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The COVID-19 Pandemic: Exacerbating the Threat of Corruption to Human Rights and Sustainable Development in Pacific Island Countries



This paper was commissioned by the United Nations Pacific Regional Anti-Corruption (UN-PRAC) Project, a joint initiative by the United Nations Office on Drugs and Crime (UNODC) and United Nations Development Programme (UNDP), which had been supported by the Australian and New Zealand Governments. This was produced in close partnership with the Office of the United Nations High Commissioner for Human Rights (OHCHR).

The views expressed in this paper do not necessarily reflect those of the Australian Government or of the New Zealand Government.

The UN-PRAC team wishes to thank the lead expert Lyal S. Sunga (UN-PRAC Consultant), Annika Wythes (UNODC), Sonja Stefanovska-Trajanoska (UNDP) and Sarah Power (UN-PRAC Consultant) for their contributions to this paper, as well as Heike Alefsen (OHCHR), Momoko Nomura (OHCHR), Raewyn Harlock (Office of the Australian Information Commissioner), Suhaas Ema (UNODC) and Tim Steele (UNODC) for their invaluable peer-review.



This publication has not been formally edited.

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Executive Summary

This paper identifies how the COVID-19 pandemic has exacerbated the threat that corruption poses to human rights, democracy and the rule of law in Pacific Island countries (PICs). It recommends policies and measures that could help address this threat, focusing on the Cook Islands, Federated States of Micronesia, Fiji, Kiribati, Nauru, Niue, Palau, Papua New Guinea, Republic of Marshall Islands, Samoa, Solomon Islands, Tonga, Tuvalu and Vanuatu. First, the paper discusses how corruption threatens human rights as well as progress on Agenda 2030 for Sustainable Development (Agenda 2030) and the Sustainable Development Goals (SDGs). Second, it explores COVID-19's wide and deep impact on human rights in PICs. Third, the paper looks into examples of how corruption exacerbated by the COVID-19 pandemic has undermined certain clusters of human rights in PICs. Next, the paper takes stock of PICs' engagement with the United Nations Convention against Corruption (UNCAC), and with the UN human rights system, before concluding with policy recommendations.

Corruption seriously threatens democracy, human rights and the rule of law in all countries, including in the Pacific region. It impacts many human rights in the Pacific, including the right to development, economic, social and cultural rights, the right to safety and security of the human person, independence of the judiciary, right to fair trial and the issue of public emergency, the right to health, and the right to democratic participation and access to information.

This paper recommends adopting a whole-of-society approach to addressing corruption, as well as maximizing State efforts towards the achievement of Agenda 2030 by taking an inclusive approach to sustainable development, inextricably intertwined with human rights norms. Specifically, it encourages PICs to consider:

1. Preventing and addressing corruption holistically in line with UNCAC, Agenda 2030 and the SDGs, including through: meeting the targets under SDG 16 (peace, justice and strong institutions); ratifying and effectively implementing key human rights instruments; adopting comprehensive legislation and policies to implement UNCAC obligations; remaining fully

- engaged in the UNCAC Implementation Review Mechanism, treaty bodies, Special Procedures and Universal Peer Review (UPR); supporting national anti-corruption policies, measures and institutions; increasing intergovernmental coordination; updating public procurement procedures to better address the response to public emergencies such as COVID-19; evaluating relevant legal instruments and administrative measures to determine their adequacy to prevent and fight corruption; taking all appropriate measures to promote transparency and accountability in the management of public finances and to enhance public administration transparency; ensuring that corruption is investigated and prosecuted where necessary, effectively and fairly; protecting witnesses, experts, victims, their relatives, and whistleblowers from potential retaliation or intimidation; and encouraging genuine participation of stakeholders in decision-making on COVID-19 response measures, and identifying and addressing corruption risks;
2. Ensuring fair access to COVID-19 medical care, including a vaccine, including through: taking all necessary measures to prevent and address corruption in the health sector; considering the establishment of a specialized committee with a strong anti-corruption mandate to oversee emergency funds and vaccine deployment; ensuring COVID-19 vaccines are made available and accessible to all without discrimination; employing stringent administrative oversight and accountability control measures over procurement processes, transport, storage and delivery, including the allocation and distribution of COVID-19 vaccines and immunization supplies; and where possible, ensuring that information on procurement processes for the vaccine and other key items is made available to the public;
 3. Strengthening social protection, including through: safeguarding and augmenting income security affected by COVID-19, with particular emphasis on vulnerable persons; ensuring availability of food, water and sanitation, and adequate housing to all in line with international human rights law; and moving towards achieving SDG target 3.8 of universal health coverage;
 4. Preventing and addressing gender-based violence, including through: preventing, mitigating and addressing COVID-19-related increases of gender-based violence owing to restrictions of freedom of movement; introducing or strengthening fiscal and financial measures to maintain emergency services and to strengthen the social safety net for all people; addressing instances of abuse of power; maintaining sufficient attention on gender-based policies and institutions, particularly given the stressful conditions brought about by the pandemic; and taking measures to improve the collection and use of violence against women data in the COVID-19 context;

5. Safeguarding the right of democratic participation and freedom of opinion, expression, assembly, association and information, including through: mobilizing political and opinion leaders to promote respect for human rights and encouraging an inclusive human-centered approach to addressing the COVID-19 crisis; denouncing corrupt practices and cases of corruption while protecting victims, whistleblowers and anti-corruption campaigners from retaliation or intimidation; ensuring clear and accurate information relating to COVID-19 control policies and the decision-making process employed to develop them reaches everyone; raising public awareness of the right to information, such as through public campaigns and outreach; countering false information concerning COVID-19 and countering corrupt practices through public information campaigns; preserving the right to freedom of expression; reviewing laws and policies to identify and strengthen the promotion and protection of freedom of information/the right to information; and adopting or improving freedom of information/right to information legislation to ensure greater transparency and accountability; and
6. Ensuring public emergency measures conform to international human rights law, including through: ensuring that where states of emergency are invoked to protect public health, they meet the requirements under international human rights law; documenting and investigating cases of corruption, including those relating to enforcement of or abuse of emergency measures; ensuring that where health surveillance and monitoring require tracking and tracing of particular individuals in the interests of public health, the privacy of such individuals are fully maintained and respected; and lifting emergency powers decrees and measures as soon as circumstances permit.



Purpose, scope, methodology and sources

1. Purpose and geographic scope

This paper identifies how the COVID-19 pandemic has exacerbated the threat that corruption poses to human rights, democracy and the rule of law in PICs. The aim of this paper is to contribute to the policy debate with recommendations on measures that could help address this threat. It focuses on the Cook Islands, Federated States of Micronesia, Fiji, Kiribati, Nauru, Niue, Palau, Papua New Guinea, Republic of Marshall Islands, Samoa, Solomon Islands, Tonga, Tuvalu and Vanuatu. While many aspects of how COVID-19 has exacerbated the threat of corruption to human rights, democracy, the rule of law, and attainment of the Agenda 2030 and the SDGs are indeed common or similar across the region, and indeed globally, this paper proposes policy recommendations that are specifically tailored to the Pacific region.

First, the paper discusses how corruption threatens human rights, as well as progress on Agenda 2030 and the SDGs. Second, it explores COVID-19's wide and deep impact on human rights in relation to PICs. Third, the paper looks into examples of how corruption exacerbated by the COVID-19 pandemic has undermined certain clusters of human rights in PICs, namely:

- Right to development, and economic, social and cultural rights;
- Right to safety and security of the human person, independence of the judiciary and right to fair trial;
- Right to health, and
- Right to democratic participation and access to information.

This paper takes further stock of PICs' engagement in UNCAC with regard to ratification/ accession and involvement in the mechanism for the review of implementation of UNCAC (UNCAC Implementation Review Mechanism), as this sheds light on particular challenges and solutions concerning the threat

of corruption to human rights. The paper then notes PICs' engagement with the UN human rights system because this relates both to human rights promotion and protection, and to addressing corruption and its worsened impact due to COVID-19. Finally, the paper offers conclusions and recommendations on policies and measures that could help PICs strengthen their fight against corruption, enhance human rights, democracy and the rule of law, and strive to achieve progress on Agenda 2030 and the SDGs.

2. Methodology and sources

The paper is not intended to be a fact-finding or investigative report. It therefore does not involve documentation of violations, interviews of victims, surveys, empirical research or quantitative analysis except through secondary sources. Neither does this paper aim at in-depth analysis of concepts, definitions and linkages concerning corruption and human rights which is the subject of numerous studies and UN reports, many of which are referenced throughout the paper.

Instead, the present paper aims to contribute to the policy debate by highlighting the impact of corruption amid the rapidly changing COVID-19 situation on human rights, focusing on PICs. The paper therefore canvasses the more pertinent reports of UN agencies, bodies and programmes, such as UNODC and its UNCAC Implementation Review Mechanism, UNDP, UN Human Rights Council (and predecessor, UN Commission on Human Rights), OHCHR, UN Women, the

UN Economic and Social Commission for Asia and the Pacific (UNESCAP), International Labour Organization (ILO) and World Health Organization (WHO), reports of other intergovernmental organizations such as the International Monetary Fund (IMF), World Bank and the International Development Law Organization, as well as reports of non-governmental organizations and the media, where relevant.

A profound challenge is the lack of data available on corruption and its effects on human rights in PICs. This in itself calls for more attention on the part of the relevant authorities to gather information much more thoroughly on these issues. Without sufficient data, it becomes more difficult to set benchmarks and to track progress over time on corruption and its impact on human rights across PICs, and to understand more deeply and address more effectively the exacerbating effects of COVID-19 in this regard.

The paper benefited from very pertinent comments and suggestions from officials of UNODC, UNDP and OHCHR submitted in December 2020 and January 2021 to UN-PRAC at the drafting stage. On 5 March 2021, a peer consultative webinar was convened with representatives of UN-PRAC, OHCHR, UNDP, Office of the Ombudsman New Zealand / Tari o te Kaitiaki Mana Tangata, and the Office of the Australian Information Commissioner to discuss the draft and gather further inputs as part of the consultative process. UN-PRAC expresses its sincere thanks to all of these representatives for their valuable participation and support.



Corruption as a threat to human rights, Agenda 2030 and the SDGs

1. Corruption undermines human rights – the big picture

Corruption poses a serious threat to the enjoyment of civil, political, economic, social and cultural rights. It corrodes respect for the rule of law, undermines public service accountability, weakens democratic institutions and sets back sustainable development efforts. Where it has infiltrated the administration of criminal justice, it can seriously undermine basic rights spelt out in the Universal Declaration of Human Rights and in multilateral human rights conventions, such as the right to equality before the law (Article 7), the right not to be arbitrarily detained (Article 9), the right to a fair trial (Article 10), or the right to freedom of opinion and expression (Article 19). Corruption also hinders fair and equal access to fundamental economic, social and cultural rights, such as the right to health (Article 25), the right to education (Article 26), and more generally, the right to development, which are discussed below. Corrupt practices increase opportunities, for example, for public officials to take advantage of people made more vulnerable from pandemic-induced hardship, and for businesses to ignore labour standards. The effects of the COVID-19 pandemic also hinder PICs' progress on Agenda 2030 and the SDGs.

The need for strong institutions to prevent the insidious effects of corruption from seriously distorting political decision-making and allowing misspending of public funds cannot be emphasized enough, particularly since corruption attacks the integrity of the executive, legislature and/or the judiciary, often assumes transnational dimensions which makes it even more difficult to address. Furthermore, while PICs have treated the COVID-19 pandemic as the public emergency that it is, invoking a state of emergency substantially raises, for example, the risk of abuse of power because often emergency powers are

expanded without commensurate controls to ensure proper limits and accountability. Coupled with how corruption can weaken the independence of the judiciary and impede democratic participation and access to information in PICs, the COVID-19 pandemic could arguably have contributed to an enabling environment, climate of impunity and lead to further human rights violations as a result. This conglomeration of harmful causes and effects could ultimately set back progress on SDG 16 concerning transparency, accountability and the rule of law, as discussed below.

UNCAC does not itself define corruption. States have widely varying political and criminal law systems, and corruption itself arises in many forms and guises. Instead, UNCAC obliges State parties to take measures to prevent corruption, to criminalize corruption and to enforce laws against corruption, and it establishes a framework for international cooperation to combat corruption, to facilitate asset recovery and to strengthen technical assistance and information exchange. The preamble to UNCAC registered the concern of the international community over “the links between corruption and other forms of crime, in particular organized crime and economic

crime, including money-laundering” and “cases of corruption that involve vast quantities of assets, which may constitute a substantial proportion of the resources of States and that threaten the political stability and sustainable development of those States”.¹ The laws of many countries consider corruption to involve the bestowal of a benefit for the purpose of unduly influencing an action or decision and can take many forms.²

The Human Rights Council recognized that: “the promotion and protection of human rights and the prevention of and fight against corruption are mutually reinforcing, and that improvements in the promotion and protection of human rights at the domestic level have a central role to play in the prevention of and the fight against corruption at all levels”.³

On 10 September 2018, the UN Security Council met to discuss for the first time, links between corruption and conflict. In his speech, the Secretary-General cited World Economic Forum estimates that portray a devastating impact on country’s gross domestic product (GDP), as summarized in a UN press release:

¹ United Nations Convention Against Corruption, *adopted* by the UN General Assembly on 31 October 2003, A/58/422; *entered into force* on 14 December 2005; https://www.unodc.org/documents/brussels/UN_Convention_Against_Corruption.pdf.

² UNODC, the UN Guide for Anti-Corruption Policies; available at http://css.unodc.org/pdf/crime/corruption/UN_Guide.pdf, (2003) at 29, for example, notes that the benefit expected from bribes “can be virtually any inducement: money and valuables, company shares, inside information, sexual or other favours, entertainment, employment or, indeed, the mere promise of incentives” and that it “may be passed directly or indirectly to the person bribed, or to a third party, such as a friend, relative, associate, favorite charity, private business, political party or election campaign”.

³ Human Rights Council resolution 47/7 on the negative impact of corruption on the enjoyment of human rights of 12 July 2021: <https://undocs.org/A/HRC/RES/47/7> (2021) at 2.



“António Guterres, Secretary-General of the United Nations, emphasized that the problem of corruption is present in all nations — rich and poor, North and South, developed and developing. The World Economic Forum estimates the global cost of corruption is at least \$2.6 trillion, or 5 per cent of the global gross domestic product (GDP). According to the World Bank, meanwhile, businesses and individuals pay more than \$1 trillion in bribes every year: “Corruption robs schools, hospitals and others of vitally needed funds,” he said, adding that it also rots institutions — even as public officials enrich themselves or turn a blind eye to criminality — while also depriving people of their rights, driving away foreign investment and despoiling the economy.”⁴

Recent data from the International Monetary Fund shows that among “low-income countries, the share of the budget dedicated to education and health is one-third lower in more corrupt countries ... It should come as no surprise, then, that test scores tend to be lower in

countries where corruption is more prevalent. While students in more corrupt countries may spend as much time in the classroom as those in other countries, the quality of instruction is worse. This is not just about spending less on education. In some countries, access to teaching jobs in public schools is influenced by bribes or connections”, noting that teacher absenteeism is also a widespread form of corruption in several developing economies.”⁵ See **Figure 1** for an illustration of this.

The Report of the UN Working Group on the issue of human rights and transnational corporations and other business enterprises encapsulates how corruption in the health sector exerts a direct impact of the right to health and the right to life.⁶ The report notes that medicine supply and procurement are highly vulnerable to corruption and that “[c]orruption in the health-care sector causes annual losses of approximately \$500 billion”.⁷ The Report underlines that: “[W]ith health-care systems strained worldwide, diversion of critical resources due to corruption threatens the rights to health and life,” and that the COVID-19 pandemic ushers in fresh challenges from corruption “in relation to workforce and

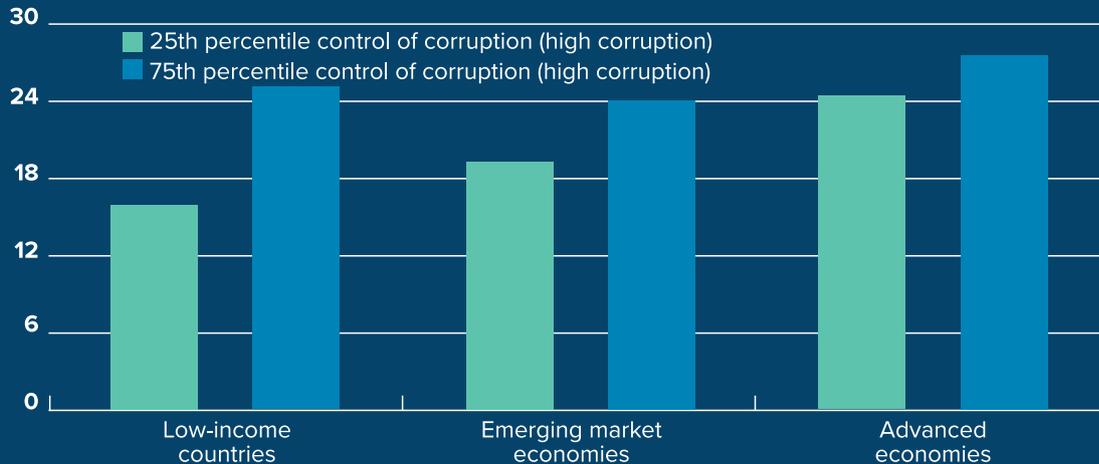
⁴ UN Press Release on “Global Cost of Corruption at Least 5 Per Cent of World Gross Domestic Product, Secretary-General Tells Security Council, Citing World Economic Forum Data: In First-Ever Meeting on Corruption, Briefer Says War Has Been ‘Very Lucrative’ for Small Groups of Conflict Profiteers”; Security Council meeting of 10 September 2018; SC/13493; <https://www.un.org/press/en/2018/sc13493.doc.htm>, UN Security Council (2018).

⁵ Paolo Mauro, Paulo Medas, and Jean-Marc Fournier, The Cost of Corruption: Graft results in lost tax revenue, but it also takes a social toll; <https://www.imf.org/external/pubs/ft/fandd/2019/09/pdf/the-true-cost-of-global-corruption-mauro.pdf>, Finance & Development (September 2019) at 28.

⁶ Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises on ‘Connecting the business and human rights and the anti-corruption agendas’; A/HRC/44/43 of 17 June 2020; <https://undocs.org/en/a/hrc/44/43> (2020) at para. 6.

⁷ Ibid.

Figure 1: Public spending on education and health is lower in countries where corruption is higher (percentage of total spending).⁸



labour management, privacy and surveillance, supply chains, and security”.⁹

While certain acts of corruption often grab news headlines and may be more easily understood or detected, they should not distract attention from the larger and more dangerous effects of corruption on the lives of citizens. Corruption can seriously reduce human rights enjoyment across the board and jeopardize a country’s efforts at sustainable development in a very consequential way, without necessarily attracting the attention it deserves in order to be addressed effectively.

2. Corruption undermines Pacific Island countries’ achievement of Agenda 2030 and the SDGs

Consideration of COVID-19’s worsening of the impact of corruption on the enjoyment of human rights across the PICs would be incomplete without taking full account of Agenda 2030 and the SDGs.¹⁰

Agenda 2030 is founded upon, and is inextricably intertwined with, the panoply of human rights norms. It adopts a universal,

⁸ IMF, Government Finance Statistics; and IMF staff estimates (data is from 2016). See: Ibid.

⁹ Report of the Working Group, above n. 7.

¹⁰ Transforming our world: the 2030 Agenda for Sustainable Development, *adopted* by the UN General Assembly on 21 October 2015; A/RES/70/1; <https://www.refworld.org/docid/57b6e3e44.html> (2015).

transformative, integrated and inclusive approach to sustainable development, covers the full spectrum of its social, economic and environmental dimensions, pledges that ‘no one will be left behind’, and recognizes that ‘the dignity of the human person is fundamental’. Drafted over a three-year period of extensive intergovernmental consultations and negotiations, UN Member States inaugurated Agenda 2030 on 25 September 2015. Agenda 2030 was elaborated and adopted as a concrete plan of action for ‘people, planet, prosperity, peace and partnership’. It takes a comprehensive, deep-rooted and human-centered approach

to improving the human condition globally by setting forth 17 SDGs, as well as 169 targets to be achieved by the year 2030. Progress on the SDGs and their associated targets is measured using specific indicators. Agenda 2030 reiterates the importance of promoting and protecting human rights and fundamental freedoms also in paragraphs 19 (in the context of UN Member States’ responsibility under the UN Charter which implies that States must pursue sustainable development fully in line with international human rights legal obligations), 20 (with regard to gender equality), 29 (with regard to migrants) and 35. Paragraph 35 underlines that:



“Sustainable development cannot be realized without peace and security; and peace and security will be at risk without sustainable development. The new Agenda recognizes the need to build peaceful, just and inclusive societies that provide equal access to justice and that are based on respect for human rights (including the right to development), on effective rule of law and good governance at all levels and on transparent, effective and accountable institutions. Factors which give rise to violence, insecurity and injustice, such as inequality, corruption, poor governance and illicit financial and arms flows, are addressed in the Agenda. We must redouble our efforts to resolve or prevent conflict and to support post-conflict countries, including through ensuring that women have a role in peacebuilding and State building. We call for further effective measures and actions to be taken, in conformity with international law, to remove the obstacles to the full realization of the right of self-determination of peoples living under colonial and foreign occupation, which continue to adversely affect their economic and social development as well as their environment.”

In short, Agenda 2030 represents the international community’s recognition that all efforts to realize sustainable development must be interwoven into the normative and institutional tapestry of social peace, justice, inclusivity, human rights, rule of law, good

governance and accountability. At the same time, paragraph 35 warns that certain factors, including corruption, unravel the threads of the social fabric by weakening and destroying the normative and institutional matrix that keeps everyone safe and secure.

¹¹ Ibid at para. 35.

Most pertinent to issues of corruption across the Pacific region in the context of the COVID-19 pandemic are SDG 16 on peaceful and inclusive societies, access to justice and effective, accountable and inclusive institutions, SDG 3 on health, and SDG 10 on reducing inequality.

They provide a valuable and comprehensive policy framework for PICs within which to strengthen anti-corruption reforms, promote and protect human rights, and bolster access

to health on a fair and equitable basis in light of the COVID-19 pandemic, while advancing Agenda 2030 and sustainable development.

Specifically, SDG 16 calls upon all countries and stakeholders to: “Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels”. This is summarized in **Table 1** below.

Table 1: Excerpts from SDG 16 Targets and Indicators relevant to addressing corruption.¹²

SDG 16 Target	SDG-16 Indicators
16.4: By 2030, significantly reduce illicit financial and arms flows, strengthen the recovery and return of stolen assets and combat all forms of organized crime	16.4.1: Total value of inward and outward illicit financial flows (in United States dollars)
16.5: Substantially reduce corruption and bribery in all their forms	16.5.1: Proportion of persons who had at least one contact with a public official and who paid a bribe to a public official, or were asked for a bribe by those public officials, during the previous 12 months
	16.5.2: Proportion of businesses that had at least one contact with a public official and that paid a bribe to a public official, or were asked for a bribe by those public officials during the previous 12 months
16.6: Develop effective, accountable and transparent institutions at all levels	16.6.2: Proportion of the population satisfied with their last experience of public services
16.7: Ensure responsive, inclusive, participatory and representative decision-making at all levels	16.7.1: Proportions of positions in national and local institutions, including (a) the legislatures; (b) the public service; and (c) the judiciary, compared to national distributions, by sex, age, persons with disabilities and population groups
	16.7.2: Proportion of population who believe decision-making is inclusive and responsive, by sex, age, disability and population group
16.10: Ensure public access to information and protect fundamental freedoms, in accordance with national legislation and international agreements	16.10.2: Number of countries that adopt and implement constitutional, statutory and/or policy guarantees for public access to information

¹² UN-PRAC, Holistic Integrity Frameworks to Address Corruption; <https://www.pacific.undp.org/content/pacific/en/home/library/eg/holistic-integrity-frameworks-to-address-corruption-2021.html> (2021) at 9.

SDG 3 to 'ensure healthy lives and promote well-being for all at all ages' has taken on a more urgent dimension with the severe health and socioeconomic consequences brought about by COVID-19, and it underlines preparedness as a key element both in dealing with the present crisis, and for preventing future public health emergencies of a similar nature. Target 3.3 aims to 'end epidemics of AIDS, tuberculosis, malaria and neglected tropical diseases and combat hepatitis, water-borne diseases and other communicable diseases' by 2030. Just as pertinent to the current situation is target 3.8 to achieve 'universal health coverage, including financial risk protection, access to quality essential health-care services and access to safe, effective, quality and affordable essential medicines and vaccines for all', as discussed above in connection with the right to health. Directly relevant also are target 3.B concerning 'research and development of vaccines and medicines for the communicable and noncommunicable diseases' and 'access to affordable essential medicines and vaccines', and target 3.C, which aims to substantially 'increase health financing and the recruitment, development, training and retention of the health workforce in developing countries, especially in least developed countries and small island developing States'. Finally, target 3.D aims to 'strengthen the capacity of all countries, in particular developing countries, for early warning, risk reduction and management of national and global health risks'.

SDG 10 recalls overarching non-discrimination and equality principles of international human rights law that govern the manner in which

law, policy and action should be implemented. Target 10.2 aims by 2030 to 'empower and promote the social, economic and political inclusion of all, irrespective of age, sex, disability, race, ethnicity, origin, religion or economic or other status'. Moreover, target 10.3 requires governments to 'ensure equal opportunity and reduce inequalities of outcome, including by eliminating discriminatory laws, policies and practices and promoting appropriate legislation, policies and action', as well as target 10.4 on adopting fiscal, wage and social protection policies towards greater equality.

A number of other SDG targets relate to the specific human rights discussed above. Target 5.2 for example, on the elimination of all forms of violence against women and girls in the public and private spheres. Universal and equitable access to safe and affordable drinking water is embodied in target 6.1. Target 6.2 relates to adequate and equitable sanitation and hygiene, with special attention to the needs of women and girls and those in vulnerable situations.

All the SDGs and their targets remain applicable during COVID-19. Also, as measures stimulate the economy and address the effects of COVID-19, consideration should be taken of, for example, target 8.3 on the promotion of 'development-oriented policies that support productive activities, decent job creation, entrepreneurship, creativity and innovation, and encourage the formalization and growth of micro-, small- and medium-sized enterprises'. Target 8.8 further calls for

protection of labour rights and promotion of ‘safe and secure working environments for all workers, including migrant workers, in particular women migrants, and those in precarious employment’. Target 8.9 assumes particular importance for PICs by calling for the devising and implementation of policies to promote sustainable tourism that creates jobs and promotes local culture and products. Target 8.10 is also on strengthening the capacity of domestic financial institutions to encourage and expand access to banking, insurance and financial services for all is also pertinent in addressing the effects of COVID-19.

The right to democratic participation and the right to information remain integral to one another as discussed above, and this interdependence is reflected in target 9.C. This target calls for significant increase in ‘access to information and communications technology’ and the provision of ‘universal and affordable access to the internet in least developed countries by 2020’. Target 16.10 requires ensuring ‘public access to information’ and linking such access to the protection of fundamental freedoms in line with national legislation and international agreements. The right to information is an important means to reaching target 10.2 which calls for empowerment and promotion of social, economic and political inclusiveness of all, irrespective of age, sex, disability, race,

ethnicity, origin, religion or economic or other status. Target 10.2 in turn relates to target 16.A calling for the strengthening of national institutions, including through international cooperation and for building capacity at all levels, in particular in developing countries, to prevent violence and combat terrorism and crime. In effect, targets 10.2 and 16.A require a double-pronged approach to strengthen institutions responsible for guarding the rule of law and combating impunity, including with respect to corruption. Finally, it is important to recall target 17.1 that resolves to strengthen domestic resource mobilization, including through international support to developing countries and to improve domestic capacity for tax and other revenue collection.

As enunciated in the UN report entitled, *Fast-tracking the SDGs: Driving Asia-Pacific Transformations*, tackling the COVID-19 crisis requires institutional, private sector, international community and individual resilience in order to ‘build back better’.¹³ It identifies “Digital transformation, enhanced local governance, increased transparency and anti-corruption measures, the promotion of accountability, strengthened social contracts, greater inclusion and gender equality, and improved access to justice and human rights” as forming one of four key building blocks to help improve public service delivery that will be more resilient to address any future crisis.¹⁴

¹³ UNESCAP, ADB & UNDP, *Fast-tracking the SDGs: Driving Asia-Pacific Transformations*; https://www.unescap.org/sites/default/d8files/knowledge-products/AP_SDGPartnership_Driving%20Asia%20PacificTransformations2020forWeb_0406.pdf (2020) at 12.

¹⁴ *Ibid* at x.

Good practice appears to be the establishment of a multi-faceted, whole-of-society approach to preventing and fighting corruption that is tailored to a country's context. Such an approach can include the development and implementation of a National Anti-Corruption Strategy. This aligns with UNCAC Article 5 requiring States parties to adopt 'effective, coordinated anti-corruption policies'. Such a Strategy can be defined as comprehensive anti-corruption policy documents that coordinate national anti-corruption action.¹⁵ They typically define a set of priority objectives with an action plan and implementation monitoring mechanisms, and will often cut across different sectors and involve different government institutions.¹⁶

Significantly, PICs have already taken important steps at national, regional and international levels to reach SDG Target 16.5, which is to 'substantially reduce corruption and bribery in all its forms'. At the domestic level, some PICs have adopted National Anti-Corruption Strategies (see **Table 2** below, which also takes into account if PICs have a National Anti-Corruption Committee and/or Independent Commission Against Corruption). As will be discussed below, in February 2021, 18 Pacific Island Forum Leaders further endorsed the 'Teieniwa Vision: Pacific Unity Against Corruption' as the regional roadmap to address corruption.¹⁷

¹⁵ UNDP, Anti-corruption strategies. Understanding what works, what doesn't and why? Lessons learned from the Asia-Pacific region, Bangkok; <https://www.undp.org/content/dam/undp/library/Democratic%20Governance/Anti-corruption/UNDP%20ACS%20Asia%20Pacific%20%20Anti-corruption%20Strategies.pdf> (2014) at 1.

¹⁶ UNODC, National Anti-Corruption Strategies: A Practical Guide for Development and Implementation; https://www.unodc.org/documents/corruption/Publications/2015/National_Anti-Corruption_Strategies_-_A_Practical_Guide_for_Development_and_Implementation_E.pdf (2015) at 8-10, 15, 30.

¹⁷ Pacific Islands Forum Secretariat (PIFS), Pacific Islands Forum Special Leaders' Retreat, Leaders' Decision; <https://www.forumsec.org/wp-content/uploads/2021/02/2021-Special-Leaders-Retreat-Decisions.pdf> (3 February 2021) at para 14 which confirms endorsement of key decisions in Annex A of Out-of-Session Decisions, and Annex A, para 5, page 4 includes endorsement of Teieniwa Vision.

Table 2: Key national anti-corruption commitments and bodies¹⁸

State party	UNCAC (ratification/ accession (a))	National Anti-Corruption Committee	National Anti-Corruption Strategy	Independent Commission Against Corruption
Cook Islands	17 October 2011 a	Yes	No	No
Federated States of Micronesia	21 March 2012 a	Under development	Under development	No
Fiji	14 May 2008 a	No	No	Yes
Kiribati	27 September 2013 a	Yes	Yes	No
Nauru	12 July 2012 a	No	No	No
Niue	3 October 2017 a	No	No	No
Palau	24 March 2009 a	No	No	No
Papua New Guinea	16 July 2007	Yes	Yes	Yes
Republic of the Marshall Islands	17 November 2011 a	Yes	No	No
Samoa	18 April 2018 a	No	No	No
Solomon Islands	6 January 2012 a	Yes	Yes	Yes
Tonga	6 February 2020 a	No	No	Legislation enacted in 2007 but Commissioner not yet appointed
Tuvalu	4 September 2015 a	Under development	Under development	No
Vanuatu	12 July 2011 a	Yes	Under development	No

¹⁸ UN-PRAC, above n. 12, at 7.



COVID-19's wide and deep impact on human rights in Pacific Island countries

The threat that corruption poses to human rights globally has become much more acute with the COVID-19 pandemic. While rapid responses among PICs have lessened the direct consequences of the pandemic, with several countries remaining COVID-19 free, the consequences of the restrictions imposed to keep the number of cases under control have been severe. The pandemic has disproportionately affected already marginalized communities, set the development agenda back years and decimated economies.¹⁹

In particular, the negative effects of the pandemic exerted on PICs include a precipitous drop in tourism across the region,²⁰ reduced income and investment,²¹ interruption of supply chains,²² and sharp downturns in GDP growth and employment amid increased economic and social uncertainty.²³ All these and other associated factors have sharply increased inequalities within

¹⁹ OHCHR & SPC, Human Rights in the Pacific: A Situational Analysis 2020; <https://www.spc.int/resource-centre/publications/the-pacific-human-rights-situational-analysis-report-2020> (2020) at 3.

²⁰ IMF, Tourism Tracker: Asia & Pacific Edition; <https://www.imf.org/-/media/Files/Countries/ResRep/pis-region/tourism-tracker/february-2021-tourism-tracker.ashx> (2021).

²¹ World Bank. From Containment to Recovery: World Bank East Asia and Pacific Economic Update October 2020; <https://openknowledge.worldbank.org/bitstream/handle/10986/34497/9781464816413.pdf> (2021) at xxi.

²² International Labour Organization, COVID-19 and global supply chains: How the jobs crisis propagates across borders; https://www.ilo.org/wcmsp5/groups/public/--dgreports/--inst/documents/publication/wcms_749368.pdf (2020) at 6.

²³ International Labour Organization, Asia-Pacific Employment and Social Outlook; https://www.ilo.org/wcmsp5/groups/public/--asia/--ro-bangkok/--sro-bangkok/documents/publication/wcms_764084.pdf (2020) at 17.

PICs and have strained public health and social welfare systems.²⁴ It is expected that a return to the pre-COVID-19 state of normality will take considerable time,²⁵ and therefore likely considerable effort and resources. To return to such normality will likely require emergency health measures, expedited public investment in health infrastructure, and economic growth stimulation policies and packages, all of which must be implemented as quickly as possible to lessen the impact of the pandemic. The Pacific is the most aid-dependent region in the world, with over US \$2 billion spent in foreign aid each year from 2011 to 2017, equal to approximately 6.5 per cent of the region's GDP,²⁶ and this reliance on international aid and assistance to urgently deploy public funds quickly, often under loosened bidding and expenditure control standards, is likely to have increased opportunities for corrupt practices to thrive. This phenomenon is evident in the context of

earlier pandemics.²⁷ It is therefore essential to spotlight corruption as a threat to human rights in PICs, and how the COVID-19 pandemic exacerbates this threat, as well as to consider possible anti-corruption measures to help address it.

In launching a UN report entitled, *We are all in this Together: Human Rights and COVID-19 Response and Recovery*,²⁸ UN Secretary-General António Guterres declared that: “[t]he COVID-19 pandemic is a public health emergency – but it is far more. It is an economic crisis. A social crisis. And a human crisis that is fast becoming a human rights crisis.” He underlined that people and their rights have to be kept front and centre in all COVID-19 responses and that a “human rights lens puts everyone in the picture and ensures that no one is left behind”.²⁹

²⁴ See Zhenqian Huang and Sweta C. Saxena, Can this time be different? Challenges and opportunities for Asia-Pacific economies in the aftermath of COVID-19; https://www.unescap.org/sites/default/d8files/knowledge-products/PBx114_Can%20this%20time%20be%20different_Challenges%20and%20opportunities%20for%20Asia-Pacific%20economies%20in%20the%20aftermath%20of%20COVID-19.pdf, UNESCAP (2020) at 4.

²⁵ See for example the predicted GDP Growth Rate for PICs in 2021: ADB, Fiji and ADB; <https://www.adb.org/countries/fiji/economy> (2021).

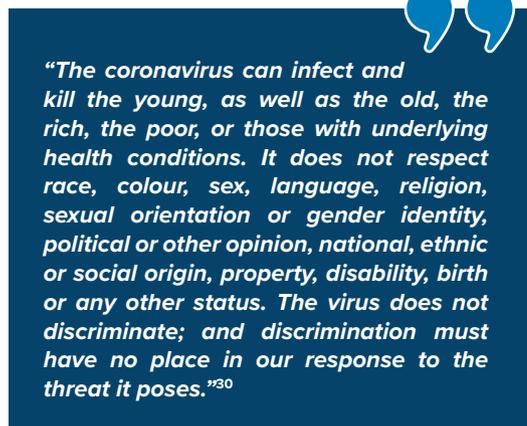
²⁶ Lowy Institute, Pacific aid map; <https://pacificaidmap.lowyinstitute.org> (2020).

²⁷ As an UN-PRAC policy submission to the Australian Parliament noted in June 2020: “There are multiple examples from previous epidemics of money being disbursed to individuals rather than organizations, duplicated payments for supplies, disregard of procurement procedures, and patients being charged for health services and medicines already paid for by international donors.” See UN-PRAC, Submission 33 to Inquiry into Australia activating greater trade and investment with Pacific island countries; https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Foreign_Affairs_Defence_and_Trade/TradewithPacific/Submissions (2020) at 4, footnote 12, citing a report of the U4 Anti-Corruption Resource Centre: “U4 Brief: Ebola and corruption: Overcoming critical governance challenges in a crisis situation” <https://www.cmi.no/publications/file/5522-ebola-and-corruptionpdf> (March 2015).

²⁸ UN, COVID-19 and Human Rights: We are all in this together; https://www.un.org/sites/un2.un.org/files/un_policy_brief_on_human_rights_and_covid_23_april_2020.pdf, United Nations (2020).

²⁹ António Guterres, We are all in this Together: Human Rights and COVID-19 Response and Recovery; Statement of the UN Secretary-General; <https://www.un.org/en/un-coronavirus-communications-team/we-are-all-together-human-rights-and-covid-19-response-and> (2020).

As the UN report underlined:



“The coronavirus can infect and kill the young, as well as the old, the rich, the poor, or those with underlying health conditions. It does not respect race, colour, sex, language, religion, sexual orientation or gender identity, political or other opinion, national, ethnic or social origin, property, disability, birth or any other status. The virus does not discriminate; and discrimination must have no place in our response to the threat it poses.”³⁰

Entrenched and systematic discrimination, marginalizes women and girls, migrants and refugees, child detainees, indigenous populations, ethnic, racial, religious minorities, the lesbian, gay, bisexual, transgender and intersex (LGBTI) community, sex workers, and persons with disabilities,³¹ and this is often exacerbated by corruption as discussed in UNODC’s publication *The Time is Now: Addressing the Gender Dimensions of Corruption* which looks at, among other things,

the connection between gender inequality and corruption.³² It disadvantages these individuals and groups and excludes them from the full enjoyment of human rights, hampering the kind of all-inclusive approach needed to fight COVID-19. UN High Commissioner for Human Rights, Michelle Bachelet echoed that people “in vulnerable situations, whose voices have been systematically silenced and whose interests are rarely served, tend to suffer the worst from the health and socioeconomic impacts of COVID-19”; this involved namely people living in poverty, racial, ethnic and religious minorities, indigenous peoples, people with disabilities, the elderly, particularly those in care homes, women who tend to be concentrated in the informal work sector, migrants and refugees, and children who are not in school and who lack access to online education.³³

An April 2020 study found that in Fiji for example, young women’s participation in the labour force was half of that compared to men, many more women than men were working in the informal sector, and women in the labour force were in a much more

³⁰ UN, above n. 28, at 5.

³¹ UNDP, Marginalised minorities in development programming; <https://www.ohchr.org/documents/issues/minorities/undpmarginalisedminorities.pdf> (2010) at 3.

³² UNODC, *The Time is Now- Addressing the Gender Dimensions of Corruption*; https://www.unodc.org/documents/corruption/Publications/2020/THE_TIME_IS_NOW_2020_12_08.pdf (2020).

³³ COVID-19 and the Right to Development: We Are All in This Together 45th session of the Human Rights Council Biennial Panel discussion on the Right to Development; <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=26254&LangID=E>, (2020).

vulnerable position than men during the COVID-19 pandemic.³⁴

In May 2020, a study by UNESCAP found that while numbers of COVID-19 cases and fatalities were currently limited in the Asia-Pacific, the economies of many PICs would suffer significant losses: “Cook Islands, Maldives and Palau seem most vulnerable with the highest dependence on tourism and tourists from China and Europe – the two having been epicenters of the outbreaks –

whereas other countries such as Fiji, Samoa, Tonga and Vanuatu are also greatly exposed to sudden shocks in tourism demand.”³⁵ Region-wide, the UN World Tourism Office (UNWTO) found that Asia and the Pacific experienced significant drops in international tourist arrivals in 2020 and 2021 (see **Figure 2**) and, based on global survey among its UNWTO Panel of Tourism Experts on the impact of COVID-19 on tourism and the expected time of recovery, most experts expect tourism in Asia and the Pacific to recover by 2024 or later (see **Figure 3**).

Figure 2: International Tourist Arrivals, percentage change.³⁶

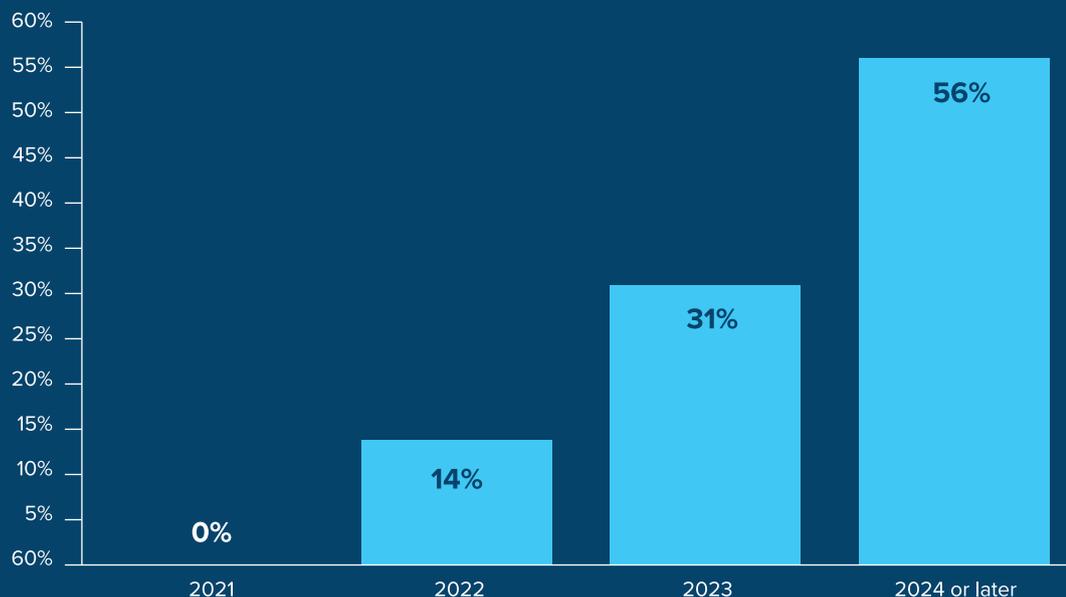


³⁴ The study found that: “[v]ast gender inequalities exist across every realm of economic participation in Fiji. The number of people employed in Fiji disaggregated by gender is 234,059 for men and 106,680 for women. A large proportion of the population is concentrated in informal employment, comprising 48% of the population, with over two thirds of all informal workers coming from rural areas (67%). 19% of businesses are registered by women and most of which focuses on micro and small businesses. Young women’s participation is half that of young men, with women (15-34 years) having a labour participation rate of 33% compared with their male counterparts at 67%. 62% of Lesbian Bisexual and Trans (LBT) women and gender nonconforming people are unemployed and in precarious work.” See Gendered Impacts of COVID-19 on Women in Fiji: Paper by the COVID-19 Response Gender Working group; <https://www.humanrights.unsw.edu.au/on-guard/gender/gendered-impacts-covid-19-women-fiji>, (2020).

³⁵ Yusuke Tateno and Andrzej Bolesta, Policy responses to COVID-19: Addressing the impact of the pandemic on tourism in Asia-Pacific small island developing States; https://www.unescap.org/sites/default/files/COVID-19_Paper_MPFDFinal8May2020.pdf, UNESCAP (2020) at 1.

³⁶ Data as collected by UNWTO, May 2021. Published: 31/05/2021. See: UNWTO, Tourist numbers down 83% but confidence slowly rising; <https://www.unwto.org/taxonomy/term/347>.

Figure 3: When is international tourism expected to return to pre-pandemic 2019 levels in Asia and the Pacific? Percentage of respondents' answers.³⁷



Quarantine measures, travel restrictions, and partial or complete closing of borders hit PIC economies hard: “Some States, such as Marshall Islands and the Federated States of Micronesia, are delinked from the international air transport system entirely as airlines suspended services”.³⁸ Many cruise lines shut

down operations, forcing Fiji, New Caledonia and Vanuatu to close their cruise ports.³⁹ UNESCAP predicts that the COVID-19 pandemic “would translate into a loss of \$910 billion to \$1.2 trillion in tourism receipts globally, putting an abrupt end to a 10-year period of sustained growth since the 2009

³⁷ UNWTO conducted a global survey among its UNWTO Panel of Tourism Experts on the impact of COVID-19 on tourism and the expected time of recovery. Data as collected by UNWTO, May 2021. Published: 31/05/2021. See: *Ibid.*

³⁸ Yusuke Tateno and Andrzej Bolesta, Policy responses to COVID-19: Addressing the impact of the pandemic on tourism in Asia-Pacific small island developing States; https://www.unescap.org/sites/default/files/COVID-19_Paper_MPFDFinal8May2020.pdf, UNESCAP (2020) at 2.

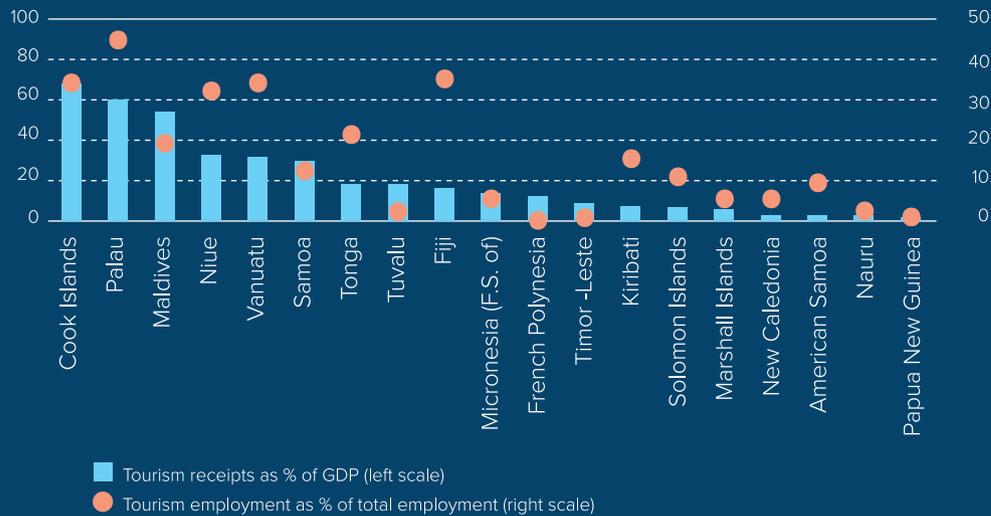
³⁹ *Ibid.*

financial crisis”,⁴⁰ and concluded that: “[w]hile the full scale of the pandemic impact is still largely unknown, the possibility of double-digit contractions in GDP cannot be ruled out for Cook Islands, Fiji, Palau, Samoa and Vanuatu in 2020. Unemployment figures are likely to be staggering, as close to 40 per cent of Vanuatu’s

formal workforce is expected to be out of a job, with even greater impacts on the informal sector”, as indicated in **Figure 4**.⁴¹

The sharp decrease in GDP and employment in PICs does not tell the whole story, as COVID-19 is expected to hit the most vulnerable part

Figure 4: Tourism receipts and employment, 2018.⁴²



⁴⁰ The catastrophic impact of COVID-19 stems from PICs’ dependency on tourism for GDP growth and employment: “For example, in 2018, tourism earnings exceeded 50% of GDP in Cook Islands, Maldives and Palau and equaled approximately 30% of GDP in Samoa and Vanuatu. Similarly, the number of tourism employees constitutes more than 30% of total employment in Cook Islands, Fiji, Niue, Palau and Vanuatu. Ibid at 3. See also Eleanor Ange Roy, “New Zealand to send team to investigate Cook Islands travel bubble”, *The Guardian*, 9 November 2020; <https://www.theguardian.com/world/2020/nov/09/new-zealand-to-send-team-to-investigate-cook-islands-travel-bubble>.

⁴¹ Ibid at 3.

⁴² UNESCAP, based on tourism receipt data from the Pacific Tourism Organisation’s Annual Review of Tourist Arrivals in Pacific Island Countries 2018, GDP data from the United Nations National Accounts Main Aggregates Database and the World Bank Development Indicators databank (accessed on 6 March 2020), and employment data from UNESCAP (2020). See: Tateno and Bolesta, above n. 38.

of the population the hardest. Some 80 per cent of the global tourism industry comprises micro, small and medium-sized enterprises, which are most vulnerable to economic shocks, for example, those making or selling handicraft and souvenirs in Fiji and Vanuatu.⁴³ It is estimated that “in Tonga, where one-third of households rely on earnings from tourism, the poverty rate of those households could increase from 49 per cent prior to the pandemic to two-thirds if faced with an income loss of 50 per cent over a six month period ... Similarly, in many small island developing States, 20 to 35 per cent of the population lives on incomes above the \$3.20-a-day poverty line but below the \$5.50 a day.”⁴⁴

These economic difficulties place people generally in a more vulnerable position, which makes them more susceptible to all sorts of corrupt practices, discussed below. At the same time, particularly during times of acute economic and social strain, where government needs to disburse considerable quantities of emergency funds to bolster the social safety net and avert further downward economic spiral, people in positions of power could exercise greater leverage to divert public funds into private hands. This is because the relaxation of safeguards in procurement, oversight and accountability standards in order to allow more rapid assistance can inadvertently allow more opportunities for those in power

to undertake corrupt acts, therefore allowing corruption to seep into public and private institutions and into the regular daily lives of individuals. Article 9 of UNCAC for instance, includes requirements for States parties to establish appropriate systems of procurement, based on transparency, competition and objective criteria in decision-making, that are effective in preventing corruption, including the public distribution of information relating to procurement procedures and contracts, effective systems of domestic review and the use of objective and predetermined criteria for public procurement decisions. However, while PICs have made significant progress on implementing the provisions of article 9, the relaxation of these safeguards in response to COVID-19 has meant that these provisions are not always complied with. Thus, the COVID-19 pandemic has the opportunity to worsen corruption, particularly where executive power has been expanded to address the emergency without commensurate measures to maintain full transparency, access to information and accountability.⁴⁵ UNODC’s publication entitled *Good practices in ensuring compliance with article 9 of the United Nations Convention against Corruption* provides a more in-depth breakdown of the requirements of article 9 and how implementing such provisions can help to strengthen procurement systems against corruption, with Annex II providing a set of questions that can assist States parties in

⁴³ Ibid at 3.

⁴⁴ Ibid.

⁴⁵ UN-PRAC, Advisory Note: COVID-19 and Corruption in the Pacific; https://www.unodc.org/documents/southeastasiaandpacific/pacific/2020/UN-PRAC_Advisory_Note_-_COVID-19_and_Corruption_in_the_Pacific_May_2020.pdf (2020); UNODC, Accountability and the Prevention of Corruption; https://www.unodc.org/documents/Advocacy-Section/COVID-19_and_Anti-Corruption-2.pdf (2020).

determining whether their procurement system is in compliance with article 9 of UNCAC.⁴⁶

The scale and gravity of the COVID-19 threat, and the extraordinary measures that governments have had to adopt to try to control and address it, has the potential to place many human rights in jeopardy and increase the risk of corruption. A number of PICs imposed states of emergency and other extraordinary measures to respond to the pandemic. When PICs had their first cases of COVID-19 in March 2020, responses to the pandemic varied

across the Pacific, with many PICs declaring a national state of emergency and sealing their borders.⁴⁷ In terms of procurement responses, many PICs also increased their use of emergency provisions in existing law and policy, or, in the case of Papua New Guinea, enacted new laws entirely.⁴⁸

In many PICs, access to clean water, food, sanitation and education has been disrupted by the pandemic. A CARE report indicated already in March 2020 that:



“90 per cent of the total population in the Pacific have access to an improved drinking water source but this rate is significantly lower in rural areas. Access to improved sanitation is uneven in the Pacific region with Kiribati, Solomon Islands and Vanuatu hosting 81 per cent of the population without access. Unimproved sanitation facilities used in the Pacific include shared toilets, pit latrine without a slab, flush/pour to anything other than septic tank or sewer. Women and girls are disproportionately affected by the lack of access to basic water, sanitation and hygiene facilities, due to their needs during periods of increased vulnerability to infection around menstruation and reproduction. Women and girls also have a larger role relative to men in water, sanitation and hygiene activities, including in agriculture and domestic labour. With increased need to self-isolate and the increased need for hand washing and good hygiene practice during the response to COVID-19, women and girls may face higher security risks in collection of water and when accessing sanitation facilities.”⁴⁹

⁴⁶ UNODC, Good practices in ensuring compliance with article 9 of the United Nations Convention against Corruption; https://www.unodc.org/documents/corruption/Publications/2013/Guidebook_on_anti-corruption_in_public_procurement_and_the_management_of_public_finances.pdf (2013).

⁴⁷ See for example, Samoa’s declaration of a state of emergency, including suspension of travel: Samoan Government Press Secretariat, State of emergency declared; <https://www.samoagovt.ws/2020/03/state-of-emergency-declared/> (20 March 2020).

⁴⁸ *Emergency (General Provisions) (COVID 19) Act 2020* (Papua New Guinea); *Emergency (General Provisions) (COVID 19) Regulations 2020* (Papua New Guinea).

⁴⁹ The CARE (Cooperative for Assistance and Relief Everywhere) report also noted that: “Public health messaging for COVID-19 has focused on good hygiene practices such as washing hands. However, across the Pacific there is significant variation in WASH access with much lower access in rural areas. As a region the Pacific has the lowest water coverage and the second lowest sanitation coverage globally. The availability of soap is challenging, especially in more remote communities. Additionally, in the Pacific, women consistently raise significant difficulties with access to sanitation and their experience of violence whilst accessing sanitation facilities.” See CARE, Rapid Gender Analysis COVID-19: Pacific Region; available at <https://reliefweb.int/sites/reliefweb.int/files/resources/Pacific%20ORGA%20FINAL%20APPROVED%2026March2020.pdf> (2020) at 3.

COVID-19, combined with corruption, directly threatens the right to health. For example, the bribery of doctors and medical staff to receive undue priority treatment, and the inspection standards subverted by bribery of public health officials, can lead to a discriminatory effect of access to hospitals, emergency care, ventilators and vaccines. In Pakistan for example, doctors ran out of vital drugs and oxygen cylinders because they were stolen and being sold on the black market for 25 times their price.⁵⁰ It is important to note that corruption in such circumstances also tends to affect vulnerable groups, such as women and girls, more owing to their reproductive health needs.⁵¹

The intense demand for timely procurement, distribution and administering of large numbers of COVID-19 vaccine creates a heightened risk of corruption in public and private sectors given that governments have to negotiate complex contracts with companies encompassing, among other things, vaccine prices and supply in a highly competitive situation.⁵² Corruption risks exist throughout all stages of the vaccination process, for instance in the research and development stage where conflicts of interest may mean those vaccine research and development programmes that

have connections to public officials may be unfairly advantaged, to the deployment and distribution stage where, as a result of vaccines being in short supply and high demand, results in vaccines being stolen and sold on the black market.⁵³ The risk of corruption is worsened where contractual terms involving large public expenditures remain confidential and where conflicts of interest on the part of public officials remain undisclosed.

Another risk is that organized criminal networks enter the scene to produce, sell and administer fake COVID-19 vaccines, to target supply chains for infiltration or disruption, and to conduct online phishing and other cyber-attacks on governments, businesses and individuals. On 2 December 2020, INTERPOL issued an Orange Notice to warn its 194 member countries of this threat.⁵⁴ By 3 March 2021, INTERPOL reported that South African authorities had seized and made arrests around 2,400 doses of fake vaccine found in a warehouse in Gauteng as well as fake 3M masks. Police in China arrested around 80 persons suspected of manufacturing fake vaccines, 3,000 of which were discovered at the scene.⁵⁵

⁵⁰ Ellis-Petersen, H & Meer Baloch, S., Pakistan Covid-19 doctors witness black market deals in blood plasma, *the Guardian*; https://www.theguardian.com/world/2020/jun/23/pakistan-covid-19-doctors-witness-black-market-deals-in-blood-plasma?CMP=Share_AndroidApp_Gmail (24 June 2020).

⁵¹ UNODC, above n. 32.

⁵² UNODC, above n. 45.

⁵³ UNODC, COVID-19 vaccines and corruption risks: Preventing corruption in the manufacture, allocation and distribution of vaccines; https://www.unodc.org/documents/corruption/COVID-19/Policy_paper_on_COVID-19_vaccines_and_corruption_risks.pdf (2020) at 2-3.

⁵⁴ INTERPOL, INTERPOL warns of organized crime threat to COVID-19 vaccines; <https://www.interpol.int/en/News-and-Events/News/2020/INTERPOL-warns-of-organized-crime-threat-to-COVID-19-vaccines> (2 December 2020).

⁵⁵ INTERPOL, Fake COVID vaccine distribution network dismantled after INTERPOL alert; <https://www.interpol.int/en/News-and-Events/News/2021/Fake-COVID-vaccine-distribution-network-dismantled-after-INTERPOL-alert> (3 March 2021)

Corruption, exacerbated by the impact of COVID-19, can also further lower the general quality of health care for everyone. According to Article 25(1) of the Universal Declaration of Human Rights, ‘Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services.’ This has to be guaranteed and made accessible ‘without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status’ as per Article 2 of the Declaration. In this connection, affordable, universal health care coverage remains essential so that everyone is accorded fair and equal access to medical care and facilities, regardless of their social, economic, racial, religious or other status, as articulated in SDG 3.

Violence against women and other forms of gender-based violence increased substantially during extended lockdown periods with stay-at-home restrictions and other limitations of freedom of movement, according to information that OHCHR received from its field presences, human rights defenders in

many countries, and numerous credible press reports.⁵⁶ Many women found themselves closed in with abusive partners during these periods of confinement at home. During the same lockdown periods, many support centers and shelters were closed, unavailable or could no longer be easily accessed because of restricted freedom of movement.⁵⁷ There were also reports from many countries that victim shelters and support centers were being deprioritized during the pandemic, that some were converted to shelters for the homeless, and that some of the centers that were still operating required victims of violence to show a negative COVID-19 test prior to being considered for admission, but that such tests often were not readily available.⁵⁸ Like with all government services, corruption has the ability to worsen this situation as funding for shelters and support centers may be diverted into corrupt hands, thus making victims of gender-based violence less secure and more vulnerable.

In the Pacific region, COVID-19 combined with the after-effects of a tropical cyclone, hampered the work of shelters to protect and assist victims of gender-based violence.⁵⁹

⁵⁶ OHCHR, COVID-19 and women’s human rights: Guidance; https://www.ohchr.org/Documents/Issues/Women/COVID-19_and_Womens_Human_Rights.pdf, OHCHR (2020) at 1. See further, Melissa Godin, As Cities Around the World Go on Lockdown, Victims of Domestic Violence Look for a Way Out; Time Magazine <https://time.com/5803887/coronavirus-domestic-violence-victims> (18 March 2020), among many other news articles OHCHR cites.

⁵⁷ There are “major threats to women’s lives and livelihoods associated with COVID-19 – namely, curtailed access to justice institutions, rising intimate partner violence (IPV), threats to women’s rights to sexual and reproductive health, growing injustice for workers, discriminatory laws and lack of legal identity, as well as repercussions on forcibly displaced women and those deprived of their liberty”. See: DLO, UN Women, UNDP, UNODC et al, Justice for Women amidst COVID-19; https://www.idlo.int/sites/default/files/pdfs/publications/idlo-justice-for-women-amidst-covid19_0.pdf (2020) at 5.

⁵⁸ OHCHR, above n. 56.

⁵⁹ UN Women, Across the Pacific, crisis centres respond to COVID-19 amid natural disasters; <https://www.unwomen.org/en/news/stories/2020/6/feature-pacific-crisis-centres-respond-to-covid-19-amid-natural-disasters> (2020).

Even before the pandemic, many of these centers were operating on limited public funds and needed more substantial government support,⁶⁰ despite many PICs having much higher rates of violence against women and girls compared to the world average.⁶¹ In Fiji for example, there was a marked increase in the number of women seeking assistance from domestic violence between February to March 2020.⁶² Additionally, Samoa recorded a 150 per cent increase in helpline calls compared to the previous year, and in Tonga, there was a 54 per cent increase in the number of cases coming to the women's crisis center during the COVID-19 lockdown.⁶³ Emerging evidence of the causes of this trend points to women and children being confined for longer periods with their perpetrators due to job losses and restrictions on movement, as well as the financial pressure put on families due to such job losses which can act as a trigger for

family violence.⁶⁴ Furthermore, gender roles in the Pacific commonly mean women are responsible for preparing food for the family, and growing food insecurity caused by supply chain disruptions and reduced income puts this role under threat and could also trigger additional violence.⁶⁵ Corrupt practices have the potential to divert public funds that should be used for crisis centers and helplines into private hands, as well as divert welfare away from those who need it to cope with financial pressures resulting from job losses, thus potentially worsening gender-based violence.

In addition to domestic violence, COVID-19 has other disproportionate effects on women and girls. Pregnant women for example, especially those with underlying health conditions, while not being at greater risk of contracting COVID-19, are at an increased risk of developing severe COVID-19 if they

⁶⁰ In 2018, the CEDAW Committee recommended that the Cook Islands, for example, “[e]nsure that victims of gender-based violence, including domestic violence, have adequate access to shelters and support services, in particular in the outer islands where no counselling centres exist, and, to that end, establish well-resourced public shelters and support civil society organizations providing such services”. See: Concluding observations on the combined second and third periodic reports of the Cook Islands, CEDAW/C/COK/CO/2-3 of 25 July 2018; https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CEDAW/C/COK/CO/2-3&Lang=En (2018) at para. 16(c).

⁶¹ Pacific Women Shaping Pacific Development 2019, Ending violence against women: <https://pacificwomen.org/our-work/focus-areas/ending-violence-against-women/> (2019).

⁶² In a joint press release with Fiji's Minister of Women, Children and Poverty Alleviation and other agencies, UN Women reported that “... the national domestic violence helpline recorded a significant increase in calls in the month of April (around 527), compared to 87 in February and 187 in March. ... Close to 50 per cent of women are reporting a correlation between COVID-19 and increased violence, linked directly to the restrictions of movement and economic strain on families,” and that “The domestic violence being reported is serious – close to three-quarters of women reported physical violence, including some extremely serious forms of violence, such as being punched, kicked and hit by stones and timber.” See UN Women, above n. 59.

⁶³ *Ibid.*

⁶⁴ For example, see the findings from the Samoa Ombudsman's National Inquiry into Family Violence 2018; https://ombudsman.gov.ws/wp-content/uploads/2019/01/2018_-_SHRR-2018-National-Public-Inquiry-into-Family-Violence_-_English.pdf (2018) at 118.

⁶⁵ OHCHR & SPC, above n. 19, at 5.

are infected, compared with non-pregnant women of a similar age.⁶⁶ Girls are also most likely to bear the brunt of school closures: “Past health emergencies (Ebola and Zika for example) have shown that girls are often removed from or leave schools first during a health emergency – even when schools remain open – due to increased care work at home”,⁶⁷ and that can close off their access to a safe environment, nutritious food and gender-specific services provided by their schools. UNICEF noting that worldwide 10 million additional girls at risk of child marriage due to COVID-19.⁶⁸ This is primarily because lockdowns have made it more difficult for girls and women to approach the formal justice system to block an illegal marriage, and that enforcement of the legal minimum age at marriage was also weakened.⁶⁹ A UNICEF report released on International Women’s Day 2021 observed that: “Pandemic-related travel restrictions and social distancing can make it difficult for girls and women to access health

care, along with programmes and services that aim to protect them from child marriage as well as sexual and gender-based violence”.⁷⁰ The pandemic has also hindered access to modern contraception, resulting in a rise in the number of unintended pregnancies and subsequent child marriages.⁷¹

Women also dominate the caring professions in PICs, putting them at increased risk of contracting COVID-19 as frontline responders.⁷² In the Western Pacific for example, while there are more male physicians than female (41 percent of physicians are female), 81 percent of nurses are female.⁷³ While this puts women at higher risk of contracting COVID-19, it also creates circumstances conducive to corruption by making health care workers more susceptible to bribery and other forms of corruption in order to pay for vital protective equipment, as seen in previous public health emergencies.⁷⁴

⁶⁶ World Health Organization, Coronavirus disease (COVID-19): Pregnancy and childbirth; <https://www.who.int/news-room/q-a-detail/coronavirus-disease-covid-19-pregnancy-and-childbirth> (2 September 2020).

⁶⁷ OHCHR, above n. 56, at 7.

⁶⁸ UNICEF, Press release: 10 million additional girls at risk of child marriage due to COVID-19; <https://www.unicef.org/press-releases/10-million-additional-girls-risk-child-marriage-due-covid-19> (2021).

⁶⁹ UNICEF, COVID-19: A threat to progress against child marriage; <https://data.unicef.org/wp-content/uploads/2021/03/UNICEF-report--COVID-19--A-threat-to-progress-against-child-marriage-1.pdf> (March 2021); World Health Organization, Child, early and forced marriage legislation in 37 Asia-Pacific countries; <https://apps.who.int/iris/bitstream/handle/10665/246283/9789241565042-eng.pdf> (2016).

⁷⁰ UNICEF, above n. 68; Save the Children, The global girlhood report 2020: How COVID-19 is putting progress in peril; <https://resourcecentre.savethechildren.net/library/global-girlhood-report-2020-how-covid-19-putting-progress-peril> (2020) at 9.

⁷¹ Ibid.

⁷² Boccuzzi, E, The Future of Work for Women in the Pacific Islands, the Asia Foundation; <https://asiafoundation.org/wp-content/uploads/2021/02/The-Future-of-Work-for-Women-in-the-Pacific-Islands.updateMarch1.pdf> (2021) at 9.

⁷³ Mathieu Boniol, Michelle McIsaac, Lihui Xu, Tana Wuliji, Khassoum Diallo, and Jim Campbell, Gender equity in the health workforce: Analysis of 104 countries: Health Workforce Working Paper 1; <https://apps.who.int/iris/bitstream/handle/10665/311314/WHOIS-HWF-Gender-WP1-20191-eng.pdf?ua=1>, World Health Organization (2019) at 3.

⁷⁴ UNODC, above n. 32, at 50.

More than half of the world's population does not have internet access,⁷⁵ but access to information through the internet and social media is closely linked to the right to health across PICs. This is because social media is used by governments to issue public warnings and health guidance, which can then be shared by individuals to their wider networks.⁷⁶ Faster internet service was introduced in some PICs by way of the Coral Sea optical fiber cable in 2020 that links Australia to its close Pacific Island neighbours, while Manatua One Polynesia, another optical fiber connection, links Samoa, Niue, Cook Islands and French Polynesia. At the same time, it has been reported that enhanced internet links risk exposing Pacific Island women and children to online abuse.⁷⁷ Additionally, an increase in social media use is often correlated with the spreading of false information. For example, in Samoa, the Office of the Regulator issued a

statement assuring the public that the popular conspiracy theory being spread through social media that 5G mobile phone technology was linked with COVID-19 was false.⁷⁸

COVID-19 has also intensified the vulnerable situation of indigenous communities across the globe, many of whom have weak access to health care, as well as persons with disabilities who may require food or medical assistance.⁷⁹ People in pre-trial detention and prisoners are also at higher risk of COVID-19 infection due to close proximity of detainees in confined institutional spaces, or incarceration in overcrowded penitentiaries.⁸⁰ Discrimination has also worsened for other vulnerable sectors of the population: "There are reports of COVID-19 directives being misused by police to target LGBTI individuals and organizations".⁸¹ In the Pacific region, people living with HIV could suffer reduced

⁷⁵ UN, above n. 37, at 14.

⁷⁶ See for example: Papua New Guinea Department of Health, Facebook; <https://www.facebook.com/PNGNDOH/> (2021).

⁷⁷ "Women are disproportionately affected by cyber harassment, and, the Pacific islands, many of which have patriarchal societal structures, have some of the world's highest rates of violence against women and children.". See: Will Higginbotham, A double-edged sword: hopes and fears for children as fast internet reaches Pacific: New fibre-optic cables to Pacific islands have been cautiously welcomed amid warnings over harassment and violence linked to online platforms; <https://www.theguardian.com/world/2020/oct/20/a-double-edged-sword-hopes-and-fears-for-children-as-fast-internet-reaches-pacific>, The Guardian (19 October 2020):

⁷⁸ RNZ, No link between 5G and Covid-19 says Samoa office; <https://www.rnz.co.nz/international/pacific-news/413740/no-link-between-5g-and-covid-19-says-samoa-office> (8 April 2020).

⁷⁹ Pacific Disability Forum website; <http://www.pacificdisability.org/Home.aspx>.

⁸⁰ Human Rights Law Centre, Explainer: Prisons and COVID-19; <https://www.hrlc.org.au/prisons-and-covid19> (2020); UNODC, WHO, OHCHR & the Joint United Nations Programme on HIV/AIDS (UNAIDS), Joint Statement on COVID-19 in Prisons and Other Closed Settings; https://www.unodc.org/documents/Advocacy-Section/20200513_PS_covid-prisons_en.pdf (2020); UNODC, Position Paper: COVID-19 preparedness and responses in prisons; https://www.unodc.org/documents/justice-and-prison-reform/COVID-19/20-02110_Position_paper_EN.pdf, (31 March 2020).

⁸¹ UN, above n. 28, at 12.

access to anti-retroviral medications,⁸² and people who use drugs could face greater difficulty accessing needles, syringes and social assistance.⁸³ Both of these groups are also particularly vulnerable to COVID-19 due to underlying health issues, stigma, social marginalization and higher economic and social vulnerabilities, including a lack of access to housing and health care.⁸⁴ Mental health of individuals is also likely to be at risk as many PICs have reported increased

community anxiety, thus constituting a ‘ticking time bomb’ for the enjoyment of human rights in the region as PICs do not have the counselling competency or capacity to deal with widespread mental health issues.⁸⁵ Additionally, many people from PICs travel to Australia and New Zealand for medical care, but travel restrictions have stopped many from doing so, which could have serious consequences for those suffering from serious or terminal illness.

⁸² Ben Doherty and Daniel Hurst, Pacific nations face wider health crisis as systems focus on stopping COVID-19: As cases mount in Papua New Guinea, experts warn already fragile services will not be able to combat other diseases such as TB, HIV/Aids and malaria; <https://www.theguardian.com/world/2020/jul/29/pacific-nations-face-wider-health-crisis-as-systems-focus-on-stopping-covid-19>, The Guardian (29 July 2020).

⁸³ See example from Sydney, Australia: Udesha Chandrasena, Olivia Price and Rachel Sutherland, Trends in, and characteristics associated with, trouble accessing sterile needles and syringes among people who inject drugs in Sydney, New South Wales, National Drug and Alcohol Research Centre, UNSW Sydney; <https://ndarc.med.unsw.edu.au/sites/default/files/ndarc/resources/FINAL%20NSW%20IDRS%20Bulletin%202021.pdf> (2021).

⁸⁴ UNODC, COVID-19 HIV prevention, treatment, care and support for people who use drugs and people in prisons; <https://www.unodc.org/unodc/en/hiv-aids/new/covid-19-and-hiv.html>.

⁸⁵ OHCHR & SPC, above n. 19, at 6.



Examples of how corruption exacerbated by the COVID-19 pandemic undermines certain clusters of human rights in Pacific Island countries

Corruption can violate or infringe virtually any human right. Its effects are felt at several levels. As OHCHR's progress report on the issue of the negative impact of corruption on the enjoyment of human rights noted, corruption affects individuals directly, for example, through discriminatory access to public services by way of bribery. This offers wealthy individuals priority over those less fortunate for admission to hospital emergency care, access to schools and universities, and favorable judicial treatment where judges or prosecutors can be bribed.⁸⁶ Corruption disproportionately affects groups of people, such as women and girls,⁸⁷ as well as the poor by excluding them from government-provided goods and services. Corruption also affects society at large through diversion of funds destined for development and infrastructure such as roads, schools and hospitals, which at the same time weakens public trust and confidence in government institutions, democracy and the rule of law.

The COVID-19 pandemic worsens the effects of corruption on human rights in PICs across a broad spectrum and at many different levels. Corruption slows progress on development. It degrades the enjoyment of economic, social and cultural rights, including the right to health in particular, the right to safety and security of the person, right to fair trial and independence of the judiciary, and the right to political participation and to the right to receive and impart information as discussed below.

⁸⁶ Progress report on the issue of the negative impact of corruption on the enjoyment of human rights; A/HRC/26/42 of 14 May 2014; <https://undocs.org/en/A/HRC/26/42> (2014) at para. 20.

⁸⁷ UNODC, above n. 32.

1. Right to development, economic, social and cultural rights

UN Commission on Human Rights Independent Expert on the Right to Development, Arjun Sengupta defined the right to development as: “the right to a particular process of development in which ‘all human rights and fundamental freedoms can be fully realized’ is consistent with the approach of the human rights movement. It refers to the realization of all the rights and freedoms recognized as human rights - civil and political rights and economic and social and cultural rights - in their totality as an integrated whole, as all these rights are interrelated and interdependent. The outcomes of development, as well as the way the outcomes are realized, constitute the process of development which is regarded as a human right. It is a process in time, not a finite event ...”.⁸⁸

It should be recalled that, as of 17 July 2021, the International Covenant on Economic, Social and Cultural Rights (ICESCR) had been

ratified by Fiji, the Marshall Islands, Papua New Guinea and the Solomon Islands, and signed but not yet ratified by Palau. The Covenant obliges States in Article 2: “to take steps, individually and through international assistance and cooperation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant”.⁸⁹ The majority of PICs have ratified the CEDAW, and it is therefore noteworthy that its treaty body (also known by the ‘CEDAW’ abbreviation) urged States parties in General Comment 33 to: “Tackle corruption in justice systems as an important element of eliminating discrimination against women on access to justice”.⁹⁰

Corruption can divert a country’s resources that should have been used, for example for infrastructure and services, to fulfill economic, social and cultural rights. A country’s budgetary allotments should be evaluated quantitatively against human rights indicators,⁹¹ including the updated indicators that the General Assembly has adopted to measure human rights progress on the SDGs.⁹²

⁸⁸ Fourth Report of the UN Commission on Human Rights Independent Expert on the Right to Development, Arjun Sengupta on the “Right to Development”; E/CN.4/WG.18/2 of 20 December 2001. For more on the mandate and reports of the Special Rapporteur on the Right to Development, see: <https://www.ohchr.org/EN/Issues/Development/SRDevelopment/Pages/SRDevelopmentIndex.aspx>.

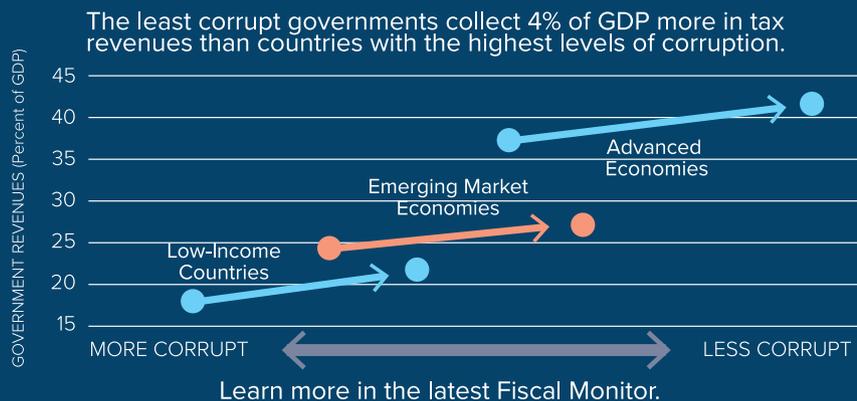
⁸⁹ International Covenant on Economic, Social and Cultural Rights; *adopted* and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966, *entered into force* 3 January 1976, in accordance with article 27; <https://www.ohchr.org/Documents/ProfessionalInterest/cescr.pdf>.

⁹⁰ UN Committee on the Elimination of Discrimination against Women General recommendation on women’s access to justice; CEDAW/C/GC/33 of 23 July 2015; <https://digitallibrary.un.org/search?fl=author&as=1&sf=title&so=a&rm=&m1=e&p1=UN.+Committee+on+the+Elimination+of+Discrimination+against+Women&ln=en>.

⁹¹ Human Rights Indicators: A Guide to Measurement and Implementation; https://www.ohchr.org/Documents/Publications/Human_rights_indicators_en.pdf, OHCHR (2012).

⁹² A Human Rights Based Approach to Data - Leaving No One Behind in the 2030 Agenda for Sustainable Development; Guidance Note to Data Collection and Disaggregation; <https://www.ohchr.org/Documents/Issues/HRIndicators/Guidance-NoteonApproachtoData.pdf>, OHCHR (2018).

Figure 5:
Relationship
between
corruption and
tax collection.⁹³



The IMF's April 2019, *Fiscal Monitor* analyzed data from 180 countries, and indicated that more corrupt countries collected significantly lower rates of tax (see **Figure 5**). Lower tax revenues reduced the volume of public funds available for essential State expenditures, including for health and education as the chart above shows.

As the UN Committee on Economic, Social and Cultural Rights underlined in 2017, “[c]orruption constitutes one of the major obstacles to the effective promotion and protection of human rights, particularly as regards the activities of businesses. It leads to discriminatory access to public services in favour of those more able

to influence authorities, including by offering bribes or resorting to political pressure”⁹⁴.

2. Right to safety and security of the human person, independence of the judiciary, right to fair trial and the issue of public emergency

One of the situations where the safety and security of the human person comes under clear threat, and which is very amenable to corruption, is that of detention, arbitrary or not, because it is during detention where

⁹³ IMF, *Fiscal Monitor: Curbing Corruption*; <https://www.imf.org/en/Publications/FM/Issues/2019/03/18/fiscal-monitor-april-2019>, International Monetary Fund (2019).

⁹⁴ UN Committee on Economic, Social and Cultural Rights General Comment No. 24 on State obligations under the International Covenant on Economic, Social and Cultural Rights in the context of business activities; E/C.12/GC/24 of 10 August 2017; <https://www.refworld.org/docid/5beaeaba4.html> (2017) at para. 20.

torture, inhuman or degrading treatment or punishment, is most likely to occur.⁹⁵ Moreover, in a state of public emergency, many human rights and fundamental freedoms may be suspended, curtailed or reduced, further weakening human rights generally, as well as access to justice, independence of the judiciary, fair trial rights and the rule of law, as discussed further below. This is why safeguards and oversight mechanisms for the implementation of emergency measures by law enforcement and other authorities is necessary to avoid the excessive use of emergency powers, for example, to suppress dissenters, or to target vulnerable or marginalized groups such as homeless persons, or members of social, ethnic or religious minority groups.⁹⁶

In its Seventh Annual Report, the UN Subcommittee on the Prevention of Torture explained that all detainees were in a position of vulnerability, but individuals in pre-trial detention or immigration detention, and migrants who do not have a residence permit, were especially vulnerable to extortion, torture and ill-treatment. This situation was more dire where detainees were unable to retain legal counsel or legal aid.⁹⁷ Corruption and the use of torture and ill-treatment were held to be mutually interdependent and reinforcing systemic practices:



“One reason is that in States with high levels of corruption there may be less likelihood of torture and ill-treatment being either discovered or prosecuted. The struggle to promote human rights and the campaign against corruption share a great deal of common ground. A corrupt government that rejects both transparency and accountability is unlikely to respect human rights. Indeed, the rejection of transparency and accountability make the protection of human rights difficult, if not impossible. Therefore, eradicating corruption and preventing torture and ill-treatment are not disparate processes, but are interdependent. Corruption within a State seriously impedes the eradication of torture and ill-treatment. Hence, to prevent torture and ill-treatment it is also critical to prevent and eradicate corruption. There must be vigilance, and where corruption is present it must be rooted out and punished appropriately, in accordance with the law.”⁹⁸

⁹⁵ Seventh annual report of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; CAT/C/52/2 of 20 March 2014; https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CAT%2FC%2F52%2F2&Lang=en. (2014).

⁹⁶ UNODC & UNDP, Guidance Note: Ensuring access to justice in the context of COVID-19; <https://www.undp.org/publications/ensuring-access-justice-context-covid-19> (May 2020) at 7.

⁹⁷ Ibid at para. 80.

⁹⁸ Ibid at para. 82.

In terms of root causes, the Subcommittee observed that, particularly in countries with sub-standard conditions of detention, corrupt prison officers were often placed in a stronger position to extort money from inmates or to deny access to certain privileges, services or benefits, for example.⁹⁹ In countries plagued by political instability, violence as a means of social control may have become more normalized, and corruption may therefore be more rampant in such situations. Added to this, may be the fact that prison officials and police may be poorly paid, and are therefore at greater temptation to use extortion, torture and ill-treatment to supplement their salaries,¹⁰⁰ or engage in ‘sextortion’ (i.e. coercive sexual exploitation resulting from an abuse of power, often through cybercrime).¹⁰¹

In 2019, UN Human Rights Council Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Nils Melzer, argued that corruption and torture each breed and exacerbate one another in the sense that corruption is a deliberate practice used to enable, perpetuate and protect torture,

and torture is used to enable, perpetuate and protect corruption.¹⁰² Violations of the safety and security of the person, including the right not to be tortured, forms part and parcel of a systemic challenge that produces false accusations, false confessions, other serious violations of fair trial rights and other kinds of transgressions, that the UN Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) and other instruments seek to address. Rule 1 of the Nelson Mandela Rules for instance, mandates that no prisoner shall be subjected to, and all prisoners shall be protected from, torture and other cruel, inhuman or degrading treatment or punishment, for which no circumstances whatsoever may be invoked as a justification.

¹⁰³

Concretely, corruption tends to thrive in situations where officials, or those acting on their behalf, or with their acquiescence, can exercise power arbitrarily or with impunity because of war, national disaster or other calamity that has weakened law and order.¹⁰⁴ COVID-19 provides greater opportunities for

⁹⁹ Ibid at para. 84.

¹⁰⁰ Ibid.

¹⁰¹ UNODC, Preventing sextortion: a new Internet crime on the rise during COVID-19; <https://www.unodc.org/westandcentralafrica/en/2020-09-22-sextortion-cyber-crime.html> (2020).

¹⁰² Ibid at para. 24.

¹⁰³ UNODC, United Nations Standard Minimum Rules for the Treatment of Prisoners (the Mandela Rules), *adopted* by the UN General Assembly on 17 December 2015; <https://www.refworld.org/docid/56209cd14.html> (2015).

¹⁰⁴ Elizabeth Ferris, Natural Disasters, Conflict, and Human Rights: Tracing the Connections; <https://www.brookings.edu/on-the-record/natural-disasters-conflict-and-human-rights-tracing-the-connections/> (3 March 2010).

See also the Right Honourable David Miliband’s lecture on the Age of Impunity: *“By Age of Impunity, I mean a time when those engaged in conflicts around the world – and there are many – believe they can get away with anything, including murder, whatever the rules and norms. And because they can get away with anything, they do everything.”* International Rescue Committee, The new arrogance of power: Global politics in the age of impunity; <https://reliefweb.int/report/world/new-arrogance-power-global-politics-age-impunity> (19-21 June 2019).

corrupt officials to extort money and other favours from those accused, justly or unjustly, of violating lockdown, quarantine or curfew orders.¹⁰⁵

During COVID-19, it has been crucial to ensure that the crisis does not act as an opportunity to undermine the rule of law or weaken the judiciary. Historically, emergencies have been known to test the rule of law.¹⁰⁶ The judiciary can also be part of the corruption problem or part of the solution to control it. The judiciary can root out corruption by remaining fair and impartial in respect of criminal prosecutions and disciplinary proceedings involving corruption, but a corrupt judiciary itself also becomes a perpetrator of corrupt practices. Once the administration of justice has fallen into serious disrepute, it can be very difficult to regain the public's confidence. For this reason, Article 11(1) of UNCAC stipulates that: "Bearing in mind the independence of the judiciary and its crucial role in combating corruption, each State Party shall, in accordance with the fundamental principles of its legal system and without prejudice to judicial independence, take measures to strengthen integrity and to prevent opportunities for corruption among

members of the judiciary. Such measures may include rules with respect to the conduct of members of the judiciary".¹⁰⁷

3. Right to health

The right to health ranks among the more important economic, social and cultural rights because equal access to medical care can spell the difference between life and death. Article 12 of the ICESCR obliges State parties to "recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health" and requires them to reduce the stillbirth rate and infant mortality, to promote the healthy development of the child, to improve environmental and industrial health, as well as to prevent, treat and control epidemic and endemic, occupational and other diseases. Article 12 also obliges State parties to create conditions that "would assure to all medical service and medical attention in the event of sickness".

Prior to COVID-19, immunization programmes in some PICs had been weak or irregular,

¹⁰⁵ Inter-Agency Standing Committee, COVID-19: Focus on Persons Deprived of Their Liberty: Interim Guidance of OHCHR and WHO; <https://data2.unhcr.org/en/documents/download/75290> (2020).

¹⁰⁶ Ian McDougall, Coronavirus and the Rule of Law: A Warning From History; <https://www.lexisnexis.com.au/en/COVID19/blogs-and-articles/coronavirus-and-the-rule-of-law-a-warning-from-history>.

¹⁰⁷ United Nations Convention Against Corruption, adopted by the UN General Assembly on 31 October 2003, A/58/422; entered into force on 14 December 2005; <https://www.refworld.org/docid/4374b9524.html>.

See also Article 30(2) which obliges State parties to take measures that strike a balance "between any immunities or jurisdictional privileges accorded to its public officials for the performance of their functions and the possibility, when necessary, of effectively investigating, prosecuting and adjudicating offences established in accordance with this Convention".

according to UNICEF.¹⁰⁸ In 2015, the Compilation Report for the Human Rights Council's Universal Periodic Review (UPR) of the Federated States of Micronesia noted, "immunization coverage varies widely between States and that according to official estimates it has decreased since the mid-2000s. The country is not achieving its own domestic target of 90 per cent of children completing all immunization by or before two years of age. The country team recommended the implementation of public health interventions to expand immunization coverage, including to rural communities and outer islands".¹⁰⁹

As argued above, diversion of public funds into private hands can degrade the quality of health care, and therefore the right to health, particularly during public emergencies such as COVID-19 when access to emergency care has become difficult due to overwhelmed public health care systems and limited resources. Perhaps also the greatest risk that COVID-19 poses to enjoyment of the right to health, combined with corruption, is the discriminatory effect of unequal access to hospitals, emergency care, ventilators and vaccines because of discrimination on the basis of socio-economic status, gender and

sexual orientation, migrant status and other such grounds. As *Human Rights: We are all in this together* emphasizes, the right to health has to be respected for everyone regardless of social or economic status. This implies that healthcare systems around the world have to be urgently improved and that universal health care to all without discrimination must be put in place wherever it has not already been achieved.¹¹⁰

4. Right to democratic participation and access to information

Corruption has the possibility to thrive where the free exchange of ideas and information are tightly restricted, and deals can be kept secret. Freedom of opinion, expression and information, including freedom of the press, remain essential to open and accountable democratic governance. Thus, the free exchange of information constitutes one of the more powerful elements by which journalists and society, at large, can learn of instances of corruption and call their public officials to account. The participation of society is included in UNCAC Article 13, specifically that States parties should take measure "to

¹⁰⁸ "Over the past few years, routine vaccine coverage has increased in many countries in the Pacific to meet the 90 per cent global target for national immunization coverage, with the exception of Samoa, Federated States of Micronesia, Republic of Marshall Islands, Kiribati, Tonga and Vanuatu. There is an average of 87.1 per cent regional vaccination coverage, however a significant number of children are still missed and do not receive the recommended number of vaccine doses.": See: UNICEF, Press Release: Reaching every child in the Pacific with vaccines vital to save lives; <https://www.unicef.org/pacificislands/press-releases/reaching-every-child-pacific-vaccines-vital-save-lives> (2018).

¹⁰⁹ Compilation prepared by the Office of the United Nations High Commissioner for Human Rights on the Federated States of Micronesia; A/HRC/WG.6/23/FSM/2 of 24 August 2015; <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G15/188/83/PDF/G1518883.pdf?OpenElement> at para. 25.

¹¹⁰ UN, above n. 28.

promote the active participation of individuals and groups outside the public sector, such as civil society, non-governmental organizations and community-based organizations, in the prevention of and the fight against corruption and to raise public awareness regarding the existence, causes and gravity of and the threat posed by corruption”.¹¹¹

Many PICs have restricted access to information or inadequate legislation guaranteeing the right to information.¹¹² The Solomon Islands Constitution, for example, does recognize the “freedom to receive ideas and information without interference” as well as “freedom to communicate ideas and information without interference”, but as of September 2021, it had no right to information or freedom of information legislation.¹¹³ There have however, been some notable strides made in the Pacific in relation to right to information. For example, Vanuatu’s Right to

Information Act entered into force in 2017,¹¹⁴ which represents a laudable step towards increased disclosure of information and related good practices concerning the right to information.¹¹⁵

Under Article 19(2) of the International Covenant on Civil and Political Rights (ICCPR), everyone has the right to hold opinions without interference, and to seek, receive and impart information through the media of his or her choice.¹¹⁶ As the UN Human Rights Committee explained in a General Comment: “Freedom of expression is a necessary condition for the realization of the principles of transparency and accountability that are, in turn, essential for the promotion and protection of human rights” and that a “... free, uncensored and unhindered press or other media is essential in any society to ensure freedom of opinion and expression and the enjoyment of other Covenant rights. It constitutes one of the

¹¹¹ The UN Convention against Corruption (UNCAC), *adopted* by the United Nations General Assembly on 31 October 2003 by resolution 58/4.

¹¹² When this paper was published, only four PICs have freedom of information/right to information legislation. See UN-PRAC, Status of Right to Information in Pacific Island Countries; https://www.unodc.org/documents/southeastasiaandpacific/pacific/2020/UN-PRAC_Paper_-_Status_of_Right_to_Information_in_Pacific_Island_Countries.pdf (2020).

¹¹³ See Right to Information in Asia Pacific: How 11 countries perform on SDG 16.10; https://images.transparencycdn.org/images/2018_Report_RTInAsiaPacific_English.pdf, Transparency International Bangladesh (2018) at 44.

¹¹⁴ Right to Information Act No. 13 of 2016; Republic of Vanuatu Gazette, 7 February 2017; <https://rti.gov.vu/images/docs/Right%20to%20Information%20Act%20No%2013%20of%202016.pdf>.

¹¹⁵ Terence Malapa, C4J calls for appointment of Right To Information Commissioner; https://dailypost.vu/news/c4j-calls-for-appointment-of-right-to-information-commissioner/article_1884efec-58e2-11ea-9f09-7307a157a3f6.html, Daily Post (27 February 2020).

¹¹⁶ In Fiji, the Human Rights and Anti-Discrimination Commission, working with UNDP, contacted two national television stations to suggest that their news bulletins include sign language interpreters to ensure deaf persons and the hearing impaired, could be kept informed of COVID-19 information. See Priteshni Nand, “Deaf community in Fiji now have access to accurate information relating to COVID-19 pandemic”; <https://www.fijivillage.com/news/Deaf-community-in-Fiji-now-have-access-to-accurate-information-relating-to-COVID-19-pandemic-485rfx>, Fiji Village (9 May 2020).

cornerstones of a democratic society”.¹¹⁷ For this reason, derogations from freedom of opinion and expression, which Article 4 of the ICCPR permits under certain circumstances and to a certain extent in times of public emergency threatening the life of the nation, must be proportional to the threat, as limited as possible in scope, temporary and non-discriminatory. The state of public emergency itself must be publicly proclaimed, and as regards ICCPR State parties, it must be communicated to all other ICCPR States parties through the UN Secretary-General (as per ICCPR Article 4(3)).¹¹⁸

In this regard, every country should bolster its whistleblower and victim protections to prevent reprisals against individuals who report acts of corruption. Whistleblowers play an important role in detecting corruption, but few PICs have extensive whistleblower protection frameworks. Therefore, PICs are recommended to conduct a review of existing whistleblower protection laws should they have them, taking into account sources of international and regional best practices, and draft comprehensive whistleblower protection frameworks where such laws do not already exist in line with article 33

of UNCAC. PICs should also bolster their witness protections in accordance with article 32 of UNCAC.

Some governments have come to recognize that anti-corruption campaigners should be regarded and protected as human rights defenders since their work often overlaps with the work of human rights civil society activists.¹¹⁹ In this regard, UN High Commissioner for Human Rights, Michelle Bachelet made the point that: “with the COVID-19 pandemic undermining people’s well-being and livelihoods in every country, we urgently need to empower more people to raise their voices for human rights” because “some governments respond to the pandemic by criminalizing criticism; attacking those who speak out; expanding tracking without privacy safeguards; and intensifying other restrictions on the civic space”.¹²⁰ In some PICs, emergency laws included requirements for the media to gain prior authorization from the national disaster authorities before publishing COVID-19 related information.¹²¹

The Teieniwa Vision, noted above as the regional roadmap to address corruption in the Pacific, declared that: “We recognise and

¹¹⁷ UN Human Rights Committee General Comment no. 34 on Article 19 of the ICCPR on Freedom of opinion and expression, adopted 12 September 2011; CCPR/C/GC/34; <https://www.refworld.org/docid/4ed34b562.html>, at paras. 3 and 13.

¹¹⁸ UN Human Rights Committee General Comment No. 29 on ICCPR Article 4 concerning Derogations during a State of Emergency, adopted 31 August 2001; CCPR/C/21/Rev.1/Add.11; <https://www.refworld.org/docid/453883fd1f.html> (2001).

¹¹⁹ Summary report of the Human Rights Council panel discussion on the negative impact of corruption on the enjoyment of human rights; A/HRC/23/26 of 18 April 2013; <https://www.refworld.org/docid/51f0d0ca4.html> (2013) at para. 19.

¹²⁰ Michelle Bachelet, Side event to the 75th session of the UN General Assembly: Good Trouble, a virtual panel on the right to protest, Video statement by Michelle Bachelet, UN High Commissioner for Human Rights; <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=26313&LangID=E>, OHCHR (2020).

¹²¹ See the Vanuatu public emergency orders at <https://ndmo.gov.vu/covid-19/category/95-state-of-emergency-orders>.

support the right to information, the need to protect genuine whistle-blowers and for an independent civil society and responsible media to be involved in national and regional anti-corruption efforts”¹²². The Teieniwa

Vision underlines also the importance for PICs to adopt good laws protecting freedom of information as a means of countering corruption through improved transparency and accountability.¹²³

¹²² See UN-PRAC, Submission 33 to Inquiry into Australia activating greater trade and investment with Pacific island countries of 30 April 2020, Attachment 2; https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Foreign_Affairs_Defence_and_Trade/TradewithPacific/Submissions (2020). At a gathering in Tarawa, Kiribati, held on 4 and 5 February 2020, and chaired by the President of Kiribati, the Prime Minister of Samoa, Prime Minister of the Cook Islands, Vice President of Kiribati, Ministers from the Kingdom of Tonga and the Solomon Islands, Ambassador of the Republic of the Marshall Islands, the High Commissioners of Australia and New Zealand, and the representative of Fiji, declared their commitment to “Pacific Unity Against Corruption, recognising that all of our progress and aspirations for a peaceful, harmonious and prosperous Pacific cannot be realised unless we address corruption”.

¹²³ Ibid.



Pacific Island countries' engagement in UNCAC is critical to full human rights promotion and protection, particularly to address the COVID-19 impact

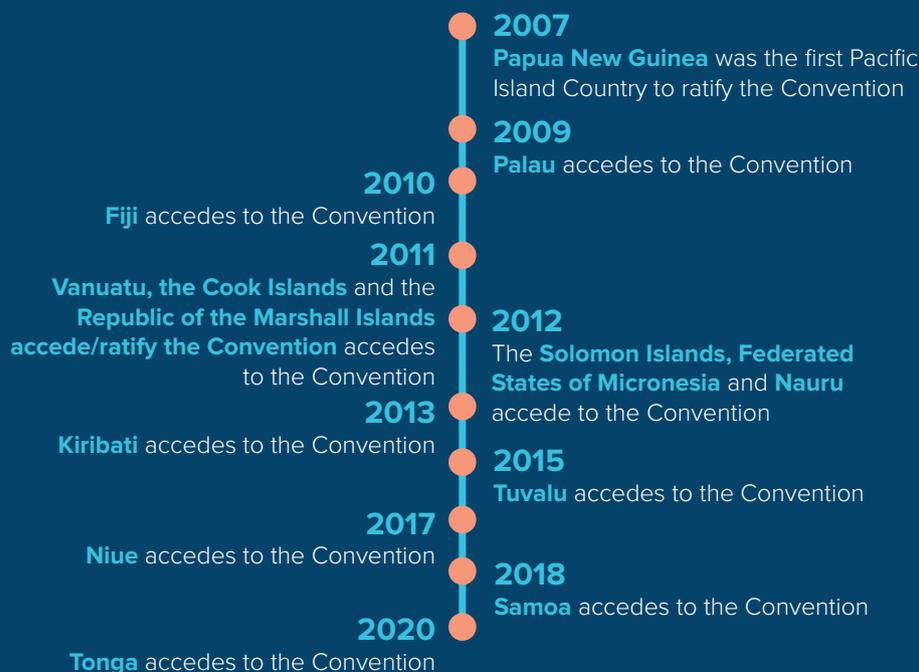
1. UNCAC and ratifications of Pacific Island countries

UNCAC is the first and to date only global, legally binding, multilateral anti-corruption treaty. All 14 PICs, the Cook Islands, Fiji, Federated States of Micronesia, Kiribati, Nauru, Niue, Palau, Republic of Marshall Islands, Samoa, Solomon Islands, Tonga, Tuvalu and Vanuatu, are States parties to UNCAC.¹²⁴

UNCAC is unique in its holistic approach, adopting prevention and enforcement measures, including mandatory requirements for criminalizing corrupt acts. The Convention also reflects the transnational nature of corruption, providing an international legal basis for enabling international cooperation and recovering proceeds of corruption (i.e. stolen assets). The important role of government, the private sector and civil society in fighting corruption is also emphasized.¹²⁵ Moreover, UNCAC paves the way for stronger international cooperation with regard to extradition or surrender of individuals sought for or convicted of corruption-related crimes (Article 44), transfer of persons sentenced for corruption-related crimes (Article 45), and it promotes closer mutual legal assistance on corruption in investigations, prosecutions and judicial proceedings (Article 46). UNCAC also obliges States parties to afford one another the

¹²⁴ The UN Convention against Corruption (UNCAC), *adopted* by the United Nations General Assembly on 31 October 2003 by resolution 58/4. By August 2021, there were 187 State parties.

¹²⁵ UN-PRAC, Pacific Anti-Corruption Factsheet #1: UNCAC; <https://www.pacific.undp.org/content/dam/fiji/docs/pacific-anticorruption-factsheet-uncac.pdf>, (2020) at page 1.

Figure 6: Ratification/ Accession of PICs to UNCAC.¹²⁶

widest measure of mutual cooperation and assistance regarding the recovery of assets (in Chapter V), and provides for increased information exchange and technical assistance among States parties on corruption matters.¹²⁷

The mechanism for the review of implementation of UNCAC (UNCAC Implementation Review Mechanism) is an

inter-governmental peer review process that was established in November 2009, at the third session of the Conference of State Parties to UNCAC. It consists of a peer review process whereby each UNCAC State party is reviewed by two other UNCAC State parties, one from the same UN geographical region, periodically every five years. The first review cycle, launched in July 2010, reviewed

¹²⁶ UN-PRAC, above n. 12, at 3.

¹²⁷ Ibid.

State parties chosen randomly, and focused on UNCAC Chapters III (Criminalization and law enforcement) and IV (International Cooperation). In November 2015, the second review cycle commenced, focusing on UNCAC Chapters II (Preventive Measures) and V (Asset Recovery). In 2019, as decided by resolution 8/2 at the Conference of States parties to UNCAC, the UNCAC Implementation Review Mechanism is to be continued beyond the completion of the second review cycle to keep monitoring implementation and to compile best practices and lessons learnt.

All Pacific States parties participate in the UNCAC Implementation Review Mechanism. All (except for Tonga that acceded to the Convention in 2020) have completed the first cycle and have or are in the process of completing the second cycle. All executive summaries of the UNCAC review reports are available online and some Pacific State parties also opted to publish their full UNCAC review reports.¹²⁸

¹²⁸ UNODC, Country Profiles; <https://www.unodc.org/unodc/en/corruption/country-profile/index.html>.



Pacific Island countries' engagement with the UN human rights system

It is useful to take note of PICs' engagement with the main elements of the UN human rights system, namely the human rights treaty bodies, Human Rights Council special procedures and the UPR. These mechanisms, together with the UNCAC Implementation Review Mechanism and the reporting against Agenda 2030 and the SDGs, represent valuable avenues of constructive multilateral cooperation in the form of monitoring and reporting, and concrete recommendations for implementation and follow-up

In line with Articles 1(3), 55 and 56 of the UN Charter, all UN Member States are obliged to promote and protect human rights. The three key pillars of the UN human rights monitoring system comprise of: the Human Rights Council's 'special procedures' that involve special rapporteurs, independent experts, special representatives and working groups that monitor human rights in particular countries or globally on a thematic basis and report publicly to the Council; the UPR through which the status of every UN Member State's implementation of its human rights obligations are peer reviewed by other States; and the UN human rights treaty body system.

The UN human rights treaty bodies are particularly relevant for the Pacific region because these bodies, composed of independent experts, monitor the compliance of State parties to certain international human rights treaties. The UN Human Rights Committee, for example, monitors State party compliance with the ICCPR, while the Committee on Economic, Social and Cultural Rights monitors State party compliance with the ICESCR. Similarly, there are treaty bodies to monitor each of the other core human rights treaties, for example, the CEDAW Committee monitors State party compliance with CEDAW, and other treaty bodies monitor State party compliance with the corresponding treaty, such as the Convention on the Rights of the Child (CRC) and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT).

In terms of outcomes, UN human rights treaty bodies are valuable. First, they receive periodic reports from States parties which updates the relevant treaty body, and by extension, the international community, on steps that governments have taken to implement the relevant treaty. Second, where a State party so authorizes, the relevant committee can receive complaints from other State parties or individuals that allege a violation of the treaty concerned (if certain admissibility criteria are met) and respond with its views on the matter (and in some situations, can take ‘urgent action’ or institute inquiries). Third, the committee offers governments guidance in the form of non-binding views and recommendations on possible steps to improve compliance. Finally, from time-to-time, human rights treaty bodies publish ‘General Comments’ setting forth its expert view on specific issues arising from the particular treaty.

The UN human rights treaty body system only applies to a State that chooses to become a party to the particular treaty in question, and not to any State that does not take the necessary steps to ratify the treaty. In other words, any country including PICs that does not ratify a particular UN human rights treaty, not only foregoes the added international human rights protection for individuals subject to its jurisdiction that ratification/ accession brings, but it will not accrue the other benefits of full engagement with UN human rights treaty bodies. This is not to say that States

which have not ratified/ acceded a particular human rights treaty are completely beyond the purview of UN human rights investigation, monitoring and reporting mechanisms, since Human Rights Council special procedures carry out these functions regardless of treaty obligations. The UPR also provides another layer of regular, public scrutiny of UN Member States’ implementation of its international human rights obligations.

PICs have made progress in ratifying the core UN human rights treaties, but there is still room for improvement.¹²⁹ According to the OHCHR dashboard as of 6 August 2021, Fiji is a State party to all of the core human rights treaties but not to their optional protocols, and the Republic of the Marshall Islands is also a party to the majority of the treaties. The Cook Islands is a party to five of the core nine human rights treaties. The situation among other PICs is uneven and mixed. The Federated States of Micronesia, Kiribati and Nauru have ratified a few of the treaties. Niue is a party to CRC, but has not taken action on other core UN human rights treaties. Palau is a party to CRC, CRPD and its optional protocol, as well as a signatory of many others. Tonga is a party to CERD and CRC, and a signatory to CRPD, while Tuvalu is a party to CEDAW and CRC, and a signatory to CRPD.¹³⁰

The chart below (**Figure 7**) shows the extent of PIC ratifications of the core UN human rights treaties as of December 2020.

¹²⁹ See “The Core International Human Rights Instruments and their monitoring bodies” OHCHR webpage which lists the 9 core instruments, date of adoption, date of entry into force, as well as the corresponding optional protocols at <https://www.ohchr.org/EN/ProfessionalInterest/Pages/CoreInstruments.aspx>.

¹³⁰ OHCHR, Status of ratification: interactive dashboard; <https://indicators.ohchr.org/> (accessed 6 August 2021).

Figure 7: Treaty ratification status of Pacific Island countries.

Treaty/ Optional Protocol	Australia	Cook Islands	Fiji	Kiribati	Marshall Islands	New Zealand	Federated States of Micronesia	Nauru	Niue	Palau	Papua New Guinea	Samoa	Solomon Islands	Tonga	Tuvalu	Vanuatu
ICESCR	R 10/12/75		R 16/07/18		A 12/03/18	R 28/12/78				S 20/09/11	A 21/07/08		R 17/03/82			
ICCPR	R 13/08/80		R 16/07/18		A 12/03/18	R 28/12/78		S 12/11/01		S 20/09/11	A 21/07/08	A 15/02/08				R 21/11/08
ICERD	R 30/09/75		R 11/01/73		A 11/04/19	R 22/11/72		S 12/11/01		S 20/09/11	A 27/01/82		R 17/03/82	A 16/02/72		
CEDAW	R 28/07/83	A 11/08/06	A 28/08/95	A 17/03/04	A 2/03/06	R 10/01/85	A 01/09/04	A 23/06/11		S 20/09/11	A 12/01/95	A 25/09/92	A 06/05/02		A 06/10/99	A 08/09/95
CAT	R 08/08/89		R 14/03/16	R 29/07/19	A 12/03/18	R 10/12/89		R 26/09/12		S 20/09/11		A 28/03/19				A 12/07/11
CRC	R 17/12/90	A 06/06/97	R 13/08/93	A 11/12/95	R 04/10/93	R 06/04/93	A 05/05/93	A 27/07/94	A 20/12/95	A 04/08/95	R 02/03/93	R 29/11/94	A 10/04/95	A 06/11/95	A 22/09/95	R 07/07/93
ICRMW			R 19/07/19							S 20/0/11						
CRPD	R 17/07/08	A 08/05/09	R 02/06/17	A 27/9/13	A 17/03/15	R 28/09/08	R 07/12/16	A 27/06/12		R/11/06/13	R/26/09/13	R 02/12/16	S 23/09/08	S 1511/07	A/18/12/13	R 23/10/08
ICPPED			R 19/07/19							S 20/09/11		R 27/11/12				S 06/02/07
ICCPR-OP1	A 25/09/91					A 26/05/89		S 12/11/01								
ICCPR-OP2	A 02/10/90					R 22/02/90										
OP-ICESCR													S 24/09/09			
OP-CAT	R 21-12-17					R 14/03/07		A 24/01/13								
OP-CEDAW	A 04/12/08	A 27/11/07			A 29/01/19	R 07/09/00							A 06/05/02			A 17/05/07
CRC OPIC					A 29/01/19							A 29/04/16				
CRC OPAC	R 26/09/06		S 16/09/05	A 16/09/15		R 12/11/01	R 26/10/15	S 08/09/00				A 17/05/16	S 24/09/09			R 26/09/07
CRC OPSC	R 08/01/07		S 16/09/05	A 16/09/15	A 29/01/19	R 20/09/11	R 23/04/12	S 08/09/00				A 29/04/16	S 24/09/09			R 17/05/07
OP-CRPD	A 21/08/09	A 08/05/09	S 02/06/10			A 04/10/16				A 11/06/13			S 24/09/09			

KEY:

Date Format:Day/Month/Year

- S (00/00/00) Treaty Signed Date
- A (00/00/00) Treaty Accension Date
- R (00/00/00) Treaty Ratification Date

Table Updated as at December 2020
Source: <http://treaties.un.org>

ABBREVIATIONS & ACRONYMS:

- ICCPR** International Covenant on Civil and Political Rights
- ICESCR** International Covenant on Economic, Social and Cultural Rights
- ICERD** International Convention on the Elimination of All Forms of Racial Discrimination
- CEDAW** Convention on the Elimination of All Forms of Discrimination Against Women
- CAT** Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
- CRC** Convention on the Rights of the Child
- ICRMW** International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families
- CRPD** Convention on the Rights of Persons with Disabilities
- ICPPED** International Convention for the Protection of All Persons from Enforced Disappearance
- ICCPR-OP1** Optional Protocol to the International Covenant on Civil and Political Rights

- ICCPR-OP2** Second Optional Protocol to the International Covenant on Civil and Political Rights, Abolition of Death Penalty
- OP-ICESCR** Optional Protocol to the International Covenant on Economic, Social and Cultural Rights
- OP-CAT** Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
- OP-CEDAW** Optional Protocol to the Convention on the Elimination of All Forms against Women
- CRC OPIC** Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure
- OP-CRC-AC** Optional Protocol to the Convention on the Rights of Child on the Involvement of Children in Armed Conflict
- OP-CRC-SC** Optional Protocol to the Convention on the Rights of Child on the Sale of Children, Child Prostitution and Child Pornography
- OP-CRPD** Optional Protocol to the Convention on the Right of People with Disabilities

As of September 2021, country and thematic special procedures mandate-holders had not conducted many missions to PICs over the previous several years, and of these, few were related directly to issues of corruption. The COVID-19 pandemic inhibited travel, including that of Human Rights Council mandate-holders, for much of 2020 and likely 2021 as well. As of mid-February 2021, a report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health was forthcoming on his mission to Fiji conducted from 28 November 2019 to 6 December 2019. Before leaving Fiji, the Special Rapporteur issued a statement noting that Fiji was a State party to all nine core international human rights treaties. However, the Special Rapporteur also noted that Fiji should devote greater attention and investment on the issue of violence against women.¹³¹

It is worth highlighting certain outcomes of the UPR process of PICs, as they relate to corruption as a threat to human rights and the rule of law, because of the UPR's regular,

systematic and comprehensive approach to human situations in UN Member States.

In 2019, during its third UPR, it was recommended that Fiji: “[p]revent women and girls from suffering discrimination, harassment and domestic and sexual violence, by allocating sufficient resources towards training for law enforcement and the judiciary in addressing cases related to violence against women and to ensure that the perpetrators are brought to justice” and “[i]ntensify the education and training campaigns for law enforcement officials and the administration of justice regarding gender and domestic violence so that victims can effectively access justice”.¹³² During the UPR process, several countries reiterated that Fiji should develop adequate mechanisms to prevent domestic violence and allow victims to access justice.¹³³ As discussed above, corruption, particularly since COVID-19, can risk diverting funds, resources and political will from addressing gender-based violence among other human rights priorities.

¹³¹ The Special Rapporteur stated that: “An additional issue of concern that deserves more attention and investment refers to violence against women and children. There are good attempts made by the Government in recognition of this serious societal problem and awareness raising. In particular, I welcome Fiji’s recent acceptance of various UPR recommendations related to this issue, including those referring to making full use and implementation of existing legislation and policies to combat violence against women and other vulnerable groups. For this, measures should be based in evidence and human rights. The realization of right to health and of the Sustainable Development Goals, Agenda 2030 (SDGs) will not be possible if violence is not addressed as a major human rights and public health issue. Efforts should be directed to stop the vicious cycle of violence, starting from violence against women and children in families, as a priority.” See Preliminary observations of the UN Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health Mr. Dainius Pūras on his country visit to Fiji, 28 November to 5 December 2019; <https://ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=25392&LangID=E>, issued in Suva on 5 December 2019.

¹³² Report of the Working Group on the Universal Periodic Review for Fiji; A/HRC/43/8 of 23 December 2019; <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G19/352/16/pdf/G1935216.pdf?OpenElement>, (2019).

¹³³ Ibid.

Similarly, during its third UPR, Kiribati was recommended to adopt more comprehensive measures to address gender-based violence. During the UPR interactive dialogue, New Zealand also commended Kiribati for its “commitments to good governance, the establishment of a national human rights institution and the fight against corruption” and “[i]t encouraged Kiribati to continue empowering the media as a vehicle for transparency and public access to information”.¹³⁴

In 2020, the Republic of the Marshall Islands was recommended to take “effective steps to combat corruption and trafficking in persons” and to move beyond an intergovernmental committee on human rights towards the establishment of a full-fledged national human rights institution based on the Principles relating to the Status of National Institutions (Paris Principles), which are the international minimum standards for effective, credible national human rights institutions.¹³⁵ It was also recommended to strengthen the judiciary and systematic capacity-building on women’s rights and gender equality.¹³⁶

With regard to the Federated States of Micronesia, in October 2020, the UN country

team expressed its concern that, “while a range of social security programmes was in place, the programmes only benefited those who had worked in the formal economy” and it recommended that the Federated States of Micronesia step up efforts to put into place a broader social safety net to cover all segments of society, in particular persons working in the informal sector, and to adopt social protection systems and packages that took into account the specific needs of women and persons with disabilities, as part of the socioeconomic response to the coronavirus disease (COVID-19) pandemic”.¹³⁷

Nauru was also recommended in its review in April 2021 to ratify the relevant human rights treaties, and many reviewing countries also recommended that Nauru establish a national human rights institution compliant with the Paris Principles. Domestic violence was also a focus, with Nauru recommended to “implement effective measures against domestic violence, including strengthening domestic violence laws and improving the handling of domestic violence cases by investing in training for local and national authorities to assist victims of domestic violence”.¹³⁸

¹³⁴ Report of the Working Group on the Universal Periodic Review on Kiribati; A/HRC/44/15 of 23 March 2020; <https://undocs.org/A/HRC/44/15> (2020) at para. 27.

¹³⁵ Principles relating to the Status of National Institutions (The Paris Principles); Adopted by General Assembly resolution 48/134 of 20 December 1993; <https://www.ohchr.org/en/professionalinterest/pages/statusofnationalinstitutions.aspx>.

¹³⁶ Report of the Working Group on the Universal Periodic Review on Marshall Islands; A/HRC/46/14 of 22 December 2020; <https://undocs.org/en/A/HRC/46/14>, (2020).

¹³⁷ UNOHCHR Compilation Report on the Federated States of Micronesia for the UPR; A/HRC/WG.6/37/FSM/2 of 30 October 2020; <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G20/275/55/pdf/G2027555.pdf> (2020) at para. 27.

¹³⁸ Report of the Working Group on the Universal Periodic Review on Nauru; A/HRC/47/17 of 12 April 2021; <https://undocs.org/A/HRC/47/17> (2021).

During the 2021 UPR Third Cycle, it was recommended that Palau ratify more human rights treaties and their optional protocols, take further steps to strengthen and fully operationalize its Office of the Ombudsman, and establish a national human rights institution that fully complies with the Paris Principles.¹³⁹

Samoa, scheduled for its next UPR review in November 2021, indicated in its 2016 UPR report that its public administration sector plan for the period 2014-2018 included working towards the establishment of an independent anti-corruption body.¹⁴⁰ Several recommendations reiterated that Samoa should conduct gender competence and domestic violence law training of its law enforcement agencies, including the police, prosecutors and the judiciary, and that Samoa should take all necessary measures to prevent and stop domestic violence, including through providing shelters for persons under threat as well as to investigate and prosecute all allegations and incidents of acts of violence against women and girls, including domestic violence.¹⁴¹

The Solomon Islands was scheduled for the UPR in May 2021, but as of October 2021, the decision of the Outcome and associated

Human Rights Council Report for the Third Cycle UPR were not yet available. It is noteworthy that during the 2016 UPR, the Solomon Islands delegation stated that the Government planned to introduce a Whistleblower Bill and an Anti-Corruption Bill that could lead to the establishment of an Independent Commission Against Corruption.¹⁴² This came to fruition in 2018 with the enactment of both the Whistleblowers Protection Act 2018 and the Anti-Corruption Act 2018, with the latter establishing the Solomon Islands Independent Commission Against Corruption under Part 2 of the Act. The Government also reported at the time that it was exploring an expansion of the mandate of the Office of the Ombudsman so that human rights complaints or issues could be brought before it, and it was also considering possibilities to establish a Paris Principles compliant national human rights institution.¹⁴³ Several countries recommended that the Solomon Islands move expeditiously towards establishing a national human rights institution. A number of recommendations concerned the need to establish effective monitoring and enforcement mechanisms to address violence against women, including to combat domestic violence, while welcoming the initiative that the Solomon Islands had taken to set up the SAFENET Referral Network

¹³⁹ Report of the Working Group on the Universal Periodic Review on Palau; A/HRC/48/12 of 16 July 2021; <https://undocs.org/en/A/HRC/48/12> (2021).

¹⁴⁰ Report of the Working Group on the Universal Periodic Review on Samoa; A/HRC/33/6 of 27 June 2016; <http://daccess-ods.un.org/access.nsf/Get?Open&DS=A/HRC/33/6&Lang=E> (2016) at para. 27.

¹⁴¹ Ibid at para 95, recommendations 48 to 57.

¹⁴² Report of the Working Group on the Universal Periodic Review on Solomon Islands; A/HRC/32/14 of 13 April 2016; <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/076/50/PDF/G1607650.pdf> (2016) at para.

¹⁴³ Ibid at para. 13.

system for women victims of domestic violence and sexual abuse.¹⁴⁴

During its UPR, Tonga's low level of ratification of key international human rights instruments was noted. Tonga was encouraged to improve its cooperation with UN human rights mechanisms. At the same time, Tonga's national policy on gender equality, criminalization of marital rape and other initiatives concerning the rights of persons with disabilities, equitable access to justice for all, combating torture, racial discrimination, corruption, child pornography and cyber harassment of children were welcomed. Several States recommended that Tonga establish a national human rights institution in compliance with the Paris Principles.¹⁴⁵

Tuvalu was commended during the 2018 UPR for its adoption of a statute establishing a national human rights institution and the Family Protection and Domestic Violence Act.

It was encouraged to ratify international human rights conventions and optional protocols to which it had not yet become a party, including the ICCPR, ICESCR, CAT and CERD.¹⁴⁶

In the 2019 UPR, Vanuatu was encouraged to address the lack of accountability for police abuse and corruption by the Vanuatu Mobile Force and the Vanuatu Police Force through investigations and prosecutions, and to strengthen the capacity of the judiciary, try to achieve universal health care coverage, and to combat violence against women and children by establishing a mechanism to protect victims and ensure accountability. Vanuatu was also encouraged to strengthen the Department of Women's Affairs and intensify efforts to combat violence against women and girls, ensuring prosecution of perpetrators through the formal justice system, and to provide police, prosecutors, judges and lawyers with appropriate training on women's rights.¹⁴⁷

¹⁴⁴ Ibid at para. 37.

¹⁴⁵ Report of the Working Group on the Universal Periodic Review of Tonga; A/HRC/38/5 of 16 April 2018; <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G18/104/85/pdf/G1810485.pdf> (2018).

¹⁴⁶ Report of the Working Group on the Universal Periodic Review on Tuvalu; A/HRC/39/8 of 10 July 2018; <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G18/209/66/pdf/G1820966.pdf> (2018).

¹⁴⁷ Report of the Working Group on the Universal Periodic Review on Vanuatu; A/HRC/41/10 of 5 April 2019; <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G19/099/76/PDF/G1909976.pdf> (2019).



Recommendations to consider

This paper recommends adopting a whole-of-society approach to addressing corruption in line with UNCAC, as well as maximizing State efforts towards the achievement of Agenda 2030 by taking an inclusive approach to sustainable development, inextricably intertwined with human rights norms. Specifically, PICs are recommended to consider:

1. Preventing and addressing corruption holistically in line with UNCAC, Agenda 2030 and the SDGs, including through: meeting the targets under SDG 16 (peace, justice and strong institutions); ratifying and effectively implementing key human rights instruments; adopting comprehensive legislation and policies to implement UNCAC obligations; remaining fully engaged in the UNCAC Implementation Review Mechanism, treaty bodies, Special Procedures and Universal Peer Review (UPR); supporting national anti-corruption policies, measures and institutions; increasing intergovernmental coordination; updating public procurement procedures to better address the response to public emergencies such as COVID-19; evaluating relevant legal instruments and administrative measures to determine their adequacy to prevent and fight corruption; taking all appropriate measures to promote transparency and accountability in the management of public finances and to enhance public administration transparency; ensuring that corruption is investigated and prosecuted where necessary, effectively and fairly; protecting witnesses, experts, victims, their relatives, and whistleblowers from potential retaliation or intimidation; and encouraging genuine participation of stakeholders in decision-making on COVID-19 response measures, and identifying and addressing corruption risks;
2. Ensuring fair access to COVID-19 medical care, including a vaccine, including through: taking all necessary measures to prevent and address corruption in the health sector; considering the establishment of a specialized committee

- with a strong anti-corruption mandate to oversee emergency funds and vaccine deployment; ensuring COVID-19 vaccines are made available and accessible to all without discrimination; employing stringent administrative oversight and accountability control measures over procurement processes, transport, storage and delivery, including the allocation and distribution of COVID-19 vaccines and immunization supplies; and where possible, ensuring that information on procurement processes for the vaccine and other key items is made available to the public;
3. Strengthening social protection, including through: safeguarding and augmenting income security affected by COVID-19, with particular emphasis on vulnerable persons; ensuring availability of food, water and sanitation, and adequate housing to all in line with international human rights law; and moving towards achieving SDG target 3.8 of universal health coverage;
 4. Preventing and addressing gender-based violence, including through: preventing, mitigating and addressing COVID-19-related increases of gender-based violence owing to restrictions of freedom of movement; introducing or strengthening fiscal and financial measures to maintain emergency services and to strengthen the social safety net for all people; addressing instances of abuse of power; maintaining sufficient attention on gender-based policies and institutions, particularly given the stressful conditions brought about by the pandemic; and taking measures to improve the collection and use of violence against women data in the COVID-19 context;
 5. Safeguarding the right of democratic participation and freedom of opinion, expression, assembly, association and information, including through: mobilizing political and opinion leaders to promote respect for human rights and encouraging an inclusive human-centered approach to addressing the COVID-19 crisis; denouncing corrupt practices and cases of corruption while protecting victims, whistleblowers and anti-corruption campaigners from retaliation or intimidation; ensuring clear and accurate information relating to COVID-19 control policies and the decision-making process employed to develop them reaches everyone; raising public awareness of the right to information, such as through public campaigns and outreach; countering false information concerning COVID-19 and countering corrupt practices through public information campaigns; preserving the right to freedom of expression; reviewing laws and policies to identify and strengthen the promotion and protection of freedom of information/the right to information; and adopting or improving freedom of information/right to information legislation to ensure greater transparency and accountability; and

6. Ensuring public emergency measures conform to international human rights law, including through: ensuring that where states of emergency are invoked to protect public health, they meet the requirements under international human rights law; documenting and investigating cases of corruption, including those relating to enforcement of or abuse of emergency measures; ensuring that where health surveillance and monitoring require tracking and tracing of particular individuals in the interests of public health, the privacy of such individuals are fully maintained and respected; and lifting emergency powers decrees and measures as soon as circumstances permit.

This paper, commissioned by the UN Pacific Regional Anti-Corruption (UN-PRAC) Project in close partnership with the Office of the United Nations High Commissioner for Human Rights (OHCHR), identifies how the COVID-19 pandemic exacerbates the threat corruption poses to human rights, democracy and the rule of law in Pacific Island countries (PICs). It recommends policies and measures that could help address this threat, focusing mainly on the Cook Islands, Fiji, Federated States of Micronesia, Kiribati, Nauru, Niue, Palau, Papua New Guinea, Republic of Marshall Islands, Samoa, Solomon Islands, Tokelau, Tonga, Tuvalu and Vanuatu. First, the paper discusses how corruption threatens human rights as well as progress in relation to the Agenda 2030 for Sustainable Development and the Sustainable Development Goals. Second, it explores COVID's wide and deep impact on human rights in PICs. Third, the paper focuses on examples of how corruption exacerbated by the COVID-19 pandemic undermines certain clusters of human rights in PICs. Lastly, the paper outlines possible policy recommendations to consider.