political Rights*, opened for signature 19 December 1966, 999 UNTS 171 (entered into force 23 March 1976) ('ICCPR'); *International Convention on the Elimination of all Forms of Racial Discrimination*, opened for signature 7 March 1966, 660 UNTS 195 (entered into force 4 January 1969) ('CERD'); *Convention on the Elimination of Discrimination against Women*, opened for signature 18 December 1979, 1249 UNTS 13 (entered into force 3 September 1981) ('CEDAW'); *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) ('CAT'); *Convention on the Rights of the Child*, opened for signature 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990) ('CRC'); *International Convention on the Rights of All Migrant Workers and Their Families*, opened for signature 18 December 1990, 2220 UNTS 3 (entered into force 1 July 2003); *Convention on the Rights of Persons with Disabilities*, opened for signature 30 March 2007, UN Doc A/61/611 (entered into force 3 May 2008) ('CPD'); *International Convention for the Protection of All Persons from Enforced Disappearance*, opened for signature 20 December 2006, UN Doc A/61/488 (entered into force 23 December 2010).

⁹ The exception is the Committee on Economic, Social and Cultural Rights, established by: Economic and Social Council, *Review of the Composition, Organisation and Administrative Arrangements of the Sessional Working Group of Governmental Experts on the Implementation of the International Covenant on Economic, Social and Cultural Rights*, ESC Res 1985/17, UN ESCOR, 1st sess, 22nd plen mtg, Agenda Item 3, UN Doc E/RES/1985/17 (28 May 1985).

¹⁰ Treaties such as the *ICESCR* contain many rights which should be realised progressively (see art 2) rather than instantaneously (contrast with art 2 of the *ICCPR*).

¹¹ All these reports are freely available online from United Nations Human Rights Office of the Office of the High Commissioner for Human Rights, *Documentation* (2012) <<http://www.ohchr.org/EN/HRBodies/UPR/Pages/Documentation.aspx>>.

UPR differs from this process in a number of respects.¹² First, UPR is not a treaty monitoring procedure. Rather, the HRC considers every member state of the UN, irrespective of the number of treaties it may have ratified. Membership of the UN is the sole criterion for consideration of a state by the HRC. Secondly, the HRC applies generally accepted human rights (drawn from the *Universal Declaration of Human Rights*)¹³ rather than the specific rights enshrined in any treaty, although obviously those states that have accepted core human rights treaties may be questioned on them under UPR. Thirdly, whereas every member state of the UN is reviewed under the same process, the treaty monitoring committees can only consider contracting parties. Fourthly, UPR is essentially an inter-state process — ‘peer review’ of progress towards general human rights goals¹⁴ — as compared to the more expert independent review undertaken by treaty bodies. A final point, particularly relevant in the Pacific regional context, is the lack of an integrated ‘shadow reporting’ system under UPR. These shadow reports, prepared primarily by NGOs or groups thereof, have proven to be a valuable and integral part of the treaty monitoring body review process. Under UPR, the stakeholders’ report is the closest equivalent but there is room to critique the modalities, not least the low regional publicity surrounding the calls for contributions to it.

In preparation for UPR, three sets of documentation are required:¹⁵ a national report tendered by the state under review; a summary of treaty monitoring committee reports, reports of HRC special procedures and other documentation on the state under review; and a report on ‘credible and reliable’ stakeholder information on the state.¹⁶ The two latter documents are compiled by the OHCHR. A working group undertakes the actual review, chaired by three states (selected by lottery) — this takes the form of an interactive dialogue between the state under review and any/all interested states that participate in the review. These review sessions are held in Geneva, and the resulting report is forwarded to the HRC, along with the views and comments thereon expressed by the state under review. Finally, the HRC formally adopts the outcome of the review at its next session.¹⁷

¹² See generally Felice D Gaer, ‘A Voice Not an Echo: Universal Periodic Review and the UN Treaty Body System’ (2007) 7 *Human Rights Law Review* 109; Nadia Bernaz, ‘Reforming the UN Human Rights Protection Procedures: A Legal Perspective on the Establishment of the Universal Periodic Review Mechanism’ in Kevin Boyle (ed), *New Institutions for Human Rights Protection* (Oxford University Press, 2009) 75.

¹³ *Universal Declaration of Human Rights*, GA Res 217A (III), UN GAOR, 3rd sess, 183rd plen mtg, UN Doc A/810 (10 December 1948).

¹⁴ Nazila Ghanea, ‘From UN Commission on Human Rights to UN Human Rights Council: One Step Forward or Two Steps Sideways?’ (2006) 55 *International and Comparative Law Quarterly* 695, 704.

¹⁵ Human Rights Council, *Institution-Building of the United Nations Human Rights Council*, UN Doc A/HRC/Res/5/1 (18 June 2007).

¹⁶ *Ibid* annex (‘*United Nations Human Rights Council: Institution Building*’) [15].

¹⁷ Human Rights Council, *Institution-Building of the United Nations Human Rights Council*, UN Doc A/HRC/Res/5/1 (18 June 2007).

When considering states under review, many states refer to the voluntary human rights goals agreed under the auspices of the HRC in 2007.¹⁸ Of particular relevance in the Pacific region context,¹⁹ human rights goals include universal ratification of the core international human rights instruments,²⁰ establishing ‘human rights national institutions guided by the *Paris Principles* and the *Vienna Declaration and Programme of Action* with appropriate funding to fulfil their mandates’²¹ and the drafting and implementing of human rights action plans, particularly addressing a broad prohibition on discrimination of any ground.²²

III PACIFIC ISLAND STATES AND THE FIRST CYCLE OF UPR

Some twenty countries and territories may be termed Pacific Island states. However, not all of them are independent states, holding membership of the UN and thus required to undergo UPR. The 12 Pacific Island states which are members of the UN are the Federated States of Micronesia, Fiji,²³ Kiribati, Marshall Islands, Nauru, Palau, Papua New Guinea, Solomon Islands, Samoa, Tonga, Tuvalu and Vanuatu. They are the subject of this commentary. These states are all small island developing states and, as such, are members of a variety of regional organisations. Of particular relevance is the Pacific Islands Forum Secretariat,²⁴ with its published ‘Pacific Plan: For Strengthening Regional Cooperation and Integration’ (‘Pacific Plan’).²⁵ Of the 12, 5 are considered least developed countries by the UN: Kiribati, Samoa, Solomon Islands, Tuvalu, and Vanuatu.²⁶ Irrespective of their development status, and definitive figures are

¹⁸ Human Rights Council, *Elaboration of Human Rights Voluntary Goals to be Launched on the Occasion of the Celebration of the Sixtieth Anniversary of the Universal Declaration of Human Rights*, HRC Res 6/26, 6th sess, 33rd mtg, UN Doc A/HRC/RES/6/26 (14 December 2007).

¹⁹ Relevance determined by the periodicity with which the goals are cited in the UPR documentation thereon.

²⁰ Human Rights Council, *Human Rights Voluntary Goals*, HRC Res 9/12, 9th sess, UN Doc A/HRC/RES/9/12 (18 September 2008) para 1(a).

²¹ *Ibid* para 1(b).

²² *Ibid* paras 1(d)–2(e).

²³ The UN documentation still refers to ‘Fiji’ although the islands now self-identify as ‘the Republic of the Fiji Islands’, thus the UN terminology has been adopted herein.

²⁴ Formerly the South Pacific Forum, current website: Pacific Islands Forum Secretariat, <www.forumsec.org.fj>.

²⁵ This living document is subject to periodic changes. The current (2007) version is available at Pacific Islands Forum Secretariat, ‘The Pacific Plan: For Strengthening Regional Cooperation and Integration’ (Report, Pacific Islands Forum Secretariat, November 2007). See generally Villiame Wilikilagi, *Does the Pacific Plan Really Offer an Avenue for Stronger and Deeper Regional Cooperation* (22 June 2010) Social Science Research Network <ssrn.com/abstract=1628424>; Susan Roberts, Sarah Wright and Phillip O’Neill, ‘Good Governance in the Pacific? Ambivalence and Possibility’ (2007) 38 *Geoforum* 967.

²⁶ Department of Economic and Social Affairs Statistics Division, ‘World Statistics Pocketbook 2010: Least Developed Countries’ (Series V, No 35/LDC, United Nations Office of the High Representative for Least Developed Countries, Landlocked Developing Countries and Small Island Developing States, 2011). Note that Vanuatu requested to remain on this list: Tony Sewen, ‘Statement by Vanuatu Representative on Vanuatu’s Graduation from LDC’ (Statement delivered at Committee for Development Policy, 2012 Triennial Review of Least Developed Country Category, New York, 17 January 2012) <http://www.un.org/en/development/desa/policy/cdp/cdp_statements/cdp_statement_vanuatu_jan2012_egm.pdf>.

lacking in the UN development index, there are many areas of commonality, other than pure geography. Accordingly there is value in considering them as a group herein. At the regional level, they are also all members of the Pacific Islands Forum Secretariat and a plethora of other regional bodies and international bodies with a regional focus.

As regards the other countries and territories, New Caledonia and French Polynesia are legally part of France, the relevant UN member state which underwent review. Similarly Tokelau, the Cook Islands and Niue are territories represented by New Zealand. Guam, American Samoa and the Northern Mariana Islands are American territories, while Hawaii is obviously a full US state. In these instances, reviewing the documentation for the salient governing state reveals little, or more commonly no, mention being made of the Pacific Island territories. Perhaps it is inevitable that the focus of the review is on the governing state itself, time and space precluding an examination of all associated territories. This is potentially problematic as small island communities appear to be omitted in this review process, albeit not intentionally. Perhaps more could be done to include them (and indeed other territories falling under the jurisdiction of another UN member state) in future cycles. Indeed, when commenting during the interactive dialogue of France's UPR, the Russian Federation noted the concern of treaty bodies at the absence of information on France's overseas territories and departments, suggesting that information on these territories should be included in future national reports.²⁷ France does comment on French Polynesia and New Caledonia, briefly, in its response to the recommendations and accepts the Russian Federation's suggestion.²⁸ It will be interesting to see the result in the second cycle of review.²⁹

Tonga³⁰ was the first Pacific Island state to be reviewed, in the second session of UPR held in 2008. Tuvalu³¹ was next in the third session, followed by

²⁷ Human Rights Council, *Report of the Working Group on the Universal Periodic Review: France*, 8th sess, Agenda Item 6, UN Doc A/HRC/8/47 (3 June 2008) [54]. See also the comments of Guatemala: at [49].

²⁸ Human Rights Council, *Report of the Working Group on the Universal Periodic Review: France: Addendum*, 8th sess, Agenda Item 6, UN Doc A/HRC/8/47/Add.1 (25 August 2008) [17]. The report also references indigenous peoples: at [10].

²⁹ France is scheduled to undergo its second review at the 15th session, to be held in 2013: Human Rights Council, *Human Rights Council Universal Periodic Review (Second Cycle)*, United Nations Human Rights, Office for the High Commissioner for Human Rights <http://www2.ohchr.org/SPdocs/UPR/UPR-FullCycleCalendar_2nd.Doc>.

³⁰ Human Rights Council, *Outcome of the Universal Periodic Review: Tonga*, 8th sess, 21st mtg, UN Doc A/HRC/DEC/8/130 (13 June 2008) adopted the outcome of the review which comprises the Human Rights Council, *UPR Report: Tonga*, 8th sess, Agenda Item 6, UN Doc A/HRC/8/48 (5 June 2008) ('*UPR Report: Tonga*') containing Tonga's response thereto. Note that unless otherwise noted, the English language version is used throughout.

³¹ Human Rights Council, *Outcome of the Universal Periodic Review: Tuvalu*, 10th sess, 32nd mtg, UN Doc A/HRC/DEC/10/116 (20 March 2009) adopted the outcome of the review, which comprises the Human Rights Council, *UPR Report: Tuvalu*, 10th sess, Agenda Item 6, UN Doc A/HRC/10/84 (9 January 2009) ('*UPR Report: Tuvalu*').

Vanuatu³² in 2009 during the fifth session, Fiji³³ during the seventh session held in 2010, Kiribati³⁴ in the following session, the Marshall Islands³⁵ and the Federated States of Micronesia³⁶ were considered during the last session of 2010 (the ninth session). Nauru³⁷ was considered in 2011 at the 10th session of UPR

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- ³² Human Rights Council, *Outcome of the Universal Periodic Review: Vanuatu*, 12th sess, 19th mtg, Agenda Item 6, UN Doc A/HRC/DEC/12/113 (9 October 2009) adopted the outcome of the review, which comprises the Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Vanuatu*, 12th sess, Agenda Item 6, UN Doc A/HRC/12/14 (4 June 2009) and the response of Vanuatu to outstanding recommendations as contained in Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Vanuatu: Addendum*, 12th sess, Agenda Item 6, UN Doc A/HRC/12/14/Add.1 (24 September 2009) (French version used herein).
- ³³ Human Rights Council, *Outcome of the Universal Periodic Review: Fiji*, 14th sess, 23rd mtg, Agenda Item 6, UN Doc A/HRC/DEC/14/107 (23 June 2010) adopted the outcome of the review, which comprises the Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Fiji*, 14th sess, Agenda Item 6, UN Doc A/HRC/14/8 (23 March 2010) ('UPR Report: Fiji') and the response of Fiji to outstanding recommendations as contained in Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Fiji: Addendum*, 14th sess, Agenda Item 6, UN Doc A/HRC/14/8/Add.1 (10 June 2010).
- ³⁴ Human Rights Council, *Outcome of the Universal Periodic Review: Kiribati*, 15th sess, 33rd mtg, Agenda Item 6, UN Doc A/HRC/DEC/15/114 (8 October 2010) adopted the outcome of the review, which comprises the Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Kiribati*, 15th sess, Agenda Item 6, UN Doc A/HRC/15/3 (17 June 2010) ('UPR Report: Kiribati') and the response of Kiribati to outstanding recommendations as contained in Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Kiribati: Addendum*, 15th sess, Agenda Item 6, UN Doc A/HRC/15/3/Add.1 (30 September 2010) ('UPR Report: Kiribati — Addendum').
- ³⁵ Human Rights Council, *Outcome of the Periodic Universal Review: Marshall Islands*, 16th sess, 34th mtg, Agenda Item 6, UN Doc A/HRC/DEC/16/110 (11 April 2011) adopted the outcome of the review, which comprises the Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Republic of the Marshall Islands*, 16th sess, Agenda Item 6, UN Doc A/HRC/16/12 (4 January 2011) and the response of the Marshall Islands to outstanding recommendations as contained in Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Marshall Islands: Addendum*, 16th sess, Agenda Item 6, UN Doc A/HRC/16/12/Add.1 (4 March 2011).
- ³⁶ Human Rights Council, *Outcome of the Universal Periodic Review: Federated States of Micronesia*, 16th sess, 35th mtg, Agenda Item 6, UN Doc A/HRC/DEC/16/113 (18 March 2011) adopted the outcome of the review, which comprises the Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Federated States of Micronesia*, 16th sess, Agenda Item 6, UN Doc A/HRC/16/16 (4 January 2011) and the response of Federated States of Micronesia to outstanding recommendations as contained in Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Micronesia: Addendum*, 16th sess, Agenda Item 6, UN Doc A/HRC/16/16/Add.1 (14 March 2011) ('UPR Report: Micronesia — Addendum').
- ³⁷ Human Rights Council, *Outcome of the Universal Periodic Review: Nauru*, 17th sess, 15th mtg, Agenda Item 6, UN Doc A/HRC/DEC/17/101 (13 July 2011) adopted the outcome of the review, which comprises the Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Nauru*, 17th sess, Agenda Item 6, UN Doc A/HRC/17/3 (8 March 2011) ('UPR Report: Nauru') and the response of Nauru to outstanding recommendations as contained in Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Nauru: Addendum*, 17th sess, Agenda Item 6, UN Doc A/HRC/17/3/Add.1 (30 May 2011) ('UPR Report: Nauru — Addendum').

and the final four states (Palau,³⁸ Papua New Guinea,³⁹ Solomon Islands⁴⁰ and Samoa⁴¹) in the penultimate session of the review cycle in 2011. Each state submitted a national report and the OHCHR presented the accompanying compilations of other relevant information. Each state sent representatives to Geneva for the interactive dialogue, chaired by the relevant working group, at which its report was considered.

Although the working group opened the interactive dialogue to all states (an integral part of the review process), comparatively few states sought to comment on the position of each Pacific Island state, fewer than made interventions in respect of some other states under review during the same session. Indeed only 21 states made interventions in respect of the Marshall Islands. Papua New Guinea attracted most comments with 36 states participating. Considering the entire first cycle of reviews, Pacific Island states certainly experienced below average numbers of interventions, indeed they received half as many comments as many other UN member states.⁴² There were, however, several states participating in the interactive dialogue with all the Pacific Island states: Algeria, Australia, Canada, France, Morocco, and New Zealand, albeit these states

³⁸ Human Rights Council, *Outcome of the Universal Periodic Review: Palau*, 18th sess, 18th mtg, Agenda Item 6, UN Doc A/HRC/DEC/18/103 (18 October 2011) adopted the outcome of the review, which comprises the Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Palau*, 18th sess, Agenda Item 6, UN Doc A/HRC/18/5 (11 July 2011) ('*UPR Report: Palau*') and the response of Palau to outstanding recommendations as contained in Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Palau: Addendum*, 18th sess, Agenda Item 6, UN Doc A/HRC/18/5/Add.1 (28 July 2011) ('*UPR Report: Palau — Addendum*').

³⁹ Human Rights Council, *Outcome of the Universal Periodic Review: Papua New Guinea*, 18th sess, 38th mtg, Agenda Item 6, UN Doc A/HRC/DEC/18/116 (30 September 2011) adopted the outcome of the review, which comprises the Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Papua New Guinea*, 18th sess, 36th mtg, Agenda Item 6, UN Doc A/HRC/18/18 (11 July 2011) ('*UPR Report: Papua New Guinea*') and the response of Papua New Guinea to outstanding recommendations as contained in Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Papua New Guinea: Addendum*, 18th sess, Agenda Item 6, UN Doc A/HRC/18/18/Add.1 (30 September 2011) ('*UPR Report: Papua New Guinea — Addendum*').

⁴⁰ Human Rights Council, *Outcome of the Universal Periodic Review: Solomon Islands*, 18th sess, 20th mtg, Agenda Item 6, UN Doc A/HRC/DEC/18/106 (18 October 2011) adopted the outcome of the review, which comprises the Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Solomon Islands*, 18th sess, Agenda Item 6, UN Doc A/HRC/18/8 (11 July 2011) ('*UPR Report: Solomon Islands*') and the response of the Solomon Islands to outstanding recommendations as contained in Human Rights Council, *Report of the Human Rights Council on Its Eighteenth Session*, 18th sess, Agenda Item 1, UN Doc A/HRC/18/2 (18 November 2011) [369] et seq.

⁴¹ Human Rights Council, *Outcome of the Universal Periodic Review: Samoa*, 18th sess, 23rd mtg, Agenda Item 6, UN Doc A/HRC/DEC/18/112 (18 October 2011) adopted the outcome of the review, which comprises the Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Samoa*, 18th sess, Agenda Item 6, UN Doc A/HRC/18/14 (11 July 2011) ('*UPR Report: Samoa*') and the response of Samoa to outstanding recommendations as contained in Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Samoa: Addendum*, 18th sess, Agenda Item 6, UN Doc A/HRC/18/14/Add.1 (21 September 2011) ('*UPR Report: Samoa — Addendum*').

⁴² The highest interventions made during interactive dialogue was seventy, usually states in excess of 60 made comments on the extranet because they are timed out of the strict three hour limit for each state's review. By 2011, this applied to states in excess of 50. The highest number of states noted as wishing to contribute to interactive dialogue exceeded 100 for a (very) few reviews.

participated extensively across the entire review cycle. Several other states commented on all bar one Pacific Island state: the Maldives and Slovenia (omitted the Federated States of Micronesia), Mexico (omitted Nauru), the United Kingdom (omitted Marshall Islands) and the US (omitted Tuvalu). Yet others commented on all bar two states: Brazil (omitted Kiribati and the Marshall Islands), Cuba (omitted Fiji and Vanuatu) and Germany (omitted Palau and Tonga). Curiously Argentina, Chile, Hungary, Slovakia and Spain all omitted only Tonga, Tuvalu and Vanuatu from their contributions to the interactive dialogues with Pacific Island states. Of these participating states, obviously New Zealand, Australia, the United Kingdom, the US and France have active interests in the Pacific region and/or have some degree of responsibility (past or present) for governance in the region. Cuba, Haiti and the Maldives were the only island states (other than Samoa as noted below) to comment on any Pacific Island states. Cuba proved generally encouraging, noting areas of progress especially in socio-economic fields. The Maldives, in partial contrast, participated in several reviews of island states (within and outwith the Pacific region), sharing its views on best practice to advance human rights' protection within small island states in light of its solidarity with them and the imminent pressures of facing the challenges of climate change.

Samoa was the only Pacific Island state to participate in the interactive dialogue on any other state. In this instance, it commented favourably during Papua New Guinea's working group's review.⁴³ Both Samoa and Papua New Guinea were considered at the same review session thus representatives from Samoa were present in Geneva during Papua New Guinea's review. Although the Solomon Islands and Palau were also considered during the same session all four states were considered on separate days. Other states were also, of course, considered along with Samoa though the Samoan delegates sought not to make interventions. The lack of contributions by Pacific Island states to the reviews of other Pacific Island states would seem to belie the conceptualisation of UPR as 'peer review'.⁴⁴ Samoa was the only 'peer' to comment on any other state. Each Pacific Island state remains equal to each other and to all other UN member states in accordance with the terms of the *Charter of the United Nations*.⁴⁵ However, there are obvious problems for small island states participating fully in reviews held in Geneva. The availability of personnel and cost of travelling to Switzerland is inherently problematic. Indeed few island states, other than the Maldives and Cuba, participated regularly in review sessions: only Sri Lanka, Mauritius, Jamaica, Trinidad and Tobago proved reasonably regular contributors to UPR, taken across the entire first cycle. Notwithstanding the benefits of face-to-face interactive dialogue in Geneva between state representatives, it is surely not unrealistic to expect other forms of distance participation to be employed, after all, states seeking to comment on reviews can, and regularly do, submit questions in advance of the scheduled dialogue. Even if mechanisms were put in place to facilitate involvement of island states, it is feasible that the difference would be small. Small states have less available personnel and reading and commenting on hundreds of pages of reports on distant states may not seem

⁴³ *UPR Report: Papua New Guinea — Addendum*, UN Doc A/HRC/18/18, [73].

⁴⁴ Ghana, above n 14.

⁴⁵ Preamble.

to be the best use of staff time. Furthermore, there may be a lack of awareness of the mechanism and the potential benefits of engaging in the process as both reviewer and reviewee. There is also a discernible reluctance on the part of Pacific Island states to criticise other states though such reticence is common worldwide, the more so with respect to human rights, something traditionally viewed as within the sovereignty of states.⁴⁶ Finally, in the case of the Pacific Islands, the low level of engagement with core treaties could be a determining factor — states may be less likely to comment on other state practices that (a) do not directly impact on them, and (b) where they themselves have not accepted the relevant core treaties.⁴⁷

Turning now to the substance of the Pacific Island states' reviews themselves — a number of areas of commonality emerge from a careful review of the documentation. Some of these areas reflect global challenges (eg universal ratification of treaties), others are specific to less developed states or small island developing countries. All of the states considered in this commentary share elements of common history (colonisation, traditional custom and practice mixing with 'imported' common (or occasionally civil) law, and the influence of missionaries), which in themselves give rise to similar human rights issues. In the following Part, the identified areas are not necessarily unique to the Pacific Island states though they do emerge as common themes in the UPR of those states, justifying a more detailed consideration thereof.

IV AREAS IDENTIFIED AS REQUIRING FURTHER ATTENTION FROM ALL OR MOST PACIFIC ISLAND STATES

Two main areas will be considered in the present commentary, each selected given their recurrence in the review documentation — the need for more engagement with the international human rights system, including increased ratification of core treaties and the extending of invitations to HRC special procedures; and the need to embed international human rights in national laws and policies including constitutional provisions, national human rights institutions and relevant action programs including those necessary to ensure non-discrimination on grounds of gender including combating violence against women and children. Each of these areas will be considered in turn, identifying the salient international standard, then the issues of concern for all or most Pacific Island states, and the response made by those states to the recommendations. To reduce repetition, comments from and to Pacific Island states will be selected as representative of the discussions in the interactive dialogue. It should be noted that identical comments are not necessarily made in respect of those Pacific Island states not explicitly mentioned.

A *More Engagement with International Human Rights*

A common theme throughout the UPR process, not least for the Pacific Island states, was calls for greater engagement with the international human rights system. At present, the Pacific Island states have a very low level of ratification

⁴⁶ For example, there was little regional criticism of the regimes assuming power in the wake of the Fiji coup.

⁴⁷ Discussed below in more detail under Part IV(A)(1).

of core treaties and do not (or perhaps cannot) participate fully in international human rights activities at the UN level. Of course, there are reasons for this, as the states themselves make clear in the dialogues and responses thereto. A notable exception is the contributions from the Pacific region to the subject of climate change and its impact on human rights: several of the Pacific Island states were commended for their attempts to maintain a global focus on the issue. The negative impact of climate change and natural disasters on human rights, particularly the right to water and land are all too apparent in the Pacific region.⁴⁸

1 *Universal Ratification of Core Human Rights Treaties*

Progressively ratifying core human rights treaties was a common recommendation made to Pacific Island states. An obligation to ratify core human rights treaties flows from various international documents including the *Vienna Declaration and Programme of Action on Human Rights*⁴⁹ and the *UN Human Rights Voluntary Goals*.⁵⁰ Universal human rights, as a goal, is inevitably predicated on global acceptance and realisation of core human rights treaties.⁵¹ This is also recognised within the regional organisations of the Pacific region — for example, initiative 12.5 of the Pacific Plan supports ‘where appropriate, ratifi[cation] and implement[ation] [of] international and regional human rights conventions, covenants and agreements; and support for reporting and other requirements’.⁵²

Pacific Island states have ratified comparatively few of the core international human rights treaties — see Table One. All the states have ratified the *Convention on the Rights of the Child* (‘*CRC*’)⁵³ and most have also ratified the *Convention on the Elimination of All Forms of Discrimination against Women* (‘*CEDAW*’).⁵⁴ There are a number of reasons for the generally low take-up of human rights treaties, not least the reporting burdens which treaty ratification/acceptance brings. Each core treaty gives rise to an obligation to report periodically on compliance with its terms. As noted above, to complete the

⁴⁸ See Secretariat of Pacific Regional Environment, *Pacific Islands Action Plan on Climate Change 2006–2015*, Secretariat of Pacific Regional Environment Programme <www.sprep.org/attachments/legal/APClimateChange.pdf>.

⁴⁹ World Conference on Human Rights, *Vienna Declaration and Programme of Action on Human Rights*, UN Doc A/CONF.157/23 (12 July 1993).

⁵⁰ *Human Rights Voluntary Goals*, UN Doc A/HRC/RES/6/26.

⁵¹ There is abundant literature on the problems of universalism though this remains the declared aim of the UN. See generally Jack Donnelly, *Universal Human Rights in Theory and Practice* (Cornell University Press, 2nd ed, 2003).

⁵² Pacific Islands Forum Secretariat, above n 25, 19. See also ‘Dejo Olowu, ‘The United Nations Human Rights Treaty System and the Challenge of Commitment and Compliance in the South Pacific’ (2006) 7 *Melbourne Journal of International Law* 155; P Imrana Jalal, ‘Pacific Culture and Human Rights: Why Pacific Island Countries Should Ratify International Human Rights Treaties’ (Discussion Paper, Pacific Regional Rights Resource Team, April 2006) <<http://www.rrrt.org/images/pacific%20culture%20and%20human%20rights.pdf>>.

⁵³ *CRC*, opened for signature 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990).

⁵⁴ *CEDAW*, opened for signature 18 December 1979, 1249 UNTS 13 (entered into force 3 September 1981). Depending on the legal arrangements agreed during the decolonisation process, some Pacific Island states succeeded to treaties on independence, rather than acceding later. This is beyond the scope of the present commentary.

treaty reporting process, the state has to file periodic reports with the UN, and attend the relevant committee meeting in Geneva where the report will be discussed before the concluding observations are adopted. Any response to any concluding observations can, of course, be submitted without further attendance. For small states, this process represents a lot of time and effort, not least when many of those states are simultaneously undergoing major constitutional and legislative changes and engaging with other states and organisations in various multilateral and bilateral processes. Nevertheless, the belief prevails at the organisational level that signing up to all core treaties will ultimately raise standards of protection and promotion of human rights irrespective of the logistical issues.

Ratification of treaty obligations, however, does not ipso facto result in increased human rights protection. It is merely an indication on the part of the state and, while obviously binding on the states under international law, it is not necessarily followed by national implementation measures. All Pacific Island states, being dualist in their approach to international law, require such implementing measures. There are a number of reasons why states opt to accept human rights treaties, not all these reasons are solely centred on enhancing human rights protection for the good of all peoples.⁵⁵ Trade, diplomacy, membership of international organisations, international development aid, all may exert influence over state practice in this respect. Moreover, for many states, ratification of a treaty is merely a political act with little or no intention for real change within a country. Professor Ann Bayefsky argues:

For a great many states ratification has become an end in itself, a means to easy accolades for empty gestures. The problem has arisen in part because of a deliberate emphasis on ratification. The primary goal of the UN community has been to achieve universal ratification of the human rights treaties. The underlying belief is that once universal ratification is realized, the implementation techniques can be strengthened. Once committed to participation, states will find it difficult to pull out and will find themselves ensnared in an ever-expanding network of international supervision and accountability. In the meantime, ratification by human rights adversaries is purchased at a price, namely, diminished obligations, lax supervision, and few adverse consequences from non-compliance. The cost of membership has been deliberately minimized.⁵⁶

While some states elect to change laws and policies to bring them into conformity with a particular treaty before accepting it, other states accept the terms of a treaty then start the process of complying therewith, even for those treaties which should be given effect to as soon as they enter into force. There is clear evidence of awareness of this dilemma across the Pacific region. Papua

⁵⁵ See generally Oona Hathaway, 'Do Human Rights Treaties Make a Difference?' (2002) 111 *Yale Law Journal* 1935; Oona Hathaway, 'Why Do Countries Commit to Human Rights Treaties?' (2007) 51 *Journal of Conflict Resolution* 588; Eric Neumayer, 'Do International Human Rights Treaties Improve Respect for Human Rights?' (2005) 49 *Journal of Conflict Resolution* 925.

⁵⁶ Anne Bayefsky, 'Report on the UN Human Rights Treaties: Facing the Implementation Crisis' (Paper presented at the International Law Association Helsinki Conference, Helsinki, 11–17 August 1996) <<http://www.bayefsky.com/reform/ila.php>>. See also Ryan Goodman and Derek Jinks, 'Measuring the Effects of Human Rights Treaties' (2003) 14 *European Journal of International Law* 171.

New Guinea, for example, noted its intention to ratify the core treaties but in its own time, in accordance with its priorities.⁵⁷ A phased approach seems favoured, enhancing national laws and policies then adopting the salient treaty. Meanwhile, Kiribati noted that '[c]apacity and resource constraints have required [it] to adopt a cautious approach in terms of ratifying or acceding to international conventions. Reporting obligations for many international conventions on a country with severe capacity and resource constraints are especially onerous'.⁵⁸ It appears that the burden of reporting is deemed a cost too high for Kiribati at present.⁵⁹

For Pacific Island states, changing laws to effect treaty provisions can prove problematic as the relevant laws are often constitutional provisions. Nauru reported to the HRC working group on its (then) recent challenge of continuing with constitutional and legal reform: there had been a 'no' vote in a referendum on legislative reform of various aspects of the Constitution, including its bill of rights.⁶⁰ Obviously, had Nauru elected to accept treaty obligations which it cannot fulfil, other problems would arise. Nauru has since elected to sign a number of treaties, though it remains to be seen when and if ratification follows. As it stands, it was recommended that Nauru consider additional public information programs to garner support for essential constitutional and other legislative changes, thereby facilitating the ratification of core treaties.⁶¹ Fiji, in contrast, declared itself to be aiming at implementing a new constitution and democratic elections in 2014, in accordance with its proclaimed 'Road Map for Democracy and Sustainable Socio-Economic Development 2009–2014'.⁶² The state therefore elected not to engage with discussion on increasing membership of human rights treaties at the present time. Progress towards reinstating basic rights, suspended after the coup, will nevertheless be sought in the second cycle of review.

Professor Oona Hathaway undertook a comprehensive review of the impact of treaty ratification and concluded that

states with strong domestic institutions and poor human rights records are less likely to join human rights treaties than states with weaker domestic institutions that have similar rights records. ... [N]ewer regimes, which stand to gain larger collateral benefits from treaty membership, have a higher likelihood of joining human rights treaties.⁶³

Certainly in the Pacific region, there is emerging recognition, through the review process, of such 'collateral' benefits from treaty membership with states agreeing

⁵⁷ Human Rights Council, *Report of the Working Group on the Universal Periodic Review Papua New Guinea: Addendum*, 18th sess, Agenda Item 6, UN Doc A/HRC/18/18/Add.1 (30 September 2011) [79.1]–[79.2].

⁵⁸ *UPR Report: Kiribati — Addendum*, UN Doc A/HRC/15/3/Add.1, [3].

⁵⁹ On technical assistance to support reporting, see below, Part IV(A)(3) 'Technical Assistance'.

⁶⁰ *UPR Report: Nauru*, UN Doc A/HRC/17/3, [6]. See also information on the constitutional review process at Parliament of Nauru, *Constitutional Review Project (2009) The Republic of Nauru* <www.naurugov.nr/parliament/projects/constitution/index.html>.

⁶¹ *UPR Report: Nauru*, UN Doc A/HRC/17/3, [79.76].

⁶² *UPR Report: Fiji*, UN Doc A/HRC/14/8, [7]–[8].

⁶³ Hathaway, 'Why do Countries Commit to Human Rights Treaties?', above n 55, 613; cf Goodman and Jinks, above n 56.

to reappraise their ratification history. Attention thus shifted onto how best to facilitate increased membership of salient UN treaties. To this end, various suggestions were made by intervening states during UPR as to how to minimise the reporting burden. One option, promulgated by the treaty bodies themselves and alluded to in the reviews, was to develop a common core document,⁶⁴ if necessary with technical assistance from the UN OHCHR or from one of the specialist NGOs in the field, many of whom already operate in the South Pacific region. While this will certainly ameliorate the problem, it will not completely solve it. Contracting states are still expected to attend the session of the treaty body discussing their report and most Pacific Island states do not have permanent representatives at the UN in Geneva or even diplomatic presences in Switzerland (or even Europe). In acknowledgement of the difficulty, the Maldives recommended Nauru seek international aid to establish a permanent representation in Geneva, though this recommendation was rejected.⁶⁵ A more substantial Pacific Islands regional representation in Geneva is another option but, of course, this will require staffing. More pertinently, the individual states are likely to wish their own representatives to appear before UN treaty bodies, and it may not be desirable or appropriate to use personnel staffing any future regional centre.⁶⁶

By the end of the first cycle of UPR, a number of Pacific Island states had indicated a willingness to accede to further core human rights treaties. The Federated States of Micronesia supported a number of recommendations made concerning ratifying core treaties, as did the Marshall Islands and Tuvalu.⁶⁷ Palau noted, by way of a voluntary commitment, that its President intended to sign the *International Covenant on Civil and Political Rights*,⁶⁸ the *International Covenant on Economic, Social and Cultural Rights*,⁶⁹ *CEDAW*, the *International Convention on the Elimination of all Forms of Racial Discrimination* ('*CERD*')⁷⁰ and the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*⁷¹ during his visit to the UN General Assembly's 66th

⁶⁴ *Harmonised Guidelines on Reporting under the International Human Rights Treaties, Including Guidelines on a Common Core Document and Treaty-Specific Targeted Documents: Report of the Secretariat*, UN HRI 17th sess, Agenda Item 7, UN Doc HRI/MC/2005/3 (1 June 2005, adopted 23–24 June 2005).

⁶⁵ *UPR Report: Nauru — Addendum*, UN Doc A/HRC/17/3/Add.1, noting recommendation 34 but declining to act further thereon at present: at [21].

⁶⁶ Contrast with the position at the UN headquarters in New York where the Pacific Island states maintain representatives and, indeed, do link together. There is also a Pacific Islands Forum Secretariat representation in Geneva at the WTO.

⁶⁷ *UPR Report: Micronesia — Addendum*, UN Doc A/HRC/16/16/Add.1, [61.1]–[61.13]; Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Marshall Islands: Addendum*, 16th sess, Agenda Item 6, UN Doc A/HRC/16/12/Add.1 (4 March 2011) [56.1]–[56.9]; *UPR Report: Tuvalu*, UN Doc A/HRC/10/84, [67.1].

⁶⁸ *ICCPR*, opened for signature 19 December 1966, 999 UNTS 171 (entered into force 23 March 1976).

⁶⁹ *ICESCR*, opened for signature 16 December 1966, 993 UNTS 3 (entered into force 3 January 1976).

⁷⁰ *CERD*, opened for signature 7 March 1966, 660 UNTS 195 (entered into force 4 January 1969).

⁷¹ *CAT*, opened for signature 10 December 1984, 1465 UNTS 85 (entered into force 26 June 1987).

session.⁷² It remains to be seen whether such a dramatic act of intent (signature) is followed by the deposit of instruments of ratification.

2 Interaction with UN Special Procedures

The desirability of ‘increasing cooperation with all mechanisms of the United Nations human rights system, including special procedures and treaty bodies’ was expressed in the UN voluntary human rights goals.⁷³ Unsurprisingly, issuing standing invitations to all UN special procedures was thus another common recommendation during UPR of the Pacific Island states. UN special procedures developed under the auspices of the Commission on Human Rights (since replaced by the HRC).⁷⁴ There are currently a number of mandate holders with responsibility for particular human rights themes,⁷⁵ the more obviously relevant mandates include that on education, health, safe drinking water and sanitation, minorities, indigenous peoples, hazardous substances and waste, independence of the judiciary and violence against women, its cause and consequences. Special procedure mandate holders take-up (or seek) invitations to visit a few states each year, the number of visits is inevitably limited by financial constraints. During these visits, they meet with a range of state and non-governmental officials to discuss matters relevant to the subject of their mandate. In many instances, special procedure mandate holders can offer expert and valuable, yet discreet, assistance, or sometimes advice, to states. Whilst there are differing views on the value of special procedures and the extent to which they should be monitored or independent,⁷⁶ there is a degree of consensus on the potential benefits they can offer states.⁷⁷ In the Pacific context, the advantages are that the mandate holder comes to the region, his/her costs are met by the UN,⁷⁸ and there is a real possibility of a useful external expert assisting the advancement of selected aspects of rights in the state.

Recommendations made on mandate holders were well-received by the Pacific Island states. The Federated States of Micronesia,⁷⁹ Fiji,⁸⁰ the Marshall

⁷² *UPR Report: Palau — Addendum*, UN Doc A/HRC/18/5/Add.1, 7–8.

⁷³ *Human Rights Voluntary Goals*, UN Doc A/HRC/RES/9/12 [1(g)].

⁷⁴ See generally Jeroen Gutter, *Thematic Procedures of the United Nations Commission on Human Rights and International Law: In Search of a Sense of Community* (Intersentia, 2006); Miko Lempinen, *Challenges Facing the System of Special Procedures of the United Nations Commission on Human Rights* (Institute for Human Rights, Abo Akademi University, 2001); Joanna Naples-Mitchell, ‘Perspectives of UN Special Rapporteurs on Their Role: Inherent Tensions and Unique Contributions to Human Rights’ (2011) 15 *International Journal of Human Rights* 232; Ted Piccone, ‘Catalysts for Rights: The Unique Contribution of the UN’s Independent Experts on Human Rights’ (Report, Brookings Institute, 2010); Bertrand Ramcharan, *The Protection Roles of UN Human Rights Special Procedures* (Brill, 2009); Surya P Subedi, ‘Protection of Human Rights through the Mechanism of UN Special Rapporteurs’ (2011) 33 *Human Rights Quarterly* 201.

⁷⁵ There are also country mandates but none in the Pacific region.

⁷⁶ See generally Alston, above n 1.

⁷⁷ On the Cambodian country mandate, see Michael Kirby, ‘UN Special Procedures — Reflections on the Office of UN Special Representative for Human Rights in Cambodia’ (2010) 11 *Melbourne Journal of International Law* 491.

⁷⁸ Or occasionally external sources, but not by the inviting state.

⁷⁹ *UPR Report: Micronesia — Addendum*, UN Doc A/HRC/16/16/Add.1, [61.48]–[61.49].

Islands,⁸¹ Nauru,⁸² Palau,⁸³ Papua New Guinea,⁸⁴ Samoa,⁸⁵ the Solomon Islands⁸⁶ and Tuvalu⁸⁷ supported recommendations to extend standing invitations to all UN special procedures. Kiribati,⁸⁸ meanwhile, indicated it will consider issuing such a standing invitation. In light of this enthusiasm, it is maybe regrettable that the existence of standing invitations does not guarantee a visit and consequentially the 'free' expert assistance. Mandate holders, to a large extent, can determine the states they choose to visit or seek invitations to visit. Statistically, rapporteurs often seek to visit states which have not, at that point, issued a standing invitation. For Pacific Island states, the act of issuing standing invitations will undoubtedly be viewed favourably as indicating closer involvement with the UN human rights system. Thereafter, the likelihood of visits is perhaps slight. For the mandate holders, it is an imperfect balance of financial and time constraints against the potential impact of a visit. The Pacific Island states are not the most significant human rights offenders and, demographically, their actions or inactions in respect of human rights affect less people than some of the larger states. It is to be hoped that the sudden raft of standing invitations from the region will prompt mandate holders to consider the tangible benefits of a visit.

3 *Technical Assistance*

Engagement with the UN human rights system is not a matter of imposing further obligations on states. A further purpose of UPR is sharing best practices and offering support and expertise where appropriate.⁸⁹ After all, with a membership of (now) 193 states,⁹⁰ there is a lot of existing knowledge on strategies for developing, promoting and protecting human rights in a range of diverse legal systems, cultures and states. Those states with particular specialist knowledge are thus encouraged to share such with states in need thereof. Similarly, during the review process, intervening states may identify areas in which the UN can offer technical assistance (for example technical assistance

⁸⁰ Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Fiji: Addendum*, 14th sess, Agenda Item 6, UN Doc A/HRC/14/8/Add.1 (23 March 2010). [45]–[54]. A caveat was added that Fiji would prefer the rapporteurs sought an invitation first. However, as visits are always arranged in cooperation with the Government of Fiji, this does not adversely affect the acceptance of the recommendations.

⁸¹ Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Marshall Islands: Addendum*, 16th sess, Agenda Item 6, UN Doc A/HRC/16/12/Add.1 (4 March 2011) [55.37]–[55.38].

⁸² *UPR Report: Nauru — Addendum*, UN Doc A/HRC/17/3/Add.1, accepting recommendations: at [23].

⁸³ *UPR Report: Palau*, UN Doc A/HRC/18/5 supported recommendations [60.1]–[60.3].

⁸⁴ *UPR Report: Papua New Guinea*, UN Doc A/HRC/18/18 supported recommendations [78.42]–[78.46].

⁸⁵ *UPR Report: Samoa*, UN Doc A/HRC/18/14 supported recommendation [73.28].

⁸⁶ *UPR Report: Solomon Islands*, UN Doc A/HRC/18/8 supported recommendation [79.8].

⁸⁷ *UPR Report: Tuvalu*, UN Doc A/HRC/10/84 supported recommendation [67.5].

⁸⁸ See *UPR Report: Kiribati*, UN Doc A/HRC/15/3 regarding recommendations in Working Group Report [66.37]–[66.38].

⁸⁹ Human Rights Council, *Institution-Building of the United Nations Human Rights Council*, UN Doc A/HRC/5/1 (18 June 2007).

⁹⁰ This figure includes South Sudan which joined the United Nations in 2011 and thus was not part of the first cycle of UPR.

can be provided by OHCHR in respect of meeting human rights treaty reporting obligations) or areas in which international development aid assistance may be available from wealthier states, or more generally, states with the salient knowledge or expertise. Many Pacific Island states already work with a range of international and national development and aid entities — AusAID and the New Zealand Aid Programme, for example. The review process does not seek to question, alter, measure or comment on existing arrangements, rather it looks at whether (and where) there is scope for additional assistance which could be made available and may be beneficial.

The provision of technical assistance is also related to the work of the special procedures. Both the UPR process and special procedure visits can result in recommendations of technical assistance. During the interactive dialogue of the working groups on the Pacific Island states, various recommendations of technical assistance and offers of cooperation were made. The Federated States of Micronesia,⁹¹ for example, accepted a number of recommendations concerning seeking and accepting technical assistance. Similarly, Nauru,⁹² Palau,⁹³ Papua New Guinea,⁹⁴ and Tuvalu⁹⁵ all accepted recommendations on seeking and/or accepting technical assistance and international support to enable them to fulfil their human rights objectives. Tonga accepted a recommendation to seek assistance through the UPR voluntary fund to assist with the implementation of recommendations arising from review.⁹⁶ This fund was established to offer some (limited) financial support to states.⁹⁷

Financial constraints and related resource and capacity issues were frequently raised by the Pacific Island states in their response to the UPR recommendations. Calls were made for technical assistance: for example, the Marshall Islands began its response by calling upon the international community to render technical and financial assistance;⁹⁸ Samoa explicitly noted it would welcome assistance in the form of further police training;⁹⁹ and Tonga supported the recommendation made by Egypt to renew its request for assistance to the

⁹¹ *UPR Report: Micronesia — Addendum*, UN Doc A/HRC/16/16/Add.1, accepting recommendations [61.70]–[61.73].

⁹² *UPR Report: Nauru*, UN Doc A/HRC/17/3, [79.102].

⁹³ *UPR Report: Palau*, UN Doc A/HRC/18/5, [60.4] accepted recommendations on prioritising issues and areas for assistance and seeking multilateral and bilateral partners to for technical assistance and capacity building.

⁹⁴ Human Rights Council, *Report of the Working Group on the Universal Periodic Review Papua New Guinea: Addendum*, 18th sess, Agenda Item 6, UN Doc A/HRC/18/18/Add.1 (11 July 2011) [78.40]–[78.41] accepted recommendations in respect of reporting obligations under human rights treaties. See also *UPR Report: Papua New Guinea*, UN Doc A/HRC/18/18, [78.25]–[78.34].

⁹⁵ *UPR Report: Tuvalu*, UN Doc A/HRC/10/84 supported recommendation [67.3].

⁹⁶ *UPR Report: Tonga*, UN Doc A/HRC/8/48, supported recommendation [63.16]. With respect to other aspects of international assistance, see also at [63.18]–[63.20].

⁹⁷ Human Rights Council, *Establishment of Funds for the Universal Periodic Review Mechanism of the Human Rights Council*, 6th sess, 21st mtg, UN Doc A/HRC/RES/6/17 (28 September 2007).

⁹⁸ Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Marshall Islands: Addendum*, 16th sess, Agenda Item 6, UN Doc A/HRC/16/12/Add.1 (4 March 2011) [55.1].

⁹⁹ *UPR Report: Samoa — Addendum*, UN Doc A/HRC/18/14/Add.1, [75.35].

OHCHR in respect of treaty reporting and to access the UPR trust fund to finance other initiatives emanating from the review process.¹⁰⁰

A list of specific issues for which international assistance should be sought, including education, health, national human rights institutions, treaty ratification and capacity to combat natural disasters, was accepted by Vanuatu.¹⁰¹ It is too early to comment on whether assistance has been forthcoming in these areas. However, by flagging them during the review, attention has been drawn to the potential for external contributions. Obviously the current economic climate is not necessarily conducive to increased financial assistance and, of course, those states and organisations already involved in the Pacific region are working to agreed project timetables, often with little room for manoeuvre.

B *More Embedding of Human Rights at National Level*

During their reviews, all Pacific Island states were urged to further embed human rights at the national level. Given the natural limitations of international law, the challenge of transforming the international rhetoric of human rights into a reality of improved protection for everyone is the Achilles' heel of the international system.¹⁰² Whether dualistic or monistic in their approach to international treaty law, no state has yet developed a perfect system of giving effect to all human rights in a meaningful and truly effective manner. Although the goal is the same (improving the promotion and protection of human rights at the national level), embedding human rights takes various forms including establishing accredited national human rights institutions, implementing legislative changes, and developing and adopting appropriate programs and policies.

1 *National Human Rights Institutions*

National human rights institutions have been supported by the UN for a number of years.¹⁰³ They can create an opportunity for holding states accountable internally for infringements, make recommendations to governments on bringing legislation into line with human rights obligations, instigate public education programs on the existence of human rights and mechanisms for enforcement or even offer advice and support to a range of interested parties. Substantive guidance on the composition, powers and operation of such institutions can be found in the *Paris Principles*, a set of guidelines adopted by

¹⁰⁰ *UPR Report: Tonga*, UN Doc A/HRC/8/48, [63.16].

¹⁰¹ Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Vanuatu: Addendum*, 12th sess, Agenda Item 6, UN Doc A/HRC/12/14/Add.1 (24 September 2009) accepting recommendations [41]–[48].

¹⁰² See generally Mary Robinson, 'From Rhetoric to Reality: Making Human Rights Work' [2003] *European Human Rights Law Review* 1; Christof Heyns and Frans Viljoen, *The Impact of United Nations Human Rights Treaties on the Domestic Level* (Kluwer Law International, 2002); Philip Alston and James Crawford (eds), *The Future of UN Human Rights Treaty Monitoring* (Cambridge University Press, 2000).

¹⁰³ See generally Rachel Murray, 'The Role of National Human Rights Institutions' in Mashood Baderin and Manisuli Ssenyonjo (eds), *International Human Rights Law: Six Decades after the UDHR and Beyond* (Ashgate, 2010) 305; Linda C Reif, 'Building Democratic Institutions: The Role of National Human Rights Institutions in Good Governance and Human Rights Protection' (2000) 13 *Harvard Human Rights Journal* 1; Brian Burdekin, *National Human Rights Institutions in the Asia-Pacific Region* (Martinus Nijhoff, 2007).

the General Assembly.¹⁰⁴ Such bodies can take a number of forms including full national human rights institutions, ombudsmen, commissions or committees. Entities are ranked by the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights.¹⁰⁵

Of all the Pacific Island states, only Fiji had a listed institution although it is not ranked by the Committee.¹⁰⁶ Nevertheless, a number of other bodies exist in the region that exercise relevant powers.¹⁰⁷ There is nonetheless considerable support within the region for establishing national institutions. The Asia Pacific Forum actively supports the establishment of national human rights institutions in the region, offering advice, guidance and workshops,¹⁰⁸ as does the Pacific Islands Forum.¹⁰⁹ Indeed a number of Pacific Island states (Vanuatu, Palau, Papua New Guinea¹¹⁰ and Samoa)¹¹¹ are actively pursuing the possibility of establishing appropriate national institutions. A regional workshop was held in 2009 under the auspices of the OHCHR, the Pacific Islands Secretariat and the Asia Pacific Forum to contribute to the dialogue on establishing national human rights institutions in the region.¹¹² (On a discrete but related issue, there are also discussions on a regional human rights mechanism.)¹¹³ A delegation from the Asia Pacific Forum spent a week in Vanuatu in September 2011 discussing with

¹⁰⁴ *National Institutions for the Promotion and Protection of Human Rights*, GA Res 48/134, UN GAOR, 48th sess, 85th plen mtg, UN Doc A/RES/48/134 (20 December 1993).

¹⁰⁵ The rankings and information thereon is available online United Nations Human Rights Office of the High Commissioner for Human Rights, 'Survey on National Human Rights Institutions' (Report, United Nations, July 2009) <<http://nhri.ohchr.org>>.

¹⁰⁶ *UPR Report: Fiji*, UN Doc A/HRC/14/8. See also Catherine Renshaw, Andrew Byrnes and Andrea Durbach, 'Implementing Human Rights in the Pacific through National Human Rights Institutions: The Experience of Fiji' (2009) 40 *Victoria University of Wellington Law Review* 251.

¹⁰⁷ See, eg, *Pacific Ombudsman* (15 February 2010) <www.pacificombudsman.org>. See also comments on regional strengthening of human rights in Olowu, above n 52.

¹⁰⁸ Their guide thereon is available online: see Asia Pacific Forum, *Guidelines for the Process of Establishing National Institutions in accordance with the Paris Principles* (October 2007) <<http://www.asiapacificforum.net/members/international-standards/downloads/best-practice-for-nhris/APF%20-%20Guidelines%20on%20Establishing%20NHRIs.doc/view>>.

¹⁰⁹ Their research paper is available online: New Zealand Human Rights Commission, 'National Human Rights Institutions: Pathways for Pacific States' (Study Paper No 1, Human Rights Commission, 9 July 2007) <www.asiapacificforum.net/establishment-of-nhris/nhri-development/pacific-island-states/downloads/background-papers/NHRIs_Pathways_for_Pacific_States.pdf>.

¹¹⁰ *UPR Report: Papua New Guinea*, UN Doc A/HRC/18/, [78.23]–[78.34].

¹¹¹ Legislation being drafted: *UPR Report: Samoa: Addendum*, UN Doc A/HRC/18/14/Add.1, [14] accepting recommendations [75.22]–[75.24].

¹¹² Asia Pacific Forum, *Pacific Island States — Regional Workshop on Establishing NHRIs* <www.asiapacificforum.net/news/establishment-of-nhris/advice/nhri-development/pacific-island-states>. For the background report on national human rights institutions in the Pacific, see New Zealand Human Rights Commission, above n 109.

¹¹³ See, eg, *UPR Report: Kiribati*, UN Doc A/HRC/15/3, [8]; *UPR Report: Tonga*, UN Doc A/HRC/8/48, [33]. See also papers in Symposium, 'Protecting Human Rights in the Pacific (APIA 28 and 29 April 2008)' (2009) 40 *Victoria University of Wellington Law Review* 1, including: P Imrana Jalal, 'Why Do We Need a Pacific Human Rights Commission?' (2009) 40 *Victoria University of Wellington Law Review* 177; Kathryn Hay, 'A Pacific Human Rights Mechanism: Specific Challenges and Requirements' (2009) 40 *Victoria University of Wellington Law Review* 195; Valmaine Toki and Natalie Baird, 'An Indigenous Pacific Human Rights Mechanism: Some Building Blocks' (2009) 40 *Victoria University of Wellington Law Review* 215.

various stakeholders the potential for a national institution.¹¹⁴ It appears highly likely that there will be progress made on establishing national human rights institutions, or at least entities with some related functions, before the second cycle of UPR. This will certainly be welcomed by the UN and, by extension, by those states commenting on the second national reports. Whilst national institutions are not a panacea for the perceived failings of states in implementing human rights, they certainly represent a marked step towards embedding human rights at the national level.

2 *Legislative and Constitutional Provisions*

Inevitably, embedding human rights requires legislative changes. Human rights cannot simply exist at the international level then disappear into a legal black hole at the national level. National laws must be altered, if necessary, to bring them into line with international obligations and national legal mechanisms must be developed to permit individuals to enforce their rights against the state in the event of infringement thereof. Accordingly, legislative changes are frequently suggested during the UPR process. In the Pacific region, this need to streamline legislation to bring it into line with international treaties also forms part of the Pacific Plan:

To include the drafting, harmonisation and promotion of awareness of rights-based domestic legislation within the Pacific, including: *CEDAW* on gender; *CRC* on children; *CERD* on racial discrimination; *ILO Convention 169* on rights of indigenous peoples; Article 50 of the *Cotonou Agreement* on labour rights; 1990 *International Convention on the Rights of Migrant Workers and Their Families*; the Biwako Millennium Framework for people with disabilities.¹¹⁵

Human rights are generally expected to be embedded in the constitutions of each state. To this end, it is notable that each of the Pacific Island states has a written (and comparatively modern) constitution document, unlike some other UN member states. (Fiji, as noted above, is in the process of establishing a new Constitution in accordance with its proclaimed Road Map.)¹¹⁶ Most of these constitutional documents do contain reference to human rights, in some form or other.¹¹⁷ However, none incorporate all the core human rights, in part because none of the states have ratified all the core treaties. Still, the existence of the constitutional provisions is a positive step, recognising the existence of, and emphasising the importance of, human rights within the state. Altering constitutions in states is fraught with difficulties, as the reported experience of Nauru demonstrates.¹¹⁸

¹¹⁴ Asia Pacific Forum, *Vanuatu Considers Steps to Establish NHRI* (11 October 2011) <www.asiapacificforum.net/carousel/news/vanuatu-considers-steps-to-establish-nhri>.

¹¹⁵ Pacific Islands Forum Secretariat, above n 52, 19.

¹¹⁶ *UPR Report: Fiji*, UN Doc A/HRC/14/8, [7].

¹¹⁷ See, eg, *Constitution of the Federated States of Micronesia 1991* art IV; *Constitution of Tonga 1988* Pt I Declaration of Rights; *Constitution of the Republic of Palau 1981* art IV; *Constitution of the Independent State of Samoa 1960* Pt II Fundamental Rights; *Constitution of Tuvalu 1986* Pt II Bill of Rights. These documents, and other Pacific Island state constitutions are available at *Pacific Islands Legal Information Institute* (15 June 2012) <www.paclii.org>.

¹¹⁸ *UPR Report: Nauru*, UN Doc A/HRC/17/3, [6].

Constitutional changes are rarely sufficient to effect the necessary embedding of human rights: some constitutional provisions are not justiciable; others are simply reflective of aspirations, intentions and values of the state and its inaugural leaders. Further legislation is thus usually required to give full effect to human rights obligations. In the Pacific Island states, the plurality of legal systems pertaining in many of the states, compounds difficulties in this area — traditional customary laws may or may not reflect contemporary human rights.¹¹⁹ Moreover, customary laws often enjoy a considerable degree of constitutional protection.¹²⁰ Resistance to changing custom is often significant as several Pacific Island states noted with respect to recommendations on family matters.¹²¹ In extreme situations, should customary practices prove untenable, comprehensive and inclusive discussions with custom leaders and perhaps even programs of education may ease an eventual change of practice.¹²² As the review documentation reveals, even the mere existence of legislation appears viewed as state intention to embed human rights. Undoubtedly the new constitution of Fiji and the laws which are passed alongside it will be looked at very closely during the second cycle.

One area of legislative need, identified in the review of several Pacific Island states, was non-discrimination laws, especially against women. Kiribati in response noted that attempts to amend their constitutional provisions to include gender in the list of non-discrimination grounds have not proven successful.¹²³ The tension between tradition and custom and international human rights appears omnipresent. Tonga noted that whilst its current laws ‘criminalize certain consensual sexual conduct, Tonga is a Christian society that believes in tolerance and respect across difference’.¹²⁴ The rhetoric and reality thus diverge somewhat in practice. In its intervention on Tonga, Bangladesh recommended that Tonga ‘continue to criminalize consensual same sex, which is outside the purview of universally accepted human rights norms’.¹²⁵ This is certainly one area in which traditional views advocated in many Pacific Island states run counter to emerging

¹¹⁹ See generally Susan Farran, ‘Custom and Constitutionally Protected Fundamental Rights in the South Pacific Region: The Approach of the Courts to Potential Conflicts’ (1997) 21 *Journal of Pacific Studies* 103; Guy Powles, ‘Common Law at Bay? The Scope and Status of Customary Law Regimes in the Pacific’ (1997) 21 *Journal of Pacific Studies* 61; D E Paterson ‘South Pacific Customary Law and Common Law: Their Interrelationship’ (1995) 21 *Commonwealth Law Bulletin* 660; New Zealand Law Commission, ‘Converging Currents: Custom and Human Rights in the Pacific’ (Study Paper 17, 2006); Sue Farran, *Human Rights in the South Pacific: Challenges and Changes* (Routledge, 2009); Jennifer Corrin Care and Don Paterson, *Introduction to South Pacific Law* (Palgrave MacMillan, 3rd ed, 2011).

¹²⁰ See, eg. *Constitution of the Federated States of Micronesia* art V; Farran, above n 119; Laita Tamata, ‘Application of Human Rights Conventions in the Pacific Islands Courts’ (2000) 4 *Journal of South Pacific Law* <<http://www.paclii.org/journals/fJSPL/vol04/12.shtml>>.

¹²¹ *UPR Report: Tonga*, UN Doc A/HRC/8/48, [13]; *UPR Report: Nauru*, UN Doc A/HRC/17/3.

¹²² See Part IV(B)(3) below.

¹²³ *UPR Report: Kiribati — Addendum*, UN Doc A/HRC/15/3/Add.1, [46].

¹²⁴ *Report of the Working Group on the Universal Periodic Review: Tonga*, UN Doc A/HRC/8/48, [65].

¹²⁵ *Ibid* [58(b)]. This position can be contrasted with that of the Czech Republic at [39(b)], the Netherlands at [28(b)] and Canada at [31(b)].

international human rights on non-discrimination grounds.¹²⁶ Reflecting the impact of the new *Convention on the Rights of Persons with Disabilities*,¹²⁷ there was also mention of disabilities.¹²⁸ In some states, discrimination against foreign workers was also identified as an issue. For example, Palau supported recommendations on implementing a new Labour Code to protect foreign workers from discrimination, establishing a minimum wage and ensuring compliance with international occupational safety standards.¹²⁹

3 Human Rights Programs

Pertinent to the need to change ‘hearts and minds’ in favour of international human rights norms, human rights programs often precede legislative changes. The UN voluntary goals refers to the

[d]efinition and implementation of national programmes of action that promote the realization of the rights and goals set forth in the *Universal Declaration of Human Rights* to, inter alia, eliminate discrimination of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, and all forms of violence against, inter alia, women, children, indigenous populations, migrants and persons with disabilities.¹³⁰

This follows the general non-discrimination clauses found in UN treaties¹³¹ and the more specific guidance in the specific non-discrimination treaties.¹³² As noted above, national programs are favoured as a mechanism for promoting discussion on a matter, raising consciousness and achieving a change of culture through education. Not all programs are successful. However, targeted programs can have considerable success. Papua New Guinea accepted a recommendation to ‘[i]mplement programmes to increase the human rights awareness of village and community leaders’.¹³³

Considerable discussion, awareness-raising and training would be needed to achieve legislative change on more controversial (in the Pacific region) grounds of discrimination such as sexual orientation. Although there is a General

¹²⁶ See Part IV(B)(3) below. A number of states around the world retain criminal sanctions for same-sex relationships. A few states (primarily from the Western Europe and Others regional grouping) repeatedly picked up on this during the review process.

¹²⁷ *CPD*, opened for signature 30 March 2007, UN Doc A/61/611 (entered into force 3 May 2008).

¹²⁸ Papua New Guinea accepted Japan’s recommendation to implement the National Disability Policy: *UPR Report: Papua New Guinea*, UN Doc A/HRC/18/18, [78.37].

¹²⁹ *UPR Report: Palau*, UN Doc A/HRC/18/5, [61.53]–[61.56]. Recommendations from Canada, Hungary, China and New Zealand were supported by Palau and considered already in the process of being implemented.

¹³⁰ *Human Rights Voluntary Goals*, UN Doc A/HRC/RES/9/12 [1(e)].

¹³¹ See *ICESCR* art 2(2); *ICCPR* art 2(1); *CRC* art 2(1).

¹³² *CEDAW* art 1; *CERD* art 1; *CPD* art 2.

¹³³ *UPR Report: Papua New Guinea — Addendum*, UN Doc A/HRC/18/18, [79.50] and accepted in *UPR Report: Papua New Guinea — Addendum*, UN Doc A/HRC/18/18/Add.1, [79.50].

Assembly declaration thereon,¹³⁴ it is far from accepted universally and it is a sensitive issue in many Pacific Island states, as the review of Tonga (above) notes.¹³⁵

The need to combat violence against women and violence against children, including corporal punishment, was raised in respect of all Pacific Island states. It is almost an endemic problem throughout the world.¹³⁶ Educational initiatives and clear, well-planned programs aimed at eradicating these prevalent practices are expected by the UN. These fit into the global push to eradicate violence against women and protect the most vulnerable members of society. Kiribati, for example, accepted the recommendation of Libya to ‘raise awareness of human rights value and their respect through the media and through educational means, as well as violence against women’.¹³⁷

Within the Pacific region, there is clear potential for developing a few realistic plans or programs targeting areas identified within the review of the state concerned. These would demonstrate willingness to embed international human rights as well as acting as a pilot to establish the most effective mechanism for achieving cultural change. This inevitably varies from state to state but is also an area in which technical assistance and sharing of good practices has advantages — there is much to be learned from the experience of other states. To

¹³⁴ *Letter Dated 18 December 2008 from the Permanent Representatives of Argentina, Brazil, Croatia, France, Gabon, Japan, the Netherlands and Norway to the United Nations addressed to the President of the General Assembly*, 63rd sess, Agenda Item 64(b), UN Doc A/63/635 (22 December 2008). See also Human Rights Council, *Human Rights, Sexual Orientation and Gender Identity*, 17th sess, Agenda Item 8, UN Doc A/HRC/17/L.9/Rev.1 (15 June 2011); International Commission of Jurists, *Yogyakarta Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity* (6 November 2006) The Yogyakarta Principles <http://www.yogyakarta-principles.org/principles_en.htm>.

¹³⁵ *UPR Report: Solomon Islands*, UN Doc A/HRC/18/8, [80.38] reporting that legislation criminalising consenting sexual activity between adults is being repealed.

¹³⁶ *Intensification of Efforts to Eliminate All Forms of Violence against Women*, GA Res 61/143, UN GAOR, 61st sess, 81st plen mtg, Agenda Item 61(a) Supp no 49, UN Doc A/RES/61/143 (30 January 2007); Secretary-General, *In-Depth Study on All Forms of Violence against Women*, 61st sess, Agenda Item 60(a), UN Doc A/61/122 (25 July 2006); Secretary-General, *In-Depth Study on All Forms of Violence against Women*, 61st sess, Agenda Item 60(a), UN Doc A/61/122/Add.1 (6 July 2006); Secretary-General, *In-Depth Study on All Forms of Violence against Women*, 61st sess, Agenda Item 60(a), UN Doc A/61/122/Add.1/Corr.1 (17 November 2006).

¹³⁷ *UPR Report: Kiribati — Addendum*, UN Doc A/HRC/15/3/Add.1, [41]. See also *UPR Report: Solomon Islands*, UN Doc A/HRC/18/8, [80.35]; *UPR Report: Tuvalu*, UN Doc A/HRC/10/84, [67.12].

this end, the UN itself supports databases of plans and programs in a variety of fields.¹³⁸

V LOOKING TOWARDS THE SECOND CYCLE OF UNIVERSAL PERIODIC REVIEW

According to the schedule for the second cycle of review, Tonga¹³⁹ then Tuvalu¹⁴⁰ will be considered in 2013, Vanuatu¹⁴¹ then Fiji¹⁴² in 2014, Kiribati¹⁴³ in 2015, followed by the Marshall Islands,¹⁴⁴ Nauru and the Federated States of Micronesia,¹⁴⁵ with the final year of the second cycle (2016) including the reviews of Palau and the Solomon Islands¹⁴⁶ then Papua New Guinea and Samoa.¹⁴⁷ A key objective of the second cycle of review is to ascertain general progress made since the first cycle and consider actions taken in response to the recommendations accepted.¹⁴⁸ As has been seen, all the Pacific Island states accepted a significant number of the recommendations made during their first review experiences. However, progress on some of these recommendations is outside the control of the states themselves — for example, standing invitations can be extended to the special procedures but not taken up. All the same, the reviewing states will be looking for evidence of a proactive response, thus the issuing of standing invitations in itself moves towards acceptance of additional human rights treaties and attempts to submit treaty periodic reports on time, greater interaction with the OHCHR and other UN agencies.

Irrespective of any support from the UN and from other member states in the form of international aid and development, one resource issue looks likely not to be resolved — that of permanent representation at the UN Office in Geneva (where of course the OHCHR is located). None of the Pacific Island states fielded a permanent representative from Geneva for the review — Fiji has a

¹³⁸ Office of the United Nations High Commissioner for Human Rights, *Handbook on National Human Rights Plans of Action* (UN Professional Training Series No 10, 2002). For examples on violence against women, see UN Women, *Good Practices* (2011) The UN Secretary-General's Database on Violence against Women <<http://sgdatabase.unwomen.org/goodpractices.action>>, compiled by the Secretary-General following his in-depth study on violence against women. For a review of national action plans on youth employment, see Department of Economic and Social Affairs, *Review of National Action Plans on Youth Employment: Putting Commitment into Action* (Report, United Nations, 2002) <www.un.org/esa/socdev/publications/National-Action-Plans.pdf>. On education as part of the World Program for Human Rights Education, see Office of the United Nations High Commissioner for Human Rights, *National Action Plans/Strategies for Human Rights Education* (7 February 2012) <www2.ohchr.org/english/issues/education/training/national-actions-plans.htm>.

¹³⁹ Human Rights Council, *Human Rights Council Universal Periodic Review (Second Cycle)* <http://www2.ohchr.org/SPdocs/UPR/UPR-FullCycleCalendar_2nd.Doc>, referring to the 15th session.

¹⁴⁰ *Ibid.*, referring to the 16th session.

¹⁴¹ *Ibid.*, referring to the 18th session.

¹⁴² *Ibid.*, referring to the 20th session.

¹⁴³ *Ibid.*, referring to the 21st session.

¹⁴⁴ *Ibid.*, referring to the 22nd session.

¹⁴⁵ *Ibid.*, referring to the 23rd session.

¹⁴⁶ *Ibid.*, referring to the 24th session.

¹⁴⁷ *Ibid.*, referring to the 25th session.

¹⁴⁸ Human Rights Council, *Follow-Up to the Human Rights Council Resolution 16/21 with regard to the Universal Periodic Review*, 17th sess, 35th mtg, Agenda Item 1, UN Doc A/HRC/DEC/17/119 (19 July 2011).

Permanent Representative to the European Union based in Brussels which is reasonably close geographically, while Tonga included the High Commissioner to the United Kingdom in their delegation. Several states sent their Permanent Representative to the UN in New York. However, that is obviously an expensive option, albeit not as expensive as sending a full delegation from the South Pacific. Inevitably delegates were sent from the South Pacific, not least as the states often chose to send senior government ministers, a decision which in itself could reflect the importance ascribed to a presence at the review process or simply the political expediency of sending a senior representative to authoritatively explain or even justify the position of the state. Whether permanent representation in Geneva would facilitate greater participation in the interactive dialogues of other Pacific (or indeed international) states is perhaps a moot point — there is a general reticence of states to challenge other states on human rights, something UPR will inevitably change, albeit perhaps slowly.¹⁴⁹

Overall, the Pacific Island states fared reasonably well in the UPR process. Those states choosing to comment on the national reports were generally encouraging of the efforts being made in the region and showed understanding of the challenges faced by small island states and least developed countries striving to give effect to the range of international human rights. Given that many of the states are young, the progress made is marked. However, such support may prove fickle if there is little or no evidence of progress being made by the time of the second review. Nevertheless, there is considerable scope for relatively small (in scale and cost) changes to be implemented now, in accordance with the themes outlined above. Such changes could reap considerable benefits for the states concerned and justify further technical and financial support from the international and regional communities. That there is good will to improve human rights on the ground is evident, the next steps towards realising this are at the choice of the Pacific Island states themselves.

¹⁴⁹ Eric Neumayer notes that most states take little interest in the human rights violations of other states: Neumayer, above n 55, 926.

Table One: Table of Ratifications of Core UN Human Rights Treaties by Pacific Island States¹⁵⁰

Country	ICESCR	ICCPR	ICERD	CEDAW	
Fiji			X	X	
Kiribati				X	
Marshall Islands				X	
FSM				X	
Nauru		S	S	X	
Palau	S	S	S	S	
Papua New Guinea	X	X	X	X	
Samoa		X		X	
Solomon Islands	X		X	X	
Tonga			X		
Tuvalu				X	
Vanuatu		X		X	
Country	CAT	CAT	CMW	CED	CRPD
Fiji		X			S
Kiribati		X			
Marshall Islands		X			
FSM		X			S
Nauru	S	X			
Palau	S	X	S	S	S
Papua New Guinea		X			S
Samoa		X		S	
Solomon Islands		X			S
Tonga		X			S
Tuvalu		X			
Vanuatu	X	X		S	X

¹⁵⁰ The information in Table One is extracted from: United Nations, (2012) United Nations Treaty Collection, <<http://treaties.un.org>>. Table One is current at March 2012. The letter 'X' indicates ratification, accession; the letter 'S' indicates signature only. Within this table, the Federated States of Micronesia has been abbreviated to 'FSM'.