

ASIA PACIFIC CENTRE - RESPONSIBILITY TO PROTECT

ATROCITY PREVENTION AND THE RESPONSIBILITY TO PROTECT IN THE PACIFIC: A VISION FOR 2021-2024



Asia-Pacific Centre for the
Responsibility to Protect

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Photo acknowledgment: UNDP Tuvalu/Aurélia Rusek The low-lying island nation, Tuvalu, in the Pacific Ocean is particularly susceptible to higher sea levels caused by climate change.

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Introduction

The Responsibility to Protect, which holds all states must protect their populations from atrocity crimes, remains a fundamental United Nations principle. Over the past 15 years, the concept has gained support across the globe, and related frameworks and policies on atrocity prevention, such as early warning and intervention mechanisms, are being embedded in the human rights and peace-building fields.

The Asia Pacific Centre for the Responsibility to Protect (APR2P Centre), based at the University of Queensland, has identified atrocity prevention in the Pacific as a key priority. Climate change, gendered violence, political instability, a history of conflict, ethnic or religious tensions, and human rights violations are all linked to the risk of atrocity crime. These are issues at the forefront of life in many Pacific nations.

While risk assessments and regular monitoring of the potential for atrocity crime in the Pacific have been part of the Centre's work for many years,¹ the focus for the future is on developing partnerships in the region, with a view to supporting local organisations in the prevention of atrocity crime.

As demonstrated by the Centre's networks in Asia, effective atrocity prevention is built on strong partnerships with local communities, government agencies, NGOs and civil society. With this in mind, the APR2P Centre has established an R2P Pacific Project to promote and implement atrocity prevention strategies in the Pacific, with an initial focus on the Melanesian states of Fiji, Vanuatu, Papua New Guinea and the Solomon Islands.

In 2020, the Centre commissioned a scoping report on R2P in Melanesia, which examined the situation in each of those states in terms of atrocity crime risk factors and relevant legal and constitutional background. Initial consultations were held with CSOs, NGOs and intergovernmental organisations, and the final report mapped existing civil society, regional NGO and government architecture. A suite of strategies was recommended for enhancing the understanding and visibility of R2P and atrocity prevention in the region.

This document, *Atrocity Prevention and the Responsibility to Protect in the Pacific: A Vision for 2021-2024*, condenses that report into an overview of the situation in Melanesian states and presents strategies under the new R2P Pacific Project.

Background on Melanesian states

While widespread violations that amount to atrocity crimes have not occurred in any of the independent Melanesian states, the potential for these crimes, especially in the absence of mitigating factors and prevention mechanisms, does exist. A history of political instability, violations of human rights (especially during times of conflict), ethnic and religious tensions, and entrenched gender-based violence, are often compounded by a culture of impunity and a lack of government transparency.

Nevertheless, many Melanesian States have established frameworks and legislative safeguards. Each has a constitution with a supremacy clause and includes the protection of fundamental human rights. There is opportunity to strengthen the commitment to human rights and protection of populations from atrocity crimes within legislation and government policy.

What has previously been called an "arc of instability" can become an "arc of responsibility,"² through the building of partnerships with Pacific states on atrocity prevention and R2P. The Melanesian region has an established formal structure vis-à-vis the Melanesian Spearhead Group,³ along with a range of NGOs and CSOs working on human rights issues of local importance.

This report and the initial period of the Pacific Project will focus on Fiji, PNG, Vanuatu and Solomons, but it is important to note the ongoing conflict and human rights issues in West Papua, as well as independence negotiations in Bougainville following the 2019 referendum. Monitoring of those situations will form part of the Centre's ongoing work.

Fiji

Fiji's political history has been dotted with military and civilian overthrow of elected governments. Its current society is shaped by racial, ethnic and religious divisions. Key human rights issues include freedom of the press and censorship;⁴ independence of the judiciary;⁵ arbitrary arrest and deaths in custody;⁶ police brutality; weakening of unions; sexual and gender based violence (SGBV); lack of access to health services; child abuse; race relations; and militarisation of the civil service.

Fiji's 2013 Constitution contains a bill of rights drawing from civil and political rights as well as economic, social and cultural rights. There is an immunity clause in its Constitution that protects state officials including the military, police and government ministers from civil and criminal liability for acts associated with military coups, which has led to a lack of accountability for human rights abuses (including torture, assault, detention in military facilities, travel bans, and media censorship).⁷ Fiji's national human rights and anti-discrimination institution is not Paris Principle compliant and its anti-corruption institution (FICAC) has been accused of political prosecution to intimidate government critics and dissenters.⁸

Fiji's Crimes Act 2009 is a comprehensive legislation that criminalises genocide and crimes against humanity, as well as a range of related crimes such as slavery and trafficking. Fiji was the fifth country in the world to ratify the Rome Statute in November 1999. In 2009, the interim military government began a process of domestication of the crimes of genocide, crimes against

humanity, war crimes and other crimes in international law, within the Crimes Decree, which was codified in the Crimes Act. In 2010, Fiji attended the Assembly of the International Criminal Court (ICC) in New York where Fiji's then Permanent Representative highlighted the lack of Pacific and Asian representation on the ICC.⁹ The ICC announced the appointment of the first Pacific Islander and female litigator to the court's roster in 2020.¹⁰

Key institutions in Fiji include: the Fiji Human Rights and Anti-Discrimination Commission; Fiji Police Force, Fiji Military Forces, and the Fiji Corrections Services; the judiciary; government ministries such as the Ministry for Women and Poverty Alleviation, Attorney General's Office, and Ministry for Justice.

The CSO movement plays a major role in holding government to account on its responsibility to protect human rights. Ranging from coordinated and legally registered entities to small informal community associations such as village women groups, Fiji's civil society space tends to prioritise and advocate on key thematic issues such as women's rights and disability rights, and some have regional programs.

Papua New Guinea

As the largest Pacific state, PNG's landscape includes large areas of geographical remoteness and inaccessibility. This presents a significant obstacle to monitoring of human rights, law enforcement and prevention of atrocities. PNG is affected by high crime rates (eg, raskol gangs) and deeply entrenched domestic and gender based violence, sorcery related killings and tribal killings fueled by the availability of modern firearms, and a culture of police brutality (including cases of torture, abuse and deaths in custody).¹¹

The situation is compounded by a lack of accountability¹² and although PNG is one of the leading Pacific states in the ratification of the core human rights, it lags in its reporting obligations on almost all of these treaties. Recommendations by UN Special Rapporteurs remain unimplemented.¹³

PNG has a Constitution and Organic Laws that protect basic rights, along with a comprehensive criminal code, which criminalises genocide and murder (though not other atrocity crimes such as war crimes, crimes against humanity, or ethnic cleansing).¹⁴ PNG is not a state party to the Rome Statute.¹⁵

PNG's key institutions that safeguard the rule of law and human rights include the Royal PNG Constabulary and the PNG Defense Force, the Judiciary and the Ombudsman's office. The government had endorsed in principle the creation of a national human rights institute, but this has not progressed.¹⁶

The NGO and CSO space in PNG includes international and church-based organisations, often advocating on issues like domestic violence, prison conditions, resource extraction, and disability rights. It is difficult to hold the government to account on human rights commitments in PNG.

Solomon Islands

Key human rights issues in the Solomons include extremely high rates of SGBV; a history of ethnic conflict; mining and resource extraction;¹⁷ and challenges in infrastructure and accessibility of services, as well as issues around criminal justice, the police and security sector.

Solomon Islands has a history of armed conflict, which was followed by a Truth and Reconciliation Commission. The RAMSI response was designed to restore order and rebuild the rule of law (an example of Pillar 2 of the R2P in action).¹⁸

The Solomon Islands legal framework includes its Constitution which provides for the protection of fundamental rights in the Bill of Rights.¹⁹ Genocide is criminalised in the Penal Code,²⁰ and expressly identified as an extraditable offence. Atrocity crimes are broadly covered as extraditable offences under the meaning of political offences. Solomon Islands signed the Rome Statute in December 1998 but has not ratified the Treaty.²¹

Key government institutions that oversee the protection of human rights are the Royal Solomon Islands Police Force, the Judiciary, the Ombudsman, and the Leadership Code Commission.²² The government has tried to strengthen these institutions since RAMSI but resourcing remains a challenge.

Local NGOs often focus on SGBV (eg, Voice Blo Mere and Family Support Center) and the church plays a significant role in community life, including in peace-building and conflict resolution. Development Services Exchange is the NGO coordinating body with membership of around 75 local and international NGOs.

Vanuatu

The main human rights challenges in Vanuatu relate to violence against women, overcrowding and inadequate sanitary conditions in places of detention, media freedom,²³ and issues around internal displacement. Vanuatu has experienced systemic corruption and waves of political instability,²⁴ high turnover of Members of Parliament, and a lack of women's representation. Watchdog institutions such as the Ombudsman's Office are under-resourced and struggle to hold leaders accountable.

Vanuatu's Constitution enshrines protection of various human rights in the Bill of Rights²⁵ while the Penal Code criminalises some but not all the atrocity crimes. Genocide, and arguably other atrocity crimes (though not expressed), are extraditable offences.²⁶ Crimes against humanity and war crimes are not specifically criminalised in Vanuatu.

Vanuatu acceded to the Rome Statute on 2 December 2011 following the passing of the Ratification Act by Parliament in the same year.²⁷ However, the provisions of the Treaty have yet to be domesticated.²⁸ In 2019, Vanuatu hosted the Parliamentarians for Global Action's Pacific Islands Roundtable on the ratification and implementation of the Rome Statute of the ICC.²⁹ It has an Ombudsman's Office and a National Human Rights Taskforce which provides advice to government on human rights and reporting obligations. Vanuatu National Human Rights Coalition is a network of NGO groups that advocate for human rights of the people of Vanuatu.

The local NGO movement in Vanuatu faces challenges around resourcing and institutional capacity. Women's rights is a core focus of many organisations.

Atrocity Prevention and R2P in the Pacific

The NGO and CSO sectors in the Pacific concentrate on the following issues:

- Gender (domestic violence, SGBV, women's rights and representation)
- Disability (rights and access to services)
- Peace-building (continuous especially in post conflict states)
- Media freedom (restrictions, criminal libels, censorship, and intimidation)
- Children's rights (INGOs and local organisations)
- Covid-19 pandemic (increased poverty and unemployment etc)

Climate change is an existential issue for many Pacific nations – it is a major threat to livelihood and human security in the region. Pacific governments are working with UN agencies and through bilateral aid programs to address the impact of climate change and it is sometimes mainstreamed in the work of NGOs, within humanitarian, gender or disability projects. In 2017, Vanuatu's former Prime Minister said, "there was a clear link between forced migration and the responsibility to protect."³⁰ Climate change is – and will continue to be – a key driver of displacement.

In 2019, Vanuatu's Ambassador to the EU called on the international community to consider extending the Rome Statute to include ecocide as a crime within the remit of the ICC.³¹ Climate change may also act as a threat multiplier, heightening the potential for atrocity crimes where underlying risk factors are present.³²

Other key issues include: resource extraction and unsustainable practices around logging, mining and fishing, which affects food security and causes health and environment concerns;³³ lack of proper sanitation; property rights; land tenure; access to information; access to health services; right to education and right to protest; and access to justice.

During the 2020 consultations with the NGO and CSO sector in Melanesia, several local and regional organisations indicated a willingness to engage on R2P and atrocity prevention, as it relates to their existing mandates. Relevant government agencies have also been consulted on potential engagement on R2P and atrocity prevention. As in the APR2P Centre's existing work within Asia, building partnerships with local organisations is crucial, in terms of connecting atrocity prevention with human rights frameworks and building capacity to monitor risks and triggers, with a view to early warning and intervention. Likewise, engagement with governments and parliamentarians can help raise awareness and dispel some of the longstanding myths around R2P.

Challenges to take into consideration include: geographical remoteness and inaccessibility, along with high cost of travel; resource limitations of local organisations and NGO capacity; relationships between the CSO/NGO sector and government; as well as difficulties with formal electronic communication and the need for ongoing and face to face communication. In addition, assuring stakeholders of the continuity of projects is a critical factor in building partnerships.

The R2P Pacific Project

The R2P Pacific Project will involve a multi-tiered strategy for engagement in the region for 2021-2024 with an emphasis on building partnerships, establishing a presence in the region, and raising awareness of R2P and atrocity prevention.

Regional NGO, local CSO and church engagement

Dialogue and partnership building with regional bodies is a key early focus for the Pacific Project. Initial consultation was conducted with a range of bodies and those contacts will be key to developing partnerships under the Pacific Project. One of the core strategies for 2021-22 is to liaise with larger NGOs in urban areas that have a presence in local areas. Those larger NGOs have the capacity to make submissions to government, and are members of human rights networks. In the longer term, engagement with NGOs that are physically based in communities can also be pursued.

While NGOs have their own frameworks and operate independently of each other, the regional Pacific Islands Association of NGOs (PIANGO) has served “the Pacific through strengthening and building the capacity of NGOs and the civil society sector through giving the sector a voice in policy formulation and strengthening its member umbrella organisations in the 25 Pacific countries and territories.”³⁴ PIANGO monitors and advocates on human rights issues in the region, including in West Papua, and in relation to Covid-19.

In addition to continuing discussions with PIANGO, the first year of the Pacific Project will also look to connect with the Pacific Human Rights Defenders Network (PHRDN), hosted by the Office of the United Nations High Commissioner for Human Rights (OHCHR), Pacific Office, and work with key state actors such as the security sector. Dialogue may also be pursued with the Fiji NGO Coalition of Human Rights (whose role is to monitor human rights violations in Fiji). Other organisations whose mandate is connected in some way to human rights and atrocity prevention include: Fiji Women’s Rights Movement, Citizens Constitutional Forum, Pacific Center for Peace Building,³⁵ Fiji Women’s Crisis Center, FemLink Pacific,³⁶ Fiji Council of Social Services; Vanuatu Women’s Center and Vanuatu Human Rights Coalition.

Churches and faith-based organisations have a strong voice and reach within Pacific communities, and many run programs on social justice and human rights issues. Engaging religious institutions will form an important strategy under the Pacific Project.

Intergovernmental organisations

Throughout 2020, the APR2P Centre has liaised with the Regional Rights Resource Team of the Pacific Community (RRRT SPC) around support for capacity building on R2P and atrocity prevention. Initial discussions have also been held with the Melanesian Spearhead Group (MSG), and future consultation could be extended to the Pacific Islands Forum Secretariat (PIFS) and Pacific Islands Legal Officers Network (PILON). Further engagement during 2021 will strengthen those partnerships with a view to accessing platforms for regional advocacy and training for government staff, Members of Parliament, judicial officers, and key senior officials of government on R2P.

In addition, direct engagement with relevant government agencies will continue on the links between their mandates and R2P (for instance, preliminary discussions have been held with the Ministry for Women in the Solomon Islands). The Pacific Project may include advocacy work on strengthening legal frameworks that can prevent and prosecute atrocity crimes, such as ratification of the Rome Statute and domestication of atrocity crimes within legislation, and this will require partnerships with Attorneys-General and their departments.

Youth work

The APR2P Centre runs a Youth for Atrocity Prevention program which supports young leaders to engage with R2P and atrocity prevention. This work could be extended to Pacific states through engagement with youth-led human rights organisations, students and universities. Training could be offered to youth organisations working in related fields, and consultation undertaken with the University of the South Pacific (USP) on incorporating R2P in courses on law, human rights and political science. The potential for establishment of a Student Coalition on R2P similar to that at UQ may also be explored. Finally, young leaders who become involved in atrocity prevention work through the above programs may apply to join the Youth Core Group on Atrocity Prevention.

APR2P Pacific Director

Given the importance of local engagement and representation, as well as relationship building and face to face contact, the APR2P Centre will engage an APR2P Pacific Director who will act as representative of the Centre in engagement with NGOs, CSOs, local communities and governments. The Director will focus on dialogue and building relationships, raising awareness and visibility of R2P, and designing and implementing strategies around training, early warning, and advocacy.

In the middle-later years of the Pacific Project, the Director will work towards establishing a network of local R2P and atrocity prevention advocates in each State to ensure that there is a continuing voice on R2P. Those advocates can receive specialised training in R2P and atrocity prevention through the Centre’s programs, and play an ongoing role in raising awareness of R2P and embedding atrocity prevention within local human rights programs. They can also play a role in engagement with government agencies, parliamentarians, the media, universities, and the youth sector. The strategy mirrors programs such as Male Champions on Violence Against Women within NGOs, who are trained to advocate on SGBV.

Longer-term concepts

The assumption that one training course can solve the issues or raise awareness, is in the Pacific context, erroneous. Under the Pacific Project, engagement and dialogue will occur continually and frequently in order to build and strengthen relationships.

The APR2P Centre runs capacity development programs in Asia for a range of participants, and can adapt the training program for the Pacific. NGO and CSO partners may also join online training and webinars, and link with the Asia Pacific Partnership on Atrocity Prevention (APPAP),³⁷ which has a number of working groups on thematic issues linked to R2P.

Training and capacity building remain an important tool for development in the region but should be tied to concrete and durable outcomes such as the strengthening of atrocity crime risk monitoring in the region, changes to legislative frameworks or greater

awareness and mobilisation of efforts to hold governments to account for the protection of human rights and atrocity prevention.

Awareness and lobbying for more robust systems and key legal frameworks within Melanesian and other Pacific governments will need to be ongoing. This can be achieved through partnership either bi-laterally with governments or through regional organisations, and NGO/CSOs. Moreover, churches and faith-based organisations are key partners to consider given their reach and social justice programs, including around domestic violence and climate change and as a moral voice of authority in many Pacific communities.

Initial discussions with organisations produced a range of ideas for future consideration. In particular, the concept of a Regional Observatory on Human Rights would aim to build on and support the ongoing monitoring of human rights in the region and the links with atrocity prevention. A regional observatory could be a central place where NGOs collate and share information on human rights concerns, risks and triggers, R2P, and to network on information sharing and advocacy.

Endnotes

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- 2 Graeme Dobell, From “Arc of Instability” to “Arc of Responsibility”, Volume 8, No.4, Special Volume on Security Arc” (Summer 2012), Institute for Regional Security, Canberra, Australia. pp33-46
- 3 MSG Secretariat: <https://www.msgsec.info/about-us/>
- 4 Fiji’s Media Freedom was rated partially free by Freedom House in 2019: <https://freedomhouse.org/country/fiji/freedom-world/2020>
- 5 Request by the UN Special Rapporteur on Freedom of Judges and Lawyers has not been accepted by the Fijian authorities since 2006. See also reports by IBA: Rule of Law in Dire Straits - <https://www.ibanet.org/Article/NewDetail.aspx?ArticleUid=6A3EA360-40C4-4940-92AF-2EB2A64D7545> ; <http://press-files.anu.edu.au/downloads/press/p7451/mobile/ch17.html>
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- 7 See the International Bar Association Report titled Dire Straits: A report on the rule of law in Fiji and The Law Society Charity Report titled, Fiji, the Rule of Law lost.
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- 13 OHCHR: <https://www.ohchr.org/en/countries/asiaregion/pages/pgindex.aspx>
- 14 Section 313A
- 15 <https://www.pgaction.org/ilhr/rome-statute/asia/papua-> http://www.paclii.org/sb/legis/consol_act/c1978167/new-guinea.html
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- 22 See National Report to the UPR: <https://www.ohchr.org/EN/HRBodies/UPR/Pages/SBIndex.aspx>
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- 25 http://www.paclii.org/vu/legis/consol_act/cotrov406/
- 26 See Section 3(1) and 2 (b): http://www.paclii.org/vu/legis/consol_act/ea149/index.html#p3
- 27 http://www.paclii.org/cgi-bin/sinodisp/vu/legis/num_act/rsoticca2011611/rsoticca2011611.html?stem=&synonyms=&query=Rome%20Statute
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