

# **HOW THE UNIVERSAL PERIODIC REVIEW PROCESS HAS INFLUENCED THE CASE FOR NATIONAL HUMAN RIGHTS INSTITUTIONS IN PACIFIC ISLAND FORUM (PIF) MEMBER STATES**

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## **INTRODUCTION**

The Universal Periodic Review (UPR) was created under United Nations (UN) General Assembly Resolution 60/251, the same resolution that established the UN Human Rights Council (HRC). Resolution 60/251 mandated the Human Rights Council to ‘undertake a universal periodic review, based on objective and reliable information, of the fulfilment by each State of its human rights obligations and commitments in a manner which ensures universality of coverage and equal treatment with respect to all States.’ Two cycles of the UPR by the 193 member States of the United Nations were completed in 2016 and the third cycle is currently ongoing and ends in 2021<sup>1</sup>. Twelve Pacific Island Forum (PIF) member States, which are also members of the United Nations have reported to the HRC under the UPR. These PIF member States<sup>2</sup> except Australia and New Zealand are the subject of this paper.

The UPR process requires the State under Review (SuR) to provide a progressive update on their human rights framework vis-à-vis human rights practices, policies, laws and commitments. It also allows the SuR to make voluntary commitments on improving human rights and accept or note recommendation made by other UN member states during their UPR.

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<sup>1</sup> First Cycle (2008-2011); Second Cycle (2012-2016) and Third Cycle (2017-2021), See <https://www.ohchr.org/EN/HRBodies/UPR/Pages/CyclesUPR.aspx> (Accessed 9 September 2019).

<sup>2</sup> Federated States of Micronesia, Fiji, Kiribati, Marshall Islands, Nauru, Palau, Papua New Guinea, Solomon Islands, Samoa, Tonga, Tuvalu and Vanuatu. Note Cook Islands is not a member of the UN.

The UPR has not been without its criticism, with arguments around its ritualism or rhetoric<sup>3</sup> when it comes to the implementation of recommendations. However, in PIF member States there is strong evidence of actual implementation of recommendations following the two UPR cycles, suggesting considerable value in the process. One cluster of recommendations receiving traction and positive responses in Pacific States is that of the establishment of national human rights institutions (NHRI).

While the establishment of NHRI have burgeoned in other regions, the Pacific still lags behind. However, there is a gradual shift in this region as the concept of NHRI's are explored by Pacific governments with the intention of setting their own home-grown institution. Before the UPR, only Fiji had an established Paris Principle compliant NHRI. Since the UPR commenced in 2007, two other Pacific governments, Tuvalu and Samoa have established their NHRIs. While there is no one size fits all model for NHRIs, Pacific governments are recognizing that they have existing institutions that could be transformed into a NHRI. However, to do that, there must be a constitutional or legislative framework that provides for the powers, roles and functions of the NHRI, be it the amendment of an existing law or the drafting of specific legislation. At its most basic, it must comply with the Paris Principles.

In this paper, I will discuss the role of a NHRI, the Paris Principles, the challenges of establishing NHRIs in the Pacific and the progress towards establishing NHRIs vis-à-vis through the impact and influence of the UPR process. In particular, I will explore how the UPR has influenced the case for NHRIs in the Pacific drawing from the recommendations and voluntary commitments of Pacific States at the UPR. Further, I will also explore the practical steps towards establishing NHRIs in the Pacific.

## **WHY NATIONAL HUMAN RIGHTS INSTITUTIONS?**

By their nature, NHRIs should be able to hold States accountable for their state practices especially on acts or omissions that infringe on human rights. To do that, the powers, competencies and mandate of the NHRI must be clearly spelled out in

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<sup>3</sup> Rana, Sameer, "Review or Rhetoric? An Analysis of the United Nations Human Rights Council's Universal Periodic Review," (2025) *Independent Study Project (ISP) Collection* 2239. [https://digitalcollections.sit.edu/isp\\_collection/223](https://digitalcollections.sit.edu/isp_collection/223) (Accessed 10 September 2019).

legislation or within the Constitution. The primary function of a NHRI is to oversee the State's discharge of its duties and functions as the duty bearer in the protection and promotion of human rights. Moreover, a Paris Principle compliant NHRI is mandated to among others, ensure that the State's human rights compliance is not mere tokenism, but that the State is diligent in meeting their human rights commitments and obligations. In a nutshell, a NHRI must act as the State's conscience on human rights. NHRI's are created by the government but by their nature are independent of the government often with quasi-judicial powers to investigate or mediate human rights conflicts within the State. Other functions of an NHRI include;

- i. Advisory: advises government, civil society, business communities etc. on human rights standards and frameworks. NHRI can also advise government on bills and policies that may infringe on human rights.
- ii. *Amicus Curae* – or friend of the court.
- iii. Human rights education and training.
- iv. Conducting inquiries on issues of national importance such as the enquiry conducted by Samoa's NHRI on family violence.<sup>4</sup>
- v. Monitoring human rights situation on the ground and providing accountability for State practices that would or may infringe human rights.

The Pacific region is not immune to human rights abuses and violations and the challenges of upholding human rights standards remain. These challenges are often compounded by the low level of human rights literacy of State officials, be it in understanding human rights treaties and legal frameworks or implementing them. Moreover, human rights violations largely stem from State practices or actions of state officials who may not be aware of human rights or purposefully infringe these enshrined rights.

The challenge with most Pacific states without a NHRI is that human rights training and education is often entrusted to regional bodies such as the SPC RRRT, the PIFS and the Melanesian Spearhead Group Secretariat (MSG) among others to carry out for their government officials. While this is not an indictment on these regional

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<sup>4</sup> Komesina o Solufaiga, *National Public Inquiry into Family Violence in Samoa*, State of Human Rights Report, Samoa Office of the Ombudsman/National Human Rights Institution, Apia, Samoa, June 2018.

organizations, the issue is that Pacific states are at a point where human rights need to be domesticated fully and practiced consistently across the State system. This means that the glaring need for a sustainable home grown NHRI is crucial to address the many gaps in human rights protection and promotion at a State level. Wickliffe (1999) argues that,

*National constitutions and institutions in the Pacific are not protecting the human rights of citizens of the Pacific. Human rights violations continue to occur. These violations include abuse of police powers, failure to meet minimal standards relating to the rights of prisoners, militarisation and its use against civilian communities, violence against women, abuse of children and young people, limitation of free speech and media freedom, discrimination based on gender, disability (including HIV/AIDS status), age, minority status or discrimination against immigrants, migrant workers or indigenous peoples. Other human rights violations are occurring in the economic, social and cultural sphere.<sup>5</sup>*

Wickliffe's views remain relevant today given the myriad of human rights challenges evident in many Pacific States which is confirmed by documented cases of human rights violations decided by our Pacific courts<sup>6</sup>. The gradual increase in cases where individuals have challenged State practices based on constitutional protection or legal frameworks on human rights highlights the importance of State officials understanding the fundamental human rights regime and frameworks of the State<sup>7</sup>. Moreover, there is a need for Pacific states to institutionalise human rights within the government system and a functional NHRI is necessary for the practical and sustainability of human rights in this regard. In his foreword on Volume 3 of the Human Rights Law Digest, Creighton highlights the systemic failures that have resulted in the many human rights cases brought before Pacific courts.

*In many cases, individual infringements of human rights standards are not isolated events: they often highlight or flow from systemic failures of widespread practices. Governments committed to observing and*

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<sup>5</sup> Caren Wickliffe "Human Rights Education in the Pacific: A Paper Prepared for the UNESCO Asia/Pacific Meeting on Human Rights Education"; (1999); 3 *Journal of South Pacific Law* <https://www.usp.ac.fj/index.php?id=13148> (Accessed 1 February 2020).

<sup>6</sup> See human rights cases determined by Pacific courts and collected by the Pacific Community's Regional Rights Resource Team in the *Pacific Human Rights Law Digest*, Volumes 1-6, SPC, Suva, Fiji Islands.

<sup>7</sup> *Idem*.

*protecting human rights need to be pro-active in identifying the underlying conditions in which the individual breaches have occurred and in implementing strategies to reduce the likelihood of future infringements.*<sup>8</sup>

While litigating human rights cases in Pacific courts have exposed various State practices resulting in human rights violations, the UPR civil society reports for most Pacific states have also highlighted the capacity and resource challenges in their country when it comes to implementing human rights commitments and human rights education and awareness in country.<sup>9</sup>

Moreover, other challenges that have been highlighted over the years include reporting to the expert treaty committees which is a problematic area for many of our state officials, who often lack the capacity, the training or both to write reports and dialogue with the expert UN treaty committees on the human rights issues in country.<sup>10</sup> Consequently many Pacific states often hire external consultants to draft their national reports for UN treaty bodies. In such situations, a NHRI can add value to the human rights regime and practices of a State by building the capacity of officials through human rights training and education,<sup>11</sup> a role currently assumed by regional organisations such as the SPC RRRT, PIFS and the MSG among others.

The glaring human rights gaps at the national level strengthens the case for a dedicated and functional institution whose roles should include capacity building, education and training, complaint handling as well as the protection and embedding of a human rights culture peculiar to the State. Further a NHRI should guide the state on

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<sup>8</sup> Pacific Islands Forum Secretariat, Peter Creighton (Ed); *Pacific Human Rights Law Digest*, Volume 3, PIFS, SPC, Suva, Fiji Islands (2011).

<sup>9</sup> See Compilation Summary of Stakeholders submissions, OHCHR <https://www.ohchr.org/EN/HRBodies/UPR/Pages/Documentation.aspx> (Accessed 27 December 2019); Fiji (1<sup>st</sup> UPR Cycle: A/HRC/WG.6/7/FJI/3; 11/Nov./2009; 2<sup>nd</sup> UPR Cycle: A/HRC/WG.6/20/FJI/3; 18/Jul./2014; 3<sup>rd</sup> Cycle: A/HRC/WG.6/34/FJI/3; 22/Aug./2019); Kiribati (1<sup>st</sup> Cycle: A/HRC/WG.6/8/KIR/3; 28/Jan./2010; 2<sup>nd</sup> Cycle: A/HRC/WG.6/21/KIR/3; 22/Oct./2010; 3<sup>rd</sup> Cycle: A/HRC/WG.6/35/KIR/3; 5/Nov./2019); Marshall Islands (1<sup>st</sup> Cycle: A/HRC/WG.6/9/MHL/3; 30/Jul./2010; 2<sup>nd</sup> Cycle: A/HRC/WG.6/22/MHL/3; 12/Feb./2015); Nauru: (1<sup>st</sup> Cycle: A/HRC/WG.6/10/NRU/3; 17/Sept./2010; 2<sup>nd</sup> Cycle: A/HRC/WG.6/23/NRU/3; 10 Aug./2015); Tuvalu (1<sup>st</sup> Cycle: A/HRC/WG.6/3/TUV/3 16/Sep./2008; 2<sup>nd</sup> Cycle: A/HRC/WG.6/16/TUV/3; 23 Jan./2013; 3<sup>rd</sup> Cycle: A/HRC/WG.6/30/TUV/3; 19/Feb./2018); Tonga: (1<sup>st</sup> Cycle: A/HRC/WG.6/2/TON/3; 11/Apr./2008).

<sup>10</sup> See national reports above n 9, where States have consistently requested more technical assistance for their officials to assist them in understanding the nuances of human rights laws and frameworks.

<sup>11</sup> Paris Principles <https://nhri.ohchr.org/EN/AboutUs/Pages/ParisPrinciples.aspx> (Accessed 27 December 2019).

its human rights practices including providing advice on new legislation and policies for human rights compliance as well as supporting the state in the reporting of its human rights practices especially best practices before expert UN treaty committees.<sup>12</sup>

As Pacific States work towards strengthening their laws and key institutions to safeguard human rights, the option of establishing a dedicated human rights institution is a timely one as it will complement the State's human rights framework and strengthen human rights practices. The Vienna Declaration and Programme of Action adopted by the 1993 World Conference on Human Rights called for among others,

*the establishment and strengthening of national institutions, having regard to the "Principles relating to the status of national institutions" and recognizing that it is the right of each State to choose the framework which is best suited to its particular needs at the national level.*<sup>13</sup>

## **PARIS PRINCIPLES COMPLIANT NHRIS**

A NHRI is an important institution of the State, the role and functions of which, while dependent on its enabling legislation, has the primary mandate of protecting and promoting human rights within the State. 'National human rights institutions—at least those that are in compliance with the Paris Principles—are the cornerstone of national human rights protection systems and, increasingly, serve as relay mechanisms between international human rights norms and the State.'<sup>14</sup> However it is not enough to establish a national institution or committee under the guise of a NHRI. An internationally recognized NHRI is one that adheres to and complies with the Paris Principles standards. The Paris Principles contains the universal minimum standards by which NHRIs are measured and accordingly receive accreditation. The two broad

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<sup>12</sup> Office of the UN High Commissioner For Human Rights, *National Mechanisms for Reporting and Follow-up; A Practical Guide to Effective State Engagement with International Human Rights Mechanisms*, New York and Geneva (2016) [https://www.ohchr.org/Documents/Publications/HR\\_PUB\\_16\\_1\\_NMRF\\_PracticalGuide.pdf](https://www.ohchr.org/Documents/Publications/HR_PUB_16_1_NMRF_PracticalGuide.pdf) (Accessed November 2019).

<sup>13</sup> Office of the United Nations High Commissioner for Human Rights, *Vienna Declaration and Program of Action*, Adopted by the World Conference of Human Rights in Vienna on 25 June 1993, <https://www.ohchr.org/EN/ProfessionalInterest/Pages/Vienna.aspx> (Accessed 1 October 2019)

<sup>14</sup> See, generally, Morten Kjærø, (2010), "What is a national human rights institution?" in *National Human Rights Institution: History, Principles, Roles and Responsibilities, Professional Training Series No.4*, United Nations, available at [www.humanrights.dk/about-us/what-is-a-nhri](http://www.humanrights.dk/about-us/what-is-a-nhri) (accessed 6 October 2019)

requirements for NHRIs under the Paris Principles are that it must protect and promote human rights.<sup>15</sup> Further a NHRI must meet the six key criteria of the Paris Principles which include:<sup>16</sup>

- i. Mandate and competence: a broad mandate, based on universal human rights norms and standards;
- ii. Autonomy from Government;
- iii. Independence guaranteed by statute or Constitution;
- iv. Pluralism which is that the membership of the NHRI must broadly reflect the society in which the institution is operating in;
- v. Adequate resources; and
- vi. Adequate powers of investigation.

Prior to the commencement of the UPR in 2006, only one PIF member State had a NHRI. Fiji's Human Rights Commission (FHRC) was established under Section 42 of the 1997 Constitution and the Human Rights Commission Act 1999 and was, until the military coup of 2006, the only "A" accredited Paris Principles compliant institution. However, following a report by the then Director of the FHRC supporting the military coup and a series of events that encroached on the independence of the FHRC, the Commission was suspended by the International Coordinating Committee of National Human Rights Institutions for the Promotion and Protection of Human Rights (ICC) in March 2007.<sup>17</sup> The FHRC through its Director, withdrew from the ICC in April 2007.<sup>18</sup> Following the abrogation of Fiji's 1997 Constitution, the FHRC was revived by the interim government under Decree 11 of 2009.<sup>19</sup> Despite the re-establishment of the FHRC under the Human Rights Commission Decree, its leadership did not seek to renew its membership with the ICC. Fiji's 2013 Constitution re-established and extended the mandate of Fiji's human rights institution as the Fiji

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<sup>15</sup> Office of the United Nations High Commissioner for Human Rights; above n.12

<sup>16</sup> *Idem*.

<sup>17</sup> Catherine Renshaw; Andrew Brynes; Andrea Durbach, "Implementing Human Rights in the Pacific through National Human Rights Institutions: The Experience of Fiji" (2009) 40(1) *Victoria University of Wellington Law Review* 262-264.

<sup>18</sup> United Nations Human Rights Council, *Compilation prepared by the Office of the High Commissioner for Human Rights, in accordance with Paragraph 15 (B) of the Annex to Human Rights Council Resolution 5/1*; HRC WG on the UPR, Seventh session Geneva, 8-19 February 2010; A/HRC/WG.6/7/FJI/2 13 November 2009.

<sup>19</sup> *Decree 11 of 2009* [http://www.pacii.org/fj/promu/promu\\_dec/hrcd2009280.pdf](http://www.pacii.org/fj/promu/promu_dec/hrcd2009280.pdf) (accessed 9 September 2019, 10am).

Human Rights and Anti-Discrimination Commission (FHRADC),<sup>20</sup> though it remains to be assessed for compliance with the Paris Principles by the Global Alliance of National Human Rights Institutions (GANHRI).<sup>21</sup> GANHRI is the global accreditation body that has replaced the ICC.

*Accreditation confers international recognition, and protection, of the NHRI and its compliance with the Paris Principles. “A” status accreditation also grants participation in the work and decision-making of the GANHRI, as well as the work of the Human Rights Council and other UN mechanisms.*<sup>22</sup>

NHRIs are accredited either as an A institution which means that the institution is fully compliant with the Paris Principles or a B institution which means that it is partially compliant with the Paris Principles. B classification recognises that while NHRIs may ‘participate as observers in international and regional work and meetings of the NHRI, they cannot vote or hold office with the Bureau or its subcommittee.’<sup>23</sup>

In 2013, just before its second UPR cycle, Samoa established its NHRI by expanding the mandate of the Ombudsman’s Office with a human rights mandate under the Komesina o Sulufaiga Act 2013.<sup>24</sup> The Samoa Ombudsman’s Office was established under Section 82(b) of the 1960 Constitution and the Komesina o Sulufaiga Act 1988 but with the conventional responsibilities of an Ombudsman, focusing primarily on government maladministration. However, the expanded mandate means that the Ombudsman’s office is now a hybrid model serving a dual function of Ombudsman and as the NHRI. In 2016, three years after the establishment of the Komesina o Sulufaiga, this hybrid human rights institution received its A accreditation<sup>25</sup> from the GANHRI.

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<sup>20</sup> Section 45 of the *Constitution of Fiji* 2013

<sup>21</sup> See GANHRI Sub-Committee on Accreditation (SCA), Global Alliance of National Human Rights Institutions (GANHRI) <https://nhri.ohchr.org/EN/Pages/default.aspx> (Accessed 27 September 2019).

<sup>22</sup> *Idem*.

<sup>23</sup> GANHRI Sub Committee on Accreditation: <https://nhri.ohchr.org/EN/AboutUs/GANHRIAccreditation/Pages/default.aspx> (Accessed 10 September 2019)

<sup>24</sup> *Komesina o Sulufaiga Act* of 2013 Samoa; [http://www.samoajls.ws/english/index.php?option=com\\_content&view=article&id=154:establishment-of-nhri-at-omb&catid=59:current-projects&Itemid=95](http://www.samoajls.ws/english/index.php?option=com_content&view=article&id=154:establishment-of-nhri-at-omb&catid=59:current-projects&Itemid=95) (accessed 9 September 2019).

<sup>25</sup> See <http://www.samoagovt.ws/2016/07/samoas-office-of-the-ombudsman-rated-a/> (accessed 9 September 2019).

PIF member States have struggled to establish Paris Principles compliant NHRIs because of financial and human resources challenges and capacity constraints, though the earlier discussion in the region was to consider the establishment of a regional human rights institution due to these and other pragmatic challenges. At the time, Jalal<sup>26</sup> argued that the Paris Principles would be problematic for many small Pacific States especially on the issue of independence, autonomy and sufficient resources for the institution. She argued that,

*the challenges of compliance with the Paris Principles for all our PICTs, let alone the small island states are manifold. How do countries like Tuvalu (population 9561), Tokelau (population 1466), Niue (population 1679), Cook Islands (population 11,900) or even Tonga (population 97,784) fully comply with such minimum standards on a daily basis?*<sup>27</sup>

Further to the issues identified by Jalal above, the NHRI Pathways for Pacific States Paper<sup>28</sup> also addressed other areas such as lack of knowledge of existing international human rights norms and standards, lack of national coordination and communication as problematic for the establishment of NHRIs in the Pacific. However, PIF Member States now have an opportunity through the UPR's interactive dialogue to revisit some of these challenges by discussing it with the international human rights community and together with their national stakeholders, regional and international partners identify creative ways of addressing these challenges. Moreover, Pacific states now have greater access to opportunities for technical and financial assistance from development partners than they had in the past to support them in the establishment of their NHRI.

Since their engagement with the UPR process, most Pacific States have established UPR/Human Rights committees to coordinate the State's report writing and implementation of human rights commitments and engagement with the international human rights system. However, the challenges of establishing Paris Principle compliant

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<sup>26</sup> Jalal.P.I. *Why do we need a Regional Human Rights Commission?* (2008) Victoria University of Wellington, Hors Serie Volume VIII, Human Rights in the Pacific <https://www.victoria.ac.nz/law/research/publications/about-nzacl/publications/special-issues/hors-serie-volume-viii,-2008> (Accessed 9 September 2019).

<sup>27</sup> *Idem.*

<sup>28</sup> National Human Rights Institutions; Pathways for Pacific States; Pacific Human Rights Issues; Series 1 [https://pacific.ohchr.org/docs/NHRI/NHRIs\\_Pathways\\_for\\_Pacific\\_States.pdf](https://pacific.ohchr.org/docs/NHRI/NHRIs_Pathways_for_Pacific_States.pdf) (Accessed 09 September 2019)

NHRIs remain and is often compounded by the lack of political will, its low national priority or urgency, competing and burdensome international obligations, including human rights reporting, and an overstretched bureaucracy. On the positive, national coordination of human rights commitments works favourably towards the commitment to establish a sustainable human rights institution.

Furthermore, the silver lining is that there have been progressive steps taken by PIF member States to establish NHRIs within the UPR periods from 2008 to 2019. These progressive steps are complemented by the scoping studies (see Table 3) of the State's feasibility, desirability and options for establishing Paris Principles compliant NHRIs which addresses the very challenges identified by Jalal and the Pacific Pathways Paper among others. However, Pacific states have demonstrated goodwill by progressing the NHRI recommendation within the confines of their existing resources and political structures.

## **THE CASE FOR THE UPR AND NHRIS**

In 2007, the Office of the United Nations High Commissioner for Human Rights, Regional Office for the Pacific (OHCHR), the SPC RRRT and PIFS began a series of UPR training to prepare Pacific States for the UPR process. These joint training sessions carried out at regional and national level resulted in all PIF member States reporting to the Human Rights Council (HRC). This is a significant achievement<sup>29</sup> for a region known for its consistently overdue treaty reports and often lethargic reporting to international human rights bodies. The training process also contributed to the strengthening of government officials' capacity to prepare national reports and defend the reports before the HRC during the interactive dialogue. Moreover, Pacific officials engaging in the UPR process recognized that while the reporting process is onerous, it is an opportunity for them to tell their 'human rights stories' with the world.<sup>30</sup>

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<sup>29</sup> Pacific Island Forum Secretariat, 42<sup>nd</sup> Pacific Leaders Communique, Paragraph 35 <http://www.pireport.org/articles/2011/09/12/42nd-pacific-islands-forum-leaders-meeting-forum-communicu%C2%83%C2%89> (Accessed 9 September 2019).

<sup>30</sup> See Pacific Community, *Human Rights in the Pacific, A Situation Analysis*, SPC, Suva, Fiji (2016) 5.

The sharing of best practices on human rights often gives countries, in particular small Pacific Island states, the impetus and courage to talk to the international community on how they are strengthening their human rights culture despite the obvious challenges.<sup>31</sup> Moreover, the nature of the interactive dialogue is such that States are obligated to address commitments taken to protect, promote and realize human rights. The Reporting Guideline established by Decision 6/102 (Paragraph 1 (B) of the Human Rights Council<sup>32</sup> require States to provide a,

*background of the country under review and framework, particularly normative and institutional framework, for the promotion and protection of human rights: constitution, legislation, policy measures, national jurisprudence, human rights infrastructure including national human rights institutions (my emphasis) and scope of international obligations identified in the “basis of review” in resolution 5/1, annex, section IA.*<sup>33</sup>

This dialogue platform not only allows the State under Review (SuR) to talk to other member States about their significant human rights’ milestones but provides them with a platform to seek international assistance in other areas of their implementation strategies. This is the case for various Pacific States that have enthusiastically engaged the UPR process. Kiribati and Palau, for example,<sup>34</sup> called on ‘international UN Agencies and development partners to assist in progressing its human rights obligations through technical and financial assistance.’<sup>35</sup> Marshall Islands acknowledged the need for ‘further assistance in implementing its human rights obligations, especially in the areas of coordination across the national and local governments’<sup>36</sup> while Nauru called

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<sup>31</sup> See Pacific Community, *Telling Pacific Human Rights Stories to the World: A road map for reporting before the UN Human Rights Council's Universal Periodic Review process*, (2010), SPC Suva, <https://rrrt.spc.int/resources/publications/telling-pacific-human-rights-stories-to-the-world> (Accessed 8 September 2019)

<sup>32</sup> Human Rights Council, “Basic Facts About UPR”, para 1(B) <https://www.ohchr.org/EN/HRBodies/UPR/Pages/BasicFacts.aspx> (Accessed 9 Sep. 2019).

<sup>33</sup> See [https://ap.ohchr.org/documents/E/HRC/decisions/A\\_HRC\\_DEC\\_6\\_102.pdf](https://ap.ohchr.org/documents/E/HRC/decisions/A_HRC_DEC_6_102.pdf) (Accessed 9 September 2019).

<sup>34</sup> See *National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21, Palau*, A/HRC/WG.6/24/PLW/1, 10 Nov 2015, WG on the UPR, 24<sup>th</sup> session, (18-29 Jan 2016) 24.

<sup>35</sup> United Nations Human Rights Council (UN HRC), *National report submitted in accordance with paragraph 5 of the annex to HRC resolution 16/2, Kiribati*, A/HRC/WG.6/21/KIR/1, 4 November 2014, WG on the UPR, Twenty-first session, (19–30 January 2015) 23.

<sup>36</sup> UN HRC, *National report submitted in accordance with paragraph 5 of the annex to HRC Res. 16/21, Marshall Islands*, A/HRC/WG.6/22/MHL/1, 9 Feb. 2015, WG on the UPR, Twenty-second session 4-15 May 2015 17.

on ‘relevant regional and international organizations, partners and donors to assist in the coordination of current, ongoing and planned human rights activities in Nauru.’<sup>37</sup> Papua New Guinea highlighted the importance of national and international partnership to address its human rights challenges.<sup>38</sup>

*For some of the PICs, the UPR process was their first involvement in reporting to an international human rights mechanism. The UPR process was overall a very valuable one for PICs as it provided a unique opportunity to present Pacific stories and to engage in dialogue on human rights issues with other states. It also opened up opportunities for greater assistance and coalition building both regionally and internationally on addressing human rights issues.*<sup>39</sup>

Moreover, the UPR process has not only strengthened the capacity of government officials to confidently dialogue on human rights but also provides the opportunity for these officials to call for technical and financial support from the international community to assist them in implementing NHRI recommendations. In its national report to the first UPR, Marshall Islands highlighted that, ‘with technical and financial assistance from the international community, such a national human rights institution will be established...Such an office would enhance RMI’s public awareness and training efforts with respect to human rights.’<sup>40</sup> Palau requested ‘the international community to kindly consider providing assistance on the establishment of a human rights institution’<sup>41</sup> while Vanuatu stated that they ‘need technical and financial

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<sup>37</sup> UN HRC, *National report submitted in accordance with paragraph 5 of the annex to HRC Res.16/21, Nauru*, A/HRC/WG.6/23/NRU/1, 14 Oct. 2015, WG on the UPR, Twenty-third session, (2-13 Nov.2015) 23.

<sup>38</sup> UN HRC, *National report submitted in accordance with paragraph 5 of the annex to HRC resolution 16/21, PNG*, A/HRC/WG.6/25/PNG/1, 3 May 2016, WG on the UPR, Twenty-fifth session, Geneva (2–13 May 2016).

<sup>39</sup> Secretariat of the Pacific Community, RRRT, *Pacific Island States and the UPR: A toolkit for Pacific Island States to measure progress and compliance against UPR recommendations*, SPC Suva, Fiji. (2012).

<sup>40</sup> UN HRC, *National report submitted in accordance with paragraph 15 (a) of the annex to HRC Res.5/1, Marshall Islands*, A/HRC/WG.6/9/MHL/1/Rev.1; 9 Nov.2010; WG on the UPR, (1-12 Nov.2010); para.49.

<sup>41</sup> UNHRC, *National report submitted in accordance with paragraph 15 (a) of the annex to HRC Res.5/1, Palau*, A/HRC/WG.6/11/PLW/1, 2 Feb. 2011, WG on the UPR, Eleventh session, Geneva, 2–13 May 2011, para.107

assistance to set up a Human Rights Commission to adjudicate over Human Rights issues.<sup>42</sup>

## **THE FIRST UPR CYCLE: 2008-2011**

The UPR process confronts SuR on crucial human rights issues and commitments including those contained in international human rights treaties and recommendations by treaty body committees and Special Procedures of the Human Rights Council. The SuR then engages in a process of interactive dialogue with other UN Member states where they are required to provide a response on a human rights issue, concern or recommendation. The SuR can also accept recommendations or make voluntary commitments around key human rights thematic issues. The SuR is then assessed of their human rights commitments in the follow up review after four-and-a-half-years. This makes the UPR, from the perspective of voluntary commitments and acceptance of recommendations, an effective tool to monitor and mobilize concrete human rights action on the ground.

Based on Decision 6/102, the establishment of Paris Principle compliant NHRIs was one of the key recommendations of the first cycle. This means that States are required to provide a position on whether it has established a NHRI or will do so in future. Further, Human Rights Council Resolution H/HRC/Res/5/1 requires a State under Review (SuR) to either accept or note and not reject a recommendation on the basis of the UPR being a cooperative mechanism between States.<sup>43</sup> In context, a Pacific state should either accept or note a NHRI recommendation. Whatever the position the State chooses, it must then report on it in the subsequent UPR. In this first cycle, nine of the twelve PIF States accepted recommendations for the exploration or establishment of an NHRI while two noted the recommendations.

The table below shows the recommendations made towards the establishment of NHRIs in PIF States (except Fiji) and their responses.

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<sup>42</sup> UNHRC, *National report submitted in accordance with paragraph 15 (a) of the annex to HRC Res.5/1, Vanuatu; A/HRC/WG.6/5/VUT/1 23 Feb.2009*; WG on the UPR; Fifth session; Geneva, 4-15 May 2009, para.121

<sup>43</sup> UN HRC Council, *Res.5/1: Institution-building of the United Nations Human Rights Council*, 9<sup>th</sup> Meeting, 18 June 2007.

**Table 1: UPR Recommendations on NHRIs made to Pacific States at the first cycle**

State	Status of NHRI	Recommendation(s)	Response: Accepts or Notes
Fiji	Not-Compliant	5 (Recommendations 36-40) on Paris Principles compliance. <sup>44</sup>	Accepted 4 of the 5 recommendations.
FSM	None	3 (Recommendations 61.39-41). <sup>45</sup>	Accepts <sup>46</sup>
Kiribati		6 recommendations including seeking assistance from the international community for the establishment of a NHRI. <sup>47</sup>	Notes considers a regional human rights mechanism as appropriate. <sup>48</sup>
Marshall Islands		5 (Recommendations 59.9-11) on the establishment of a NHRI. <sup>49</sup>	Notes <sup>50</sup>
Nauru		3 (Recommendations 79.30-32). <sup>51</sup>	Accepts. <sup>52</sup>
PNG		12 (Recommendations v78.23-34). <sup>53</sup>	Accepts.

<sup>44</sup> UK, Canada, Germany, Philippines and Israel see *UN HRC Report of the Working Group on the Universal Periodic Review, Fiji*; A/HRC/14/8; Fourteenth session, Geneva, (23 March 2010).

<sup>45</sup> Mexico, Indonesia and Argentina see Human Rights Council; *UN HRC Report of the WG on the UPR; Federated States of Micronesia*; A/HRC/16/16; Sixteenth session Geneva, (4 Jan. 2011).

<sup>46</sup> UN HRC, *Report of the Working Group on the Universal Periodic Review, Micronesia*; Addendum; Sixteenth session; A/HRC/16/16/Add.1; Geneva, (14 March 2011).

<sup>47</sup> Canada, Libyan Arab Jamahiriya, UK, Philippines, Algeria, Mexico see UNHRC, *Report of the Working Group on the Universal Periodic Review; Kiribati*; A/HRC/15/3; Fifteenth session, Geneva, (17 June 2010).

<sup>48</sup> UN HRC, *Report of the Working Group on the Universal Periodic Review, Kiribati*, Addendum; Fifteenth session; A/HRC/15/3/Add.1; Geneva; (30 September 2010).

<sup>49</sup> Argentina, Algeria, Morocco, Canada, Germany, see *UN HRC Report of the Working Group on the Universal Periodic Review, Marshall Islands*; A/HRC/16/12, Sixteenth session; Geneva, (4 January 2011).

<sup>50</sup> Marshall Islands' response was, "Recognizes the importance of establishing national human rights institutions. However, at this point in time, it is difficult to favourably consider establishing such institutions due to the resources anticipated for not only establishing said institutions but also maintaining them as well. See United Nations Human Rights Council; *Report of the Working Group on the Universal Periodic Review, Marshall Islands*; Addendum; Sixteenth session; A/HRC/16/12/Add.1; Geneva; (4 March 2011).

<sup>51</sup> Algeria, Morocco, Poland, See United Nations Human Rights Council; *Report of the Working Group on the Universal Periodic Review*, A/HRC/17/3; Seventeenth session; Geneva, (8 March 2011).

<sup>52</sup> UN HRC; *Report of the Working Group on the Universal Periodic Review, Nauru; Addendum*; Seventeenth Session; A/HRC/17/3/Add.1; Geneva, (30 May 2011).

<sup>53</sup> Samoa, Thailand, Canada, Morocco, Costa Rica, Maldives, Poland, Argentina, Norway, South Africa, France, New Zealand, See UN HRC; *Report of the WG on the UPR, Papua New Guinea*, A/HRC/18/18; Eighteenth session; Geneva, (11 July 2011).

Palau		9 (Recommendations 61.5-13). <sup>54</sup>	Accepts. <sup>55</sup>
Samoa		10 (Recommendations 73.15-24). <sup>56</sup>	Accepts.
Solomon Islands		8 (Recommendations 79.1-8). <sup>57</sup>	
Tonga		3 (Recommendations 23-25). <sup>58</sup>	
Tuvalu		4 (Recommendations 67.7-9). <sup>59</sup>	
Vanuatu		5 (Recommendations 56.16). <sup>60</sup>	

The discussion for the establishment of a Paris Principle compliant institution was seized by UN member States in the first UPR cycle with all Pacific State (except Fiji) receiving recommendations on the establishment of its NHRI. Pacific States have prior to the commencement of the UPR cycles explored opportunities for establishing their NHRI, but there were very little appetite or movement for its actual implementation. This could account for the fact that there was very little pressure from the international community but for the UPR. To date there is a growing recognition in Pacific states on the value of a NHRI.

Pacific leaders have recognised that the respect and promotion of human rights are the cornerstone for good governance. In 2004, Pacific Leaders endorsed in the Pacific Plan a vision for the ‘creation of a region of peace, harmony, security, and economic prosperity... respected for the quality of its governance, the sustainable

<sup>54</sup> Canada, Moldova, France, Poland, Argentina, Morocco, Chile, Maldives, South Africa; See UNHRC, *Report of the Working Group on the Universal Periodic Review*, A/HRC/18/5; Eighteenth session; Geneva (11 July 2011).

<sup>55</sup> UN HRC; *Report of the Working Group on the Universal Periodic Review, Palau*; Addendum; Human Rights Council; Eighteenth session; A/HRC/18/5/Add.1; Geneva; (28 July 2011).

<sup>56</sup> Canada, France, Argentina, Thailand, Spain, Indonesia, South Africa, Costa Rica, Morocco, Philippines, See UNHRC, *Report of the WG on the UPR, Samoa* A/HRC/18/14; Eighteenth session; Geneva, (11 July 2011).

<sup>57</sup> Canada, Ireland, Argentina, Spain, UK, Morocco, Indonesia, Maldives, See UN HRC, *Report of the WG on the UPR, Solomon Islands* A/HRC/18/8; Eighteenth session; Geneva, (11 July 2011).

<sup>58</sup> Canada, France, Algeria, See UNHRC, *Report of the WG on the UPR, Tonga*, A/HRC/8/48; Eighth session; Geneva, (5 June 2008).

<sup>59</sup> France, Zambia, Brazil and Morocco, See United Nations Human Rights Council, *Report of the Working Group on the Universal Periodic Review, Tuvalu*, A/HRC/10/84, Tenth session; Geneva, (9 January 2009).

<sup>60</sup> Mexico, United Kingdom, Maldives, Azerbaijan, Germany, See UN HRC, *Report of the Working Group on the Universal Periodic Review*, A/HRC/12/14; Twelfth session; Geneva, (4 June 2009).

<sup>61</sup> United Nations Human Rights Council, *Report of the Working Group on the Universal Periodic Review, Vanuatu*; Addendum; Twenty-Six session; A/HRC/12/14/Add.1; Geneva, (19 June 2014).

management of its resources, the full observance of democratic values, and for its defence and promotion of human rights.’<sup>62</sup> Part of this regional effort was the discussion among Pacific States on the establishment of their homegrown NHRIs through a paper commissioned by the Pacific Islands Forum Secretariat titled, *National Human Rights Institutions: Pathways for Pacific States* where the authors suggested ‘a “building blocks” approach be taken to incremental growth of NHRIs as resources and capacity development allow’<sup>63</sup> among others. However, as discussed in the paper, ‘the desire to make progress on national human rights institutions (NHRIs) is coupled with caution. Small Pacific states would like more assistance with how to make progress and what this means in practice.’<sup>64</sup>

At a regional conference held in Apia, Samoa in 2009<sup>65</sup> focusing on the establishment of NHRI, participants comprising government and civil society representatives from Samoa, Marshall Islands, Nauru, Niue, Palau, Solomon Islands and Vanuatu endorsed the Samoa Declaration<sup>66</sup> and calling for among others to,

- i. recognize the importance of taking necessary measures in order to establish NHRIs in compliance with the Paris Principles;
- ii. emphasise the importance of sensitizing Governments, Parliaments, and other relevant national stakeholders on the values and benefits of establishing NHRIs.
- iii. recognise that while Pacific Island countries have unique challenges concerning the establishment of NHRIs, that assistance, support and advice from OHCHR, UNDP as well as PIF, SPC, the APF and donor agencies in establishing NHRIs, are available at the request of Member States.

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<sup>62</sup> *The Pacific Plan for Strengthening Regional Cooperation and Integration*, Pacific Islands Forum Secretariat, Suva, Fiji, (November 2007).

<sup>63</sup> Pacific Islands Forum Secretariat, New Zealand Human Rights Commission (Eds) *National Human Rights Institutions Pathways for Pacific States*, Pacific Human Rights Issues, Series 1 [https://pacific.ohchr.org/docs/NHRI/NHRIs\\_Pathways\\_for\\_Pacific\\_States.pdf](https://pacific.ohchr.org/docs/NHRI/NHRIs_Pathways_for_Pacific_States.pdf) (Accessed November 2019).

<sup>64</sup> *Idem*, 5.

<sup>65</sup> OHCHR Regional Office for the Pacific <https://pacific.ohchr.org/NHRI.htm> (Accessed Nov. 2019). See also Benjamin Lee, “Regional Workshop on the Establishment of National Human Rights Mechanisms in the Pacific: Aims and Outcomes” (2009) (40) *Victoria University of Wellington Law Review* <https://www.wgtn.ac.nz/law/research/publications/about-nzacl/publications/nzacl-yearbooks/yearbook-14,-2008/Regional-Workshop.pdf> (Accessed November 2019).

<sup>66</sup> *Samoa Declaration* <http://www.nzlii.org/nz/journals/VUWLawRw/2009/24.pdf> (Accessed November 2019).

Furthermore, at a regional conference on human rights for Members of Parliament in 2015, Parliamentarians from Fiji, Kiribati, Marshall Islands, Nauru, Niue, Palau, Samoa, Solomon Islands, Tuvalu, Tonga, and Vanuatu, recognized,

*Pacific Island governments for their engagement in the UPR process, noting that all Pacific Island governments have completed a first cycle of the UPR, and are preparing for the second cycle. We note the importance of implementing accepted recommendations.*<sup>67</sup>

Some PIF member governments subsequently took steps during the period of the first and second cycle and created human rights committees to support the State's implementation of human rights commitments. These included Vanuatu<sup>68</sup> and Kiribati<sup>69</sup> who formally established a Human Rights Committee/Taskforce by Cabinet approval, Palau established a Human Rights Committee by Executive Order of the President<sup>70</sup> and Marshall Islands Human Rights Committee was formalized by legislation: The Human Rights Committee Act 2015. Other Pacific States established ad-hoc UPR/human rights committees.

While most PIF member States recognized the challenges of establishing a Paris Principle compliant institution, they were not against the recommendation of creating one. In their respective first cycle national reports, Kiribati,<sup>71</sup> Tuvalu<sup>72</sup> and Vanuatu<sup>73</sup> expressed their 'hope' that technical and financial assistance would be provided by the international community to assist in the establishment of its NHRI in the 'future' while

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<sup>67</sup> Secretariat of the Pacific Community, Regional Rights Resource Team, Members of Parliament, Denarau Declaration 2015 on Human Rights and Good Governance, 30 January 2015, [https://rrrt.spc.int/sites/default/files/resources/2019-01/MPs\\_Outcomes\\_A2\\_Poster\\_LR.pdf](https://rrrt.spc.int/sites/default/files/resources/2019-01/MPs_Outcomes_A2_Poster_LR.pdf) (Accessed 3 October 2019.)

<sup>68</sup> United Nations Human Rights Council (UN HCR), *National Report submitted in accordance with paragraph 15 (a) of the annex to Human Rights Council (HRC) Resolution 5/1, Vanuatu*, A/HRC/WG.6/18/VUT/, Eighteenth session; Geneva, (8 November 2013), Paragraph 35.

<sup>69</sup> UN HRC, *National Report submitted in accordance with paragraph 15 (a) of the annex to Human Rights Council resolution 5/1, Kiribati*, A/HRC/WG.6/21/KIR/1, Twenty-first session; Geneva, (4 Nov. 2014), Paragraph 16.

<sup>70</sup> UN HRC, *National Report submitted in accordance with paragraph 15 (a) of the annex to HRC Resolution 5/1, Palau*, A/HRC/WG.6/24/PLW/1, Twenty-fourth session; Geneva, (10 November 2015), Paragraph 33.

<sup>71</sup> UN HRC, *National Report submitted in accordance with paragraph 15 (a) of the annex to Human Rights Council resolution 5/1, Kiribati*, WG on the UPR, Eighth session, Geneva, (3–14 May 2010).

<sup>72</sup> UN HRC, *National Report submitted in accordance with paragraph 15 (a) of the annex to Human Rights Council resolution 5/1, Tuvalu*, WG on the UPR, Third session, Geneva, 1–15 December 2008, A/HRC/WG.6/3/TUV/1, (12 September 2008), Paragraph 31.

<sup>73</sup> UN HRC, *National Report submitted in accordance with paragraph 15 (a) of the Annex to Human Rights Council resolution 5/1, Vanuatu*, Working Group on the Universal Periodic Review, Fifth session, Geneva, 4–15 May 2009, A/HRC/WG.6/5/VUT/1, (23 February 2009), Paragraph 121.

Kiribati further expressed its support for the establishment of a regional human rights mechanism.<sup>74</sup> Tonga considered whether an NHRI is ‘required’ or is ‘affordable’ having recently gone through a significant ‘political and constitutional reform.’<sup>75</sup> In the northern Pacific, Marshall Islands recognized that an NHRI would ‘solidify’ the ‘people’s right to a responsible and ethical government’<sup>76</sup> while Micronesia (FSM) requested the international community to support the ‘establishment of a human rights body that facilitates advocacy of human rights and needed reforms and initiatives both in the government and community levels.’<sup>77</sup> Palau submitted that they would need ‘further consultation on the establishment of its human rights institution.’<sup>78</sup> Samoa favourably considered the establishment of a NHRI and in particular welcomed the scoping study that assessed ‘the feasibility of the establishment of such an institution and the different models that would best suit Samoa.’<sup>79</sup> Papua New Guinea stated that it was ‘committed to progress the status of the NHRI as envisaged in the National Executive Council Decision No. 21/1997 and 33/2007’<sup>80</sup> and that such an institution would, ‘strengthen and complement the work of these government agencies in the promotion and protection of human rights in PNG.’<sup>81</sup>

For PIF member states, a successful outcome of this first UPR cycle is that the discussions of NHRIs were re-energised, compelling member states to confront this issue and provide a position. Whilst various treaty bodies have made recommendations

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<sup>74</sup> National Report for Kiribati, Note 72 above.

<sup>75</sup> UN HRC, *National Report submitted in accordance with paragraph 15 (a) of the Annex to HRC Res. 5/1, Tonga*, WG on the UPR, Third session, Geneva, 5-16 May 2008, A/HRC/WG.6/2/TON/1, 10 April 2008, Paragraph 35.

<sup>76</sup> UN HRC, *National Report submitted in accordance with paragraph 15 (a) of the Annex to Human Rights Council resolution 5/1, Marshall Islands*, WG on the Universal Periodic Review, Ninth session, Geneva, 1–12 November 2010, A/HRC/WG.6/9/MHL/1/Rev.1, (9 November 2010), Paragraph 24.

<sup>77</sup> UN HRC, *National Report submitted in accordance with paragraph 15 (a) of the Annex to Human Rights Council resolution 5/1, Federated States of Micronesia*, Working Group on the Universal Periodic Review, Ninth session, Geneva, 1–12 Nov. 2010, A/HRC/WG.6/9/FSM/1, (23 August 2010), Paragraph 118 (a).

<sup>78</sup> UN HRC, *National Report submitted in accordance with paragraph 15 (a) of the Annex to Human Rights Council resolution 5/1, Palau*, Working Group on the Universal Periodic Review, Eleventh session, Geneva, 2–13 May 2011, A/HRC/WG.6/11/PLW/1, (2 February 2011), Paragraph 26.

<sup>79</sup> United Nations Human Rights Council, *National Report submitted in accordance with paragraph 15 (a) of the Annex to Human Rights Council resolution 5/1, Samoa*, Working Group on the Universal Periodic Review, Eleventh session, Geneva, 2-13 May 2008, A/HRC/WG.6/11/WSM/1, (14 February 2011), Paragraph 42.

<sup>80</sup> United Nations Human Rights Council, *National Report submitted in accordance with paragraph 15 (a) of the Annex to Human Rights Council resolution 5/1, Papua New Guinea*, Working Group on the Universal Periodic Review, Eleventh session, Geneva, 2-13 May 2008, A/HRC/WG.6/11/PNG/1, (9 May 2011), Paragraph 36.

<sup>81</sup> *Idem*.

on the creation of NHRIs to PIF member States reporting pursuant to their treaty obligations including under the Convention on the Rights of the Child,<sup>82</sup> the Convention on the Elimination of All Forms of Discrimination Against Women<sup>83</sup> or the Convention on the Rights of Persons with Disabilities,<sup>84</sup> there was very little movement to establish a NHRI until the UPR.

The lack of implementation of the NHRI recommendation from the UN treaty body system is coupled with the fact that often between reporting periods, most Pacific States are overdue with their periodic reports which means less accountability for reporting on the progress of the treaty bodies concluding comments.<sup>85</sup> Whereas for the UPR, States are required to report on progress of implementing recommendations, a failure of which could result in the censure provided in paragraph 38 of HRC Resolution 5/1 dealing with ‘cases of persistent non-cooperation with the mechanism.’<sup>86</sup> No such practices exist within the treaty body system. Arguably the UPR has strengthened and complemented the Treaty body process by recognizing in Resolution 5/1<sup>87</sup> that UN member States can raise Treaty body recommendations especially on the establishment of a NHRI with a SuR. Former UN High Commissioner for Human Rights Zeid Ra'ad Al Hussein, stressed that,

*the substantive issues raised in UPR reviews often mirror the recommendations of the Special Procedures and Treaty Bodies, forming a cross-section of critical human rights gaps at the country level which,*

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<sup>82</sup> United Nations Committee on the Rights of the Child, *Concluding observations on the second to fourth periodic reports of Vanuatu*, CRC/C/VUT/CO/2-4, (29 September 2017), Paragraph 15.

<sup>83</sup> See UN Convention on the Elimination of all forms of Discrimination Against Women, *Concluding observations on the combined initial to third periodic reports of Micronesia (FSM)*, CEDAW/C/FSM/CO/1-3, 9 March 2017, Paragraphs 18-19. See also UN CEDAW, *Concluding Observations on the combined 3<sup>rd</sup> and 4<sup>th</sup> periodic reviews of Vanuatu*, CEDAW/C/VUT/CO/4-5, (2016/), Paragraph 15.

<sup>84</sup> United Nations Committee on the Rights of Persons with Disabilities, *Concluding observations on the initial report of Vanuatu*, CRPD/C/VUT/CO/1, (13 May 2019), Paragraphs 56-57.

<sup>85</sup> See Natalie Baird, “The role of international non-governmental organisations in the Universal Periodic Review of Pacific Island States: Can ‘Doing Good be Done Better’ ” (2015) 16 *Melbourne Journal of International Law* [https://law.unimelb.edu.au/\\_\\_data/assets/pdf\\_file/0010/1687789/Baird.pdf](https://law.unimelb.edu.au/__data/assets/pdf_file/0010/1687789/Baird.pdf) (Accessed 29 December 2019).

<sup>86</sup> United Nations Human Rights Council: A/HRC/Res/5/1; <https://www.ohchr.org/EN/HRBodies/UPR/Pages/BasicFacts.aspx> (Accessed 29 December 2019).

<sup>87</sup> *Idem*, Paragraph 15 (b).

*if addressed, will build more resilient societies and sustain development and peace.*<sup>88</sup>

## **THE SECOND CYCLE: 2012-2016**

The second UPR cycle provided the platform for the Human Rights Council members to engage the State under Review on their progress of human rights commitments<sup>89</sup> including the implementation of NHRI recommendations. Generally, Paris Principle compliant NHRI recommendations were among the ‘most frequently made recommendations to Member States.’<sup>90</sup>

The table below provides an update of NHRI recommendations made at the two UPR cycles.

***Table 2: Number of NHRI recommendations from the 1<sup>st</sup> and 2<sup>nd</sup> cycle and status update***

Pacific State	1 <sup>st</sup> Cycle	2 <sup>nd</sup> Cycle	Update
FSM	3	3	The Federated States of Micronesia was in the process of requesting a scoping study. <sup>91</sup>
Kiribati	6	1	Kiribati was recommended to consider strengthening the independence of the Kiribati National Human Rights Task Force so that it complies with the Paris Principles which it accepted. <sup>92</sup>

<sup>88</sup> Human Rights Council 37<sup>th</sup> session, Annual high-level panel discussion on human rights mainstreaming, *Theme: The promotion and protection of human rights in the light of the universal periodic review mechanism: challenges and opportunities*, Geneva; (26 February 2018).

<sup>89</sup> United Nations Human Rights Council, Resolution, 17/119 *Follow-up to the Human Rights Council resolution 16/21 with regard to the universal periodic review*, A/HRC/DEC/17/119, Seventeenth session, (19 July 2011).

<sup>90</sup> United Nations General Assembly, *National institutions for the promotion and protection of human rights*, Report of the Secretary-General, Resolution 70/163, A/72/277, Seventy-second session, (3 August 2017).

<sup>91</sup> United Nations Human Rights Council, *National Report submitted in accordance with paragraph 15 (a) of the Annex to Human Rights Council resolution 5/1, Federated States of Micronesia*, WG on the UPR, Twenty-Third session, Geneva, 2-13 November 2015, A/HRC/WG.6/23/FSM/1, (7 August 2015), Paragraph 39.

<sup>92</sup> United Nations Human Rights Council, *Report of the Working Group on the Universal Periodic Review, Kiribati, Addendum, Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under Review*, Working Group on the Universal Periodic Review, A/HRC/29/5/Add.1, Twenty-ninth session, Geneva, A/HRC/WG.6/11/PNG/1, (1 July 2015), Paragraph 38.

Marshall Islands	5	9	The Government noted that it was unable to fulfil the recommendation due to resource issues but it was strengthening its existing institutions that had human rights oversight functions. <sup>93</sup>
Nauru	3	3	In its voluntary commitment, Nauru committed to ‘progressing the realisation of a dedicated national human rights body.’ <sup>94</sup>
PNG	12	13	PNG was continuing work on the establishment of a NHRI. <sup>95</sup>
Palau	9	13	Funding and technical assistance needed to assist Palau in establishing a NHRI though its Congress ( <i>9th Olbiil Era Kelulau</i> ) and key government officials have also considered this issue. <sup>96</sup>
Samoa	10	5	Mixed recommendations though Samoa had established its NHRI at this stage.
Solomon Islands	8	4	An NHRI is proposed within the draft Solomon Islands Federal Constitution, and consultations on a NHRI with stakeholders carried out.
Tonga	3	2	Tonga reported that establishing a NHRI was not feasible financially and technically but it taken steps to ensure key institutions meet the Paris Principles. <sup>97</sup>
Tuvalu	4	3	Tuvalu has established a NHRI in the Ombudsman’s Office. <sup>98</sup>

<sup>93</sup> United Nations Human Rights Council, *National Report submitted in accordance with paragraph 15 (a) of the Annex to Human Rights Council resolution 5/1, Marshall Islands*, Working Group on the Universal Periodic Review, Twenty-second session, Geneva, 4-15 May 2015, A/HRC/WG.6/22/MHL/1 (9 February 2015) Paragraph 29.

<sup>94</sup> United Nations Human Rights Council, *National Report submitted in accordance with paragraph 15 (a) of the Annex to Human Rights Council resolution 5/1, Nauru*, Working Group on the UPR, Twenty-third session, Geneva, 2-13 November 2015, A/HRC/WG.6/23/NRU/1, (14 October 2015), Paragraph 95.

<sup>95</sup> United Nations Human Rights Council, *National Report submitted in accordance with paragraph 15 (a) of the Annex to Human Rights Council resolution 5/1, Papua New Guinea*, Working Group on the Universal Periodic Review, Twenty-fifth session, Geneva, 2-13 May 2016, A/HRC/WG.6/25/PNG/1; (3 May 2016), Paragraph 95.

<sup>96</sup> United Nations Human Rights Council, *National Report submitted in accordance with paragraph 15 (a) of the Annex to Human Rights Council resolution 5/1, Palau*, Working Group on the Universal Periodic Review, Twenty-fourth session, Geneva, 18-29 January 2016, A/HRC/WG.6/24/PLW/1; (10 November 2015), Paragraphs 33-37.

<sup>97</sup> United Nations Human Rights Council, *National Report submitted in accordance with paragraph 15 (a) of the Annex to Human Rights Council resolution 5/1, Tonga*, Working Group on the UPR, Twenty-Ninth session, Geneva, 15-26 January 2018, A/HRC/WG.6/29/TON/1; (3 November 2017), Paragraph 125-132.

<sup>98</sup> The Asia Pacific Forum for National Human Rights Institutions, *Pacific Neighbors share human rights insight*, (23 April 2018) <https://www.asiapacificforum.net/news/pacific-neighbours-share>

Vanuatu	5	4	To conduct scoping study with SPC RRRT, APF and MSG. <sup>99</sup>
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In comparing the NHRI recommendations, we can identify an interesting trend. Marshall Islands, Papua New Guinea and Palau received increased recommendations as they were not able to demonstrate solid action on creating their NHRIs while other States continued to receive recommendations for the establishment of a NHRI. Interestingly the States that addressed their progress towards a NHRI did not receive many recommendations including Kiribati who argued that its Human Rights Taskforce could be strengthened to be the country's NHRI. Solomon Islands discussed that the creation of an NHRI is covered within the country's draft federal constitution. Samoa however, still received recommendations despite having established its institution at this time. There were recommendations and repeated calls to Fiji on this round to ensure its NHRI is Paris Principle compliant.

Moreover, as depicted by the trend in the table above, that unless a State fully complies with the recommendation to establish a NHRI, the recommendation will continue in the subsequent UPR cycle. This was demonstrated in Tonga's review where they were explicit in its first cycle that due to financial and technical challenges, the creation of an NHRI was impossible, however, in the second cycle, Tonga continued to receive recommendations that it considers the establishment of a NHRI. The recommendation trend also indicates the number of UN member States present at the interactive dialogue and made recommendations to the Pacific SuR. Moreover, the Federated States of Micronesia, Nauru, Tuvalu and Vanuatu discussed that they were in the process of commissioning their respective scoping study on the feasibility of establishing their NHRI which could account for their reduced NHRI recommendations.

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[human-rights-insights/](#) (Accessed 30 September 2019); See also Human Rights Council, *National Report submitted in accordance with paragraph 15 (a) of the Annex to Human Rights Council resolution 5/1*, Tuvalu, WG on the UPR, Thirtieth session, Geneva, 7-18 May 2018, A/HRC/WG.6/30/TUV/1; (28 March 2018), Paragraph 35.

<sup>99</sup> United Nations Human Rights Council, *National Report submitted in accordance with paragraph 15 (a) of the Annex to Human Rights Council resolution 5/1*, Vanuatu, Working Group on the UPR, Thirty-second session, Geneva, 21 January-1 February 2019, A/HRC/WG.6/32/VUT/1; (7 Nov. 2018), Paragraph 21.

## **SCOPING STUDIES AND NHRI SUPPORT TO PIF STATES**

In the periods between the UPR cycles, nine PIF member States have commissioned a scoping study to determine the feasibility and practicality of establishing an NHRI in their countries. Of the nine, two States established a NHRI between their first and second cycle reviews. These scoping studies were conducted by the SPC RRRT in partnership with the Asia Pacific Forum for National Human Rights Institutions (APF) and in some Pacific states partnered with the OHCHR Pacific Office and for Vanuatu with the MSG Secretariat.

A scoping study is triggered by an official request from a Pacific state formally requesting the technical agencies for their support to conduct a suitability and feasibility study on a NHRI for the country. Once a date is finalized, the agencies then arrive in country and work with relevant officials to gather views and hear from stakeholders on whether the government should establish a NHRI. Stakeholders consulted includes government officials, civil society organizations, religious leaders, chiefs and cultural institutions, civil servants, the judiciary, community groups such as women, youth, disability etc. and individuals on whether the government should establish a NHRI and what form, powers, functions and responsibilities it should have. This adds to the national ownership of this process and makes the decision to establish a national institution a home-grown one. The stakeholder's views are then compiled in the scoping report with an analysis and appropriate recommendations made to the commissioning government.<sup>100</sup> Scoping studies take into consideration the context and peculiarities of the country which includes an analysis of the legal frameworks, constitutional and legislative provisions around human rights, existing institutions that carry out human rights functions, resource capacity of the State, and its international, regional and national commitments and obligations on human rights.

The scoping study also draws from the State's existing commitments through its national frameworks such as gender, child rights and disability policies, the recommendations of treaty bodies and the existing national development plans which reflects the government's development priorities. This is illustrated in Tuvalu's NHRI process whereby the scoping report highlighted that the government's commitment to

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<sup>100</sup> Of the six scoping studies I was part of, no stakeholder that was consulted rejected the government's intention to establish a NHRI. These findings are captured and detailed in the Scoping Report.

establish its NHRI is reflected in the government's approved National Action Plan (NAP) on Human Rights 2016-2020.<sup>101</sup> The NAP provided the timeline for the establishment of a NHRI as well as indicators for the government to measure its progress towards a NHRI. Further the NAP itself is linked to the government's national development plan, the Te Kakeenga III. In his foreword on the NAP, Prime Minister Enele Sopoanga stressed that,

*this National Action Plan has not been drawn in isolation from Tuvalu's existing human rights obligations as it also draws on Tuvalu's Universal Periodic Review (UPR) commitments, treaty body recommendations and our own internal priorities as stipulated in our national development plan, the Te Kakeenga III.*<sup>102</sup>

The Table below provides a status update on scoping studies carried out in PIF member states.

**Table 3: Pacific States that have commissioned a scoping study**

Country	Scoping Dates	Status of Scoping Report
Samoa	March/April/ 2009	NHRI established
Tuvalu	5-12 July 2016	
Nauru	6-10 March 2017	Submitted to the then Minister for Home Affairs. <sup>103</sup>
Marshall Islands	18-24 March 2017	Submitted to the Secretary of Internal Affairs. <sup>104</sup>
Federated States of Micronesia	16-22 July 2017	Submitted to the Secretary of Health and Social Services <sup>105</sup> with further

<sup>101</sup> Attorney General's Office, Government of Tuvalu, *Tuvalu National Human Rights Action Plan 2016-2020*, Pacific Community, Suva, (2016). <https://rrrt.spc.int/resources/publications/tuvalu-national-human-rights-action-plan> (Accessed 29 November, 2019).

<sup>102</sup> Ibid, Pg. iv

<sup>103</sup> SPC Regional Rights Resource Team, Asia Pacific Forum for National Human Rights Institution, (Eds.), *Government of Nauru, Scoping Study Report 2017: On the desirability, feasibility and options for the establishment of a Paris Principle Compliant NHRI*, Suva, Fiji, (2017).

<sup>104</sup> SPC Regional Rights Resource Team, Asia Pacific Forum for National Human Rights Institution, Pacific Community (Eds.), *Government of the Republic of the Marshall Islands, Scoping Study Report 2017: On the desirability, feasibility and options for the establishment of a Paris Principle Compliant NHRI*, Suva, Fiji, (2017)

<sup>105</sup> SPC Regional Rights Resource Team, Asia Pacific Forum for National Human Rights Institution, (Eds.), *National Government of the Federated States of Micronesia, Scoping Study Report 2017: On the desirability, feasibility and options for the establishment of a Paris Principle Compliant NHRI*, Suva, Fiji, (2017).

		consultations in the other three FSM States recommended.
Cook Islands	15-24 April 2017	Submitted to the Secretary for Internal Affairs <sup>106</sup> with further consultation recommended to be carried out on the other islands.
Vanuatu	15-19 July 2019.	Draft report submitted to DG Justice for comments. <sup>107</sup>
Solomon Islands	January 2012	Scoping Study carried out <sup>108</sup> but a new one may need to be done given the timeframe.
Kiribati	10-13 September 2019	Draft report to be submitted to the Ministry of Justice.

Each of the scoping studies are supported by their commissioning government representative whether it is the Secretary of the Ministry or the respective Minister. These scoping studies have been welcomed by the people and groups consulted, and generally there is a recognition that ‘the time is right’ for their government to establish their homegrown NHRI.<sup>109</sup>

Moreover, the scoping studies provided by technical partners in the Pacific region are often the genesis of a range of technical support available to a Pacific State seeking to establish a NHRI. Part of the methodology of the scoping study is that the commissioning State is made aware of the range of technical assistance available from key partners and which they can access. Table 4 below shows the technical support available to Pacific States.

<sup>106</sup> SPC Regional Rights Resource Team, Asia Pacific Forum for National Human Rights Institution, Office of the UN High Commissioner for Human Rights, United Nations Development Programme, (Eds.), *Government of the Cook Islands, Scoping Study Report 2017: On the desirability, feasibility and options for the establishment of a Paris Principle Compliant NHRI*, Suva, Fiji, (2017).

<sup>107</sup> SPC Regional Rights Resource Team, Asia Pacific Forum for National Human Rights Institution, Melanesian Spearhead Group Secretariat (Eds.), *Government of Vanuatu, Scoping Study on the desirability, feasibility and options for the establishment of a Paris Principle Compliant NHRI*, (Draft), (July 2019).

<sup>108</sup> Human Rights Council, *National Report submitted in accordance with paragraph 15 (a) of the Annex to Human Rights Council resolution 5/1*, Solomon Islands, WG on the UPR, Twenty-fourth session, Geneva, 18-29 January 2019, A/HRC/WG.6/25/WSM/1; 17 (February 2016), Paragraphs 32-35; 40.

<sup>109</sup> SPC Regional Rights Resource Team (eds), above n 106, 104-108.

**Table 4: Support provided to Pacific States on the establishment of NHRIs by technical partners especially SPC RRRT, APF, UNOHCHR**

Type of assistance	Yes	No
Scoping Study: A study that informs government of the options, feasibility and desirability of establishing an NHRI in their state.	X	
Follow up meetings and discussions with State officials to ensure there is a common understanding on the way forward. <sup>110</sup>	X	
Review and Amendment of legislations such as Ombudsman's Act or Leadership Code.	X	
Capacity Building and Training support for staff of the NHRI. This is a continuous process.	X	
Funding the work of the NHRI.		X
Technical and Capacity Assessment of the NHRI to ensure its continued compliance with the Paris Principles. <sup>111</sup>	X	
South-South Cooperation: where staff of new or existing NHRI's visit other institutions to learn of how they are running their institutions. <sup>112</sup>	X	
Study Tour <sup>113</sup> (subject to funding)	X	X
Assist in drafting cabinet submission for budgetary support.	If requested	
Support NHRI to mobilize resources.	X	
Networking with other NHRIs.	X	
Other technical support to enhance the work of the NHRI.	If requested	
Funding the salary of the staff of the NHRI.		X
Accreditation support with the GANHRI.	X	

<sup>110</sup> Asia Pacific Forum for National Human Rights Institutions, 'Tuvalu charts pathway to establish NHRI', (14 October 2016), <https://www.asiapacificforum.net/news/tuvalu-charts-pathway-establish-nhri/> (Accessed 29 October 2019).

<sup>111</sup> Asia Pacific Forum for National Human Rights Institutions, 'The work of the newly-established NHRI of Samoa had received strong endorsement by the Government, with funding for three new positions,' (1 August 2015) <https://www.asiapacificforum.net/news/samoas-nhri-receives-strong-support/> (Accessed 29 October 2019).

<sup>112</sup> Asia Pacific Forum for National Human Rights Institutions, 'The head of the newest NHRI in the Asia Pacific has met with counterparts in Samoa to learn more about their work to promote and protect human rights', (23 April 2018) <https://www.asiapacificforum.net/news/pacific-neighbours-share-human-rights-insights/>, (Accessed 29 October 2019).

<sup>113</sup> Pacific Community's Regional Rights Resource Team, 'UK study tour and exchange highlights good governance essential for NHRIs', (23 July 2019). <https://www.spc.int/updates/news/2019/07/uk-study-tour-and-exchange-highlights-good-governance-essential-for-nhris> (Accessed 29 October 2019).

## THE THIRD CYCLE: 2017-2021

While the third cycle is ongoing, we now have three Pacific States with functioning NHRIs. The UPR’s third cycle has an implementation agenda focus, so it provides an opportunity for PIF member States to progress the recommendations for the establishment of NHRIs, whether it means creating a new institution, adding a human rights mandate to the existing Ombudsman’s office as done by Samoa<sup>114</sup> and Tuvalu<sup>115</sup> or strengthening the existing institution as in the case of Fiji. Samoa reported that its ‘NHRI is fully functional and consists of the Ombudsman as the Human Rights Commissioner, an Advisory Council (12) and four (4) staff and growing.’<sup>116</sup> Moreover, Samoa’s NHRI is currently the only “A” accredited NHRI in the region, while Tuvalu and Fiji continue to work on addressing the gaps within their institutional structures to meet the Paris Principles standards.

The table below shows the NHRIs that are in existence and their current status.

**Table 5: NHRI’s in the Pacific**

Country	Type of NHRI	Paris Principle Compliance/Status
Fiji	Stand-alone – Human Rights and Anti-Discrimination Commission	No – Yet to be reviewed for compliance by GANHRI.
Samoa	Ombudsman/National Human Rights Institution	A – Yes
Tuvalu		No – have not been reviewed for compliance by GANHRI.

In the first UPR cycle, Pacific States had alluded to the challenges of creating Paris Principle compliant institutions. However, as the UPR cycle progresses into its third cycle, and coupled with the growing engagement of national Human Rights Committees with regional organizations such as RRRT, OHCHR and PIFS, there are

<sup>114</sup> Ofisa Komesian Sulufainga/Office of the Ombudsman/NHRI Samoa, Human Rights Unit, <https://ombudsman.gov.ws/human-rights-2/>, (Accessed 30 September 2019).

<sup>115</sup> Asia Pacific Forum for National Human Rights Institution, *The Asia Pacific region will soon have a new NHRI, with the Parliament of Tuvalu passing legislation to establish an independent rights body*. 23 October 2017, <https://www.asiapacificforum.net/news/tuvalu-passes-bill-establish-nhri/>, (Accessed 30 September 2019).

<sup>116</sup> Human Rights Council, *National Report submitted in accordance with paragraph 15 (a) of the Annex to Human Rights Council resolution 5/1, Samoa*, Working Group on the Universal Periodic Review, Twenty-fifth session, Geneva, 2-13 May 2016, A/HRC/WG.6/25/WSM/1; (17 February 2016), Paragraphs 32-35.

evidences of considerable progress towards the establishment of NHRIs in Pacific States. These progress builds upon the ‘building blocks’<sup>117</sup> strategy/approach which recognizes the opportunity for Pacific States to design their NHRI and which reflects their country context and peculiarities.

*Neither the Paris Principles nor other guidelines stipulate a model NHRI. It would not be feasible to do so, since NHRIs are national institutions and must reflect their own context, including constitutional and legal framework, political and social situation and history. The result is that no two NHRIs are the same. They differ in form, mandate, powers, functions, composition and in many other ways. This provides an opportunity for small Pacific states to give their own unique expression to the Paris Principles.*<sup>118</sup>

However, it is not enough for a Pacific State to establish a national mechanism to oversee its human rights function with the expectation that it is the country’s NHRI. While some Pacific States that have established a mechanism of sorts have argued that they constitute a national institution, the fact is that these mechanisms do not meet the standard of a Paris Principle compliant institution especially on the issue of independence and adequate resourcing. Pacific States such as Kiribati, Palau and Vanuatu who have created committees recognize the limitations in the scope of these committees which are often tasked with supporting the ratification of core human rights treaties, reporting to these treaty committee or the UPR and other roles that may be designated to the committee.

Furthermore, the fluid nature of these Committees is compounded by the fact that they are staffed by civil servants who already hold a government job, making it difficult for them to commit to or fulfil the mandate of the committee. These committees are struggling to cope with the schedules and capacity challenges of their members given that Committee members are often appointed by reason of their government position such as Secretary of the ministry overseeing human rights rather than having actual experience in human rights. Moreover, this is problematic for national human rights committee as these overburden bureaucrats in small Pacific states also play

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<sup>117</sup> Pacific Islands Forum Secretariat, New Zealand Human Rights Commission, *National Human Rights Institution Pathways for Pacific States*, Pacific Human Rights Issues, Series 1, [https://pacific.ohchr.org/docs/NHRI/NHRIs\\_Pathways\\_for\\_Pacific\\_States.pdf](https://pacific.ohchr.org/docs/NHRI/NHRIs_Pathways_for_Pacific_States.pdf) (Accessed 12/09/2019)

<sup>118</sup> *Idem*, 27.

multiple roles in government with very little time available to properly make these human rights committee function according to their mandate.

However, an advantage of establishing such bodies is that they can eventually morph into a NHRI provided that proper analysis is carried out to determine its feasibility and suitability to become a NHRI. While concerns in Pacific States have been around the establishment of another institution, the consolation is that for NHRIs, States can strengthen existing institutions by reviewing the legal frameworks and ensuring proper resourcing so that it can meet the Paris Principles standards. General Assembly Resolution 72/186,<sup>119</sup> recognizes the role of the Ombudsman, mediator and other national human rights institutions in the promotion and protection of human rights in country. This means that the office of the Ombudsman can be empowered and resourced to also function as a NHRI as Tuvalu and Samoa has done. Pacific states that have functioning Ombudsman's offices which could also have a human rights function are Palau, Papua New Guinea, Samoa, Solomon Islands Nauru, Tonga, Tuvalu, and Vanuatu.

Moreover in 2015, the Marshall Islands became the first Pacific State to legislate a Human Rights Committee (HRC) with comprehensive human rights responsibilities and functions stipulated in section 5 the Act.<sup>120</sup> Like Pacific countries that have an Ombudsman's office, the Marshall Islands HRC can easily become its NHRI, provided that proper adjustments are made to bring this law and the composition of the Committee in conformity with the Paris Principles.

The table below examines existing institutions which could be possible NHRIs.

**Table 6: Status of existing institutions/body in PIF member states**

State	Existing Body	Enabling law/policy	Paris Principle Status
FSM	Human Rights Committee	Presidential Endorsement	The legislation (Ombudsman/Leadership Code Act) can be amended to ensure that existing institutions take on a human
Marshall Islands		HR Committee Act 2015	

<sup>119</sup> United Nations General Assembly, *The role of the Ombudsman, mediator and other national human rights institutions in the promotion and protection of human rights*, A/RES/72/186, (29 January 2018).

<sup>120</sup> Nitijela of the Republic of the Marshall Islands, *Human Rights Committee Act 2015*, P.L.2015-49.

Kiribati	HR Taskforce & Human Rights Unit <sup>121</sup>	Established by Cabinet	rights mandate as existing now in Tuvalu and Samoa.
Nauru	Ombudsman	Leadership Code Act 2016	This includes creating a Human Rights Commissioner/Deputy Ombudsman to oversee the Human Rights mandate and that the law provides all the minimum standards such as powers, functions, resources etc.
PNG		Leadership Code Act 1976	
Tonga		Commissioner for Public Relations Act 2001 & Amendment Act 2016	
Solomon Islands		Ombudsman Act 2017	
Palau	Ombudsman/HR Taskforce	Executive Order 381 Presidential Order	Government must ensure appropriate resources are allocated for the successful functioning of the institution.  The amendment of these laws and other consequential amendments are crucial to ensure the legal framework meets the Paris Principles benchmark.
Vanuatu	Ombudsman/HR Committee	Ombudsman Act 2016/ Government Act Cap 234 – Human Rights Committee Order 105 of 2014.	
Samoa	Ombudsman/ NHRI	<i>Komesina o Sulufaiga Act</i> 2013	A status and in full compliance with the Paris Principles.
Tuvalu		Leadership Code Act 2006	Still going through internal processes to strengthen the institution and being supported by APF and SPC RRRT.

At the time of this paper, four Pacific States have been reviewed in the third UPR cycle. Tonga, the first Pacific Island to be reviewed in the third cycle repeated its

<sup>121</sup> See SPC RRRT, <https://rrrt.spc.int/resources/videos/kiribati-ministry-of-justice-human-rights-unit> (Accessed 11 October 2019)

earlier position arguing that, ‘the establishment of a national human rights institution is still not feasible financially and technically,’<sup>122</sup> however ‘several actions taken by the Government are in line with the Paris Principles’<sup>123</sup> of which it then listed various actions taken including the ‘amendment to the Commissioner for Public Relations Act 2001 in 2016. This amendment re-named the Commissioner of Public Relations as the Ombudsman.’<sup>124</sup>

In reporting on the establishment of its NHRI, ‘Tuvalu informs the Human Rights Council that in adhering to its international obligations and commitment, cabinet has approved twelve (12) national measures that aim at promoting and protecting human rights nationally and more importantly ensuring that the goals and aspirations articulated under international norms and standards are reflected in national laws, policies, regulations and practices.’<sup>125</sup>

Fiji’s national report detailed the activities of its NHRI and other activities addressing the Paris Principles. It stressed that, ‘the Commission remains committed to ensuring that it is Paris Principles compliant and has in the reporting cycle continued to engage with Asia Pacific Forum of National Human Rights Institutions and the Global Alliance of National Human Rights Institutions to regain its accreditation.’<sup>126</sup>

Vanuatu stated on its NHRI update that it was in the process of conducting a scoping study with SPC RRRT, APF and the MSG Secretariat.<sup>127</sup> In this third UPR cycle, the momentum to establish NHRIs in Pacific States continues. The issue while a difficult one in the context of resources and capacity, will remain as part of the recommendations to Pacific States who have yet to establish their national institution.

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<sup>122</sup> Human Rights Council, *National Report submitted in accordance with paragraph 15 (a) of the Annex to Human Rights Council resolution 5/1*, Tonga, Working Group on the Universal Periodic Review, Twenty-ninth session, Geneva, 15-26 January 2018, A/HRC/WG.6/29/TON/1; (3 November 2017), Paragraphs 125-133.

<sup>123</sup> *Idem*.

<sup>124</sup> *Idem*, Paragraphs 127.

<sup>125</sup> Human Rights Council, *National Report submitted in accordance with paragraph 15 (a) of the Annex to Human Rights Council resolution 16/21*, Tuvalu, WG on the UPR, A/HRC/WG.6/30/TUV/1, Thirtieth session, Geneva, 17-18 May 2018, A/HRC/WG.6/25/WSM/1; (28 March 2018), Paragraph 8.

<sup>126</sup> Human Rights Council, *National Report submitted in accordance with paragraph 15 (a) of the Annex to Human Rights Council resolution 16/21*, Fiji, WG on the UPR, A/HRC/WG.6/34/FJI/1, Thirty-Fourth session, Geneva, 4-15 November 2019, A/HRC/WG.6/25/WSM/1; (7 October 2019), Paragraph 51.

<sup>127</sup> *National Report submitted in accordance with paragraph 15 (a) of the Annex to Human Rights Council resolution 16/21*, Vanuatu, A/HRC/WG.6/32/VUT/1; (7 November 2018), Paragraph 21.

However, Tuvalu and Samoa's NHRI experiences provide valuable insight into how Pacific States can work with their existing resources to establish their NHRI. The establishment of NHRI will assist the government in meeting its human rights commitment and assist the State to institutionalize human rights within government. A 2019 gathering of Members of Parliament (MPs) in Vanuatu from the Cook Islands, Federated States of Micronesia, Nauru, Palau, Samoa, Solomon Islands, Tuvalu and Vanuatu resulted in the signing of the Port Vila Declaration which is the follow up to the 2015 Denarau Declaration.<sup>128</sup> The Port Vila Declaration<sup>129</sup> states among others that MPs;

- i. recognize that National Human Rights Institutions and Parliaments are important to one another for their effective functioning.
- ii. NHRIs bring evidence-based information to Parliament which can be used for legislative decision-making processes and policy scrutiny.
- iii. acknowledge Parliamentarians' important role in the establishment of NHRIs and in ensuring their adequate funding and ongoing independence, including through the appointment of independent and credible members.

## **MOVING TOWARDS NHRI IN PACIFIC STATES**

Conducting a scoping study is often a key indicator of a State's consolidation of commitment towards the establishment of a NHRI.<sup>130</sup> Of the nine Pacific States (Table 3) that have commissioned a study, two have established a NHRI and seven are at various stages of internal government discussions on next steps. Each of the scoping report contains recommendation on the way forward which can range from further consultations on the other islands within the country as was recommended in the Cook

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<sup>128</sup> SPC RRRT, *Denarau Declaration*, [https://rrrt.spc.int/sites/default/files/resources/2019-01/MPs\\_Outcomes\\_A2\\_Poster\\_LR.pdf](https://rrrt.spc.int/sites/default/files/resources/2019-01/MPs_Outcomes_A2_Poster_LR.pdf) (Accessed 29 December 2019).

<sup>129</sup> Pacific Members of Parliament, *Port Vila Declaration on Human Rights, Good Governance and Sustainable Development*, (7 November 2019), Pacific Community's Regional Rights Resource Team, Suva, Fiji Islands. <https://rrrt.spc.int/sites/default/files/resources/2019-11/REG%20MPs%20Portvila%20Declaration.pdf> (Accessed 1 February 2020).

<sup>130</sup> See also other indicators developed by the Pacific Community's RRRT in *Pacific Island State and the Universal Periodic Review: A toolkit for Pacific Island states to measure progress against Universal Periodic Review recommendations*. 2012. <https://rrrt.spc.int/resources/publications/pacific-island-states-the-universal-periodic-review> (Accessed 27 December 2019).

Islands scoping report or in other States as that was recommended and conducted in the Federated States of Micronesia's other three states of Chuuk, Yap and Kosrae.

The scoping report is then sent to the commissioning government entity that requested the scoping study, before it is forwarded to the relevant Minister and onwards to Cabinet for their decision. The timeframe for a decision varies between months to years from the finalisation of the report to a final decision made by the Minister or Cabinet. However, the progress by PIF member States in implementing NHRI commitments supports the proposition that the UPR has made an impact on the ground.

While the setting up of a NHRI is a step in the right direction, the obvious challenges of maintaining its independence, resourcing the institution and hiring appropriate staffing remains. However, the Samoan NHRI has consistently demonstrated since its set up that despite these challenges, it can fulfil its mandate within the confines of the Paris Principles even as a hybrid institution. Fiji's NHRI experiences though illustrates the threats that can derail and discredit a national institution which includes interference and political pressures. The Fiji Human Rights Commission (FHRC) as it was then was a beacon as a NHRI and gained respect within the country for its defence of human rights. However, the FHRC lost its way.<sup>131</sup> The current institution (FHRADC) remains challenged for compliance with the Paris Principles and regaining the confidence of the people in the institution.<sup>132</sup> It has been more than ten years since Fiji's NHRI withdrew from the ICC. Fiji's case shows that NHRIs are not immune to internal shocks that can discredit the institution, but because of the international system of accountability for NHRIs, efforts can be taken to realign the institution back to the Paris Principles.

This then highlights the role of the Asia Pacific Forum for National Human Rights Institution (APF) as a coordinating body in the Asia Pacific region to network and support fledging and established NHRIs within the region.<sup>133</sup> APF continues to

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<sup>131</sup> Amnesty International; *Fiji: Paradise Lost – the tale of ongoing human rights violations, April-July 2009*; London, United Kingdom, 41-42  
<https://www.amnesty.org/download/Documents/44000/asa180022009en.pdf> (Accessed 27 December 2019).

<sup>132</sup> Fiji Women's Crisis Center; *Under attack: Role of Fiji's human rights body questioned*; (18 May 2019); <http://www.fijiwomen.com/news/media-coverage/under-attack-role-of-fijis-human-rights-body-questioned/> (Accessed 27 December 2019).

<sup>133</sup> Asia Pacific Forum for National Human Rights Institution; <https://www.asiapacificforum.net/about/> (Accessed 27 December 2019).

provide technical and capacity support to the Fiji National Human Rights and Anti-Discrimination Commission<sup>134</sup> and the Tuvalu NHRI including on the accreditation process with the Global Alliance of National Human Rights Institutions (GANHRI). Moreover, the role of technical partners including SPC RRRT, PIFS, UN OHCHR and the MSG Secretariat is also crucial in providing oversight as well as technical guidance, training, resources and continuous support to NHRIs. These member-driven organizations are based in the Pacific region and can continue to provide technical support to strengthen NHRIs upon request from its member states.

In retrospect, the establishment of NHRIs are onerous obligation on small Pacific Island States that have to deal with competing economic, social and political priorities, however as Pacific States also grapple and navigate human rights challenges, whether it is induced by climate change, domestic violence, political unrest, economic pressures or through their own engagement with the international human rights framework, a NHRI will provide a sounding board, a balance for governments to check on their human rights safeguards, standards and responsibilities as duty bearers of human rights. Fiji's NHRI has done this by holding the state accountable for human rights violations on behalf of rights holders<sup>135</sup> while in Samoa, the NHRI has conducted national inquiries on human rights concerns and issues.<sup>136</sup>

Of fundamental importance is that a NHRI does not replace the State's responsibility as a duty bearer under customary international law, but it complements the State in its human rights endeavours. Smith argues that,

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<sup>134</sup> See <https://www.asiapacificforum.net/news/apf-advises-fijis-nhri-accreditation-process/> (Accessed 27 December 2019).

<sup>135</sup> See case of *State v Dhamendra* [2016] FJHC 386) whereby the High Court ruled that the Magistrates Court's power to extend the period of detention of the three respondents in police custody by seven days was in breach of the rights of the three respondents as guaranteed under Article 9, 13 (f), and 41 (1) (e) of the Constitution.

<sup>136</sup> See for example, *Samoa Launches its National Inquiry into Family Violence Report*, 12 September 2018, <https://asiapacific.unwomen.org/en/news-and-events/stories/2018/09/samoa-launches-its-national-inquiry-into-family-violence-report> (Accessed November 2019) and other National Inquiries and State of Human Rights in Samoa, <https://ombudsman.gov.ws/state-of-human-rights-reports/> (Accessed November 2019).

*'whilst national institutions are not a panacea for the perceived failings of states in implementing human rights, they certainly represent a marked step towards embedding human rights at the national level.'*<sup>137</sup>

The establishment of a NHRI in Pacific States may be gradual and from understanding and gauging the human rights evolution in the Pacific, it is more likely that PIF member states will establish their own home-grown national mechanism, whether it meets the prerequisites within the Paris Principles upon establishment or over time work towards compliance with the Paris Principles as is currently the case for the Tuvalu National Human Rights Institution. Hence, if a micro Pacific state such as Tuvalu can establish its NHRI then, arguably the establishment of NHRIs in the Pacific are not just a question of “how” but importantly of “when” it will happen for the next Pacific State.

Moreover, to mitigate the perceived high cost of establishing a NHRI or a workable model, it is crucial to understand that NHRIs exist in many forms and sizes and there is no one-size-fits- all model. The four most widely used models around the world includes the Commission model, the Ombudsman model, the Consultative council model and the Research institute model. The Ombudsman model (Tuvalu, Samoa) and the Commission model (Fiji and though not addressed in this paper, Australia and New Zealand) are currently in existent in the Pacific.

But it is most likely that PIF member states will not have to create a stand-alone institution model, rather strengthen existing institutions be it the Ombudsman’s Office or other hybrid model that works for the country based on their context (cultural, financial and resource issues etc.) and circumstances. NHRI to be set up must realistically reflect the country’s cultural and social dynamics while not compromising on its core business of protecting and promoting the universality of human rights. Hay argues that,

*culture, customs and views on human rights are not static and reflect societal realities at a particular point in time. In this respect, reviewing*

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<sup>137</sup> Rhona K. M. Smith, *The Pacific Island States: Themes Emerging from the United Nations Human Rights Council's Inaugural Universal Periodic Review*, *Melbourne Journal of International Law* 13, no. 1 (June 2012) 569.

*and contextualizing human rights as they pertain to the Pacific is an appropriate, necessary and ongoing process.*<sup>138</sup>

In a similar vein, the NHRI Pathways for Pacific States<sup>139</sup> paper emphasises that,

*innovative approaches are needed in the region to address resource concerns, including collaborative approaches to human rights promotion and economies of scope rather than scale. Participatory processes need to take account of Pacific contexts and to build on good work related to the rights of children and young people, women, disabled people and vulnerable or marginalised groups. Dialogue about NHRIs in the Pacific needs to draw on the strengths of both Pacific peoples and human rights promoters and acknowledge that culture, language and tradition have a particular importance (and that these are key human rights issues).*

Dialogue and education are necessary to move the NHRI agenda forward. John von Dossa<sup>140</sup> argued that,

*awareness -raising on human rights is not easy. Every human rights agency knows this from bitter experience. Awareness is too low in almost every country. But at every stage the way forward is plain – education, education and more education about human rights addressed to every level of the community, from children to the aged, from poor citizen to the rich, and from bureaucrat to politician. They must all become engaged in a human rights conversation.*

Samoa's NHRI experience shows that a NHRI can work towards finding a balance between entrenched cultural practices vis-à-vis fa'aSamoa to human rights.<sup>141</sup> Tuvalu's NHRI experience shows that despite being a micro-State, creating an institution is a matter of political will and re-assessing financial priorities within the national budget to resource the institution. Fiji's experience demonstrates that even in

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<sup>138</sup> Kathryn Hay, "A Pacific Human Rights Mechanism: Specific Challenges and Requirements" (2009) 40(1) *Victoria University of Wellington Law Review* 195-214.

<sup>139</sup> Pacific Pathways Paper, above note 117, 5.

<sup>140</sup> The Hon John von Doussa QC, *The Potential Role of National Human Rights Institutions in the Pacific*, Australasian Law Reform Agencies Conference, Port Vila, Vanuatu, September 2008. <https://www.humanrights.gov.au/about/news/speeches/president-speeches-potential-role-national-human-rights-institutions-pacific#endnote26> (Accessed 29 December 2019).

<sup>141</sup> Samoa National Human Rights Institution, *State of Human Rights Report 2015*, Apia, Samoa, [https://ombudsman.gov.ws/wp-content/uploads/2019/01/2015\\_State-of-Human-Rights-Report-General\\_English.pdf](https://ombudsman.gov.ws/wp-content/uploads/2019/01/2015_State-of-Human-Rights-Report-General_English.pdf). (Accessed 29 December 2019).

periods of national instability, a NHRI should act as a State's conscience on human rights though that has often been found wanting since the periods after the military coup of 2006.

## CONCLUSION

The Pacific may be a region with low levels of human rights violations in comparison to the other regions of the world, but that does not absolve Pacific governments from not doing more to ensure that human rights protection systems are robust and relevant for the modern Pacific state. There is a case to be made on the establishment of NHRIs in Pacific states but an important consideration is that a NHRI must not be established just for the sake of establishing one. National conversations must be held on its value to the country and as argued in this paper, there are more reasons than not to establish a NHRI.

Moreover, national ownership of the NHRI and political will and commitment is equally important to ensure that the NHRI does not easily succumb to the whims and dictates of the State. Because of its nature, NHRIs often act as the last defence for human rights between citizens and the State. While the UPR process continues to 'shine a light into the human rights practices of the State'<sup>142</sup> and ensures global accountability for human rights, a dedicated homegrown Paris Principles institution can ensure that the State is not just grandstanding on human rights at international forums, but is equally engaged in its protection, promotion and domestication in country.

The "building block" approach advanced by Liddicoat<sup>143</sup> and the Pathways for Pacific States paper<sup>144</sup> provides practical and relevant steps in the setting up of NHRIs in the Pacific. This approach:

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<sup>142</sup> Office of the United Nations High Commissioner for Human Rights [https://www.ohchr.org/Documents/HRBodies/HRCouncil/HRC\\_briefingnote\\_EN.pdf](https://www.ohchr.org/Documents/HRBodies/HRCouncil/HRC_briefingnote_EN.pdf) (Accessed 29 December 2019).

<sup>143</sup> Joy Liddicoat, 'Human Rights Mechanisms in Small Pacific States: Implications for Dialogue about Regional Human Rights Mechanism', (2008). <https://www.victoria.ac.nz/law/research/publications/about-nzacl/publications/special-issues/hors-serie-volume-viii,-2008/Liddicoat.pdf> (Accessed 30 October 2019).

<sup>144</sup> Pacific Pathways Paper, above note 117.

- i. recognises the importance of giving time for dialogue about NHRI and how it will add value to the culture of human rights;
- ii. identifies challenges and gaps to human rights and how they can be addressed;
- iii. analyses and reviews existing institutions and;
- iv. the practical implementation of human rights legislations and treaties ratified by the State among others.

All these building blocks are strengthened and re-energized by the UPR whereby the interactive dialogue before the Human Rights Council allows the SuR to;

- i. discuss about NHRIs in the context of its operation, structures, legislations and also allows the SuR to solicit assistance from the international community on the type of assistance the SuR may need for this commitment.
- ii. solicit from other member states best practices or their own experiences in establishing their NHRIs.
- iii. identify strategies on next steps vis-à-vis scoping study.
- iv. set timeframes for implementation and allow the SuR to adopt indicators that measure their implementation process and progress and report on it in its next review cycle.

What is evident in the case of NHRIs in this region is that Pacific States are not alone in establishing their institutions. They are supported by development partners from inception vis-à-vis scoping study to the establishment of the NHRI by assisting in drafting of the legislative framework to making the institution work once it is established which includes capacity assessment, training of staff and related structural and administrative support. All this greatly alleviates the burden from small Pacific states on what is otherwise a huge undertaking and of which all Pacific states are struggling to take on.

Finally, the case of whether the UPR recommendations has made an impact on the ground in Pacific States is validated by the evidence of implementation progress of the NHRI recommendations, first in Samoa and Tuvalu through their NHRIs and Solomon Islands, Nauru, Micronesia, Marshall Islands, Vanuatu and Kiribati albeit their scoping studies.

The nature of the UPR is that the discussions and recommendations for the establishment of NHRI will continue as long as the SuR has not taken action to address this issue. Arguably this soft pressure on UN members within the diplomatic nuances of the United Nations Human Rights Council can soon witness the establishment of more NHRI in the Pacific region. The caveat though is that the discussions of NHRI has advanced in the Pacific, strengthened by the technical support now provided by regional organisations as SPC RRRT, PIFS, APF, MSG Secretariat among others.

But whether the establishment of more NHRI's by Pacific states will then be a catalyst for a regional or sub-regional human rights mechanism, is another story, though the human rights tide is most certainly changing in this Pacific region.