

A fairer future

Law reform and advocacy
opportunities for women's
and PIDSOIGIESC+ rights in
the Commonwealth Pacific

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Executive summary

The Equality & Justice Alliance (EJA), through funding from the UK Foreign & Commonwealth Office, is providing a programme of support to Commonwealth governments, parliaments and civil society looking to reform discriminatory laws. The EJA commissioned this report to identify opportunities to progress intersectional law reform in support of gender equality, women's and LGBT+ rights in Commonwealth Pacific countries – Fiji, Kiribati, Nauru, Papua New Guinea, Samoa, Solomon Islands, Tonga, Tuvalu and Vanuatu.¹ Part 1 of the report provides background and introduces key partners. Part 2 explains the methodology adopted to identify priorities and the landscape of existing organisations working on these issues. The report has been developed as a resource for Pacific NGOs and government stakeholders working on these issues, as well as development partners engaged in supporting human rights based law reform and collective advocacy.

Pacific activists have developed their own terminology to describe their movements. Instead of the LGBT+ label, activists refer to the rights of Pacific Islanders of Diverse Sexual Orientation and Gender Identity and Sex Characteristics (PIDSOGIESC+). Pacific NGOs use this term to recognise the range of cultures and communities within the region, including many traditional third gender communities and those who may not identify as LGBT+.

Part 3 sets out key principles to guide international development partners working in this space. Specifically, the report stresses the importance of **doing no harm**, as advocacy in support of sensitive issues around women's and PIDSOGIESC+ rights can put advocates at risk, particularly in countries where homosexuality has not been decriminalised. Violence or the threat of violence still poses a risk for human rights activists across the region. The report also stresses the importance of ensuring local ownership and partnerships. There are many actors working on human rights based law reform and it is essential that development partners tap into what is already being done and leverage existing activities rather than starting from scratch. In a region as small as the Commonwealth Pacific, duplication can be burdensome to government officials and NGOs with limited human and financial resources.

Parts 4–8 provide an overview of the cultural, legal, civil society and development environment in the Pacific within which any law reform activities would be situated. It highlights the complex and diverse cultures and contexts that affect this work. Across the region, the women's rights movement has been extremely active in promoting law reform as a critical element of their advocacy in support of gender equality and women's rights. In particular, national women's crisis centres and NGOs, working with national women's ministries, have been supported by the Regional Rights and Resources Team (RRRT) based at the Secretariat for the Pacific Community (SPC) to promote law reform through projects like the Changing Laws, Protecting Women project.² This project produced a Pacific Legislative Lobbying Toolkit³ to assist civil society partners in advocating more effectively for law reform, in particular, the passage of national domestic violence and family protection legislation, and amendments to national criminal codes to better tackle sexual violence (see below for a summary of their successes). The women's movement has been actively pushing for law reform for more than twenty years, building on the platform of national ratification of the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW) from the 1990s onwards.

Momentum for law reform for Sexual Orientation, Gender Identity and Expressions and Sex Characteristics with all intersectionalities (SOGIESC+) rights is less advanced than the women's movement but has been growing over the last decade with some strong and active Pacific SOGIESC+ NGOs working at different levels. In Fiji, there is a large and diverse group of PIDSOGIESC+ NGOs who work across a range of SOGIESC+ rights issues, including law reform. Activists in Tonga and Samoa also have a long history of locally contextualised advocacy around these issues. The Pacific Sexual and Gender Diversity Network (PSGDN) has emerged in recent years as a regional focal point for PIDSOGIESC+ advocacy across the region. Their strategic plan (2020-24) prioritises law reform as one of its three main pillars of work. PSGDN has 14 national members, including members in each of the nine Commonwealth Pacific countries, who provide good entry points for national engagement.

Part 5 provides a summary of law reform entry points and Annex 1 provides a detailed analysis of the key legal issues facing the Commonwealth Pacific around gender equality, women's and PIDSOGIESC+ rights. It is important to recognise that considerable progress has been made in recent years largely due to advocacy from Pacific civil society.

- All countries except Tonga have a non-discrimination clause in their constitution. All of these include sex as a prohibited ground of discrimination, but only Fiji has a clear protection against discrimination on the basis of "sexual orientation, gender identity and expression"⁴ in its 2013 constitution. No Commonwealth Pacific constitution includes being intersex as a prohibited ground.
- Fiji, Kiribati and Samoa have included sexual orientation (and in Samoa, HIV status) as a prohibited ground of discrimination in overarching laws regulating employment rights, while Vanuatu has included a clause prohibiting discrimination on the basis of sexual preference in relation to the employment of teachers.
- Comprehensive domestic violence legislation is in place in Fiji, Vanuatu, Nauru, Papua New Guinea (PNG), Samoa, Tonga, Kiribati, Solomon Islands and Tuvalu.⁵ Much of this work was supported through the Changing Laws, Protecting Women project implemented by RRRT.
- Fiji, Nauru, PNG, Solomon Islands and Vanuatu all have gender-neutral rape provisions. Marital rape is explicitly criminalised by legislation in Nauru, PNG, Samoa, Solomon Islands and Tonga and through case law in Fiji and Vanuatu.
- Fiji, Nauru and Vanuatu have decriminalised sex acts between same-sex couples.

However, there is still considerable work to be done in support of equal rights for women and PIDSOGIESC+.

- Only Fiji has passed a comprehensive anti-discrimination law (as part of setting up the national Human Rights and Anti-Discrimination Commission).

- In Kiribati, PNG, Samoa, Solomon Islands, Tonga and Tuvalu male homosexual sex has been criminalised (primarily through sodomy laws). In the Solomon Islands' lesbian sex is also illegal.
- None of the Commonwealth Pacific countries have fully decriminalised abortion, with PNG, Solomon Islands, Kiribati, Tonga and Tuvalu only allowing abortion where a woman's life is threatened.
- Sex work is not explicitly illegal in private in any jurisdiction except Papua New Guinea, but in all jurisdictions it is illegal to solicit in public or keep a brothel.
- No country in the Commonwealth Pacific has passed legislation in relation to legal gender recognition, though Samoa recently decriminalised impersonation of women. This is despite a strong historical and cultural tradition of a third gender in many Pacific countries.⁶

Part 9 details the critical organisations and entry points that could be harnessed by development partners to support rights based law reform.

- Law reform work should be supported at both regional and national level. Regional activities should pave the way for building peer-based coalitions across the region and identify where national work will be most useful and on which issues. Pacific human rights work has tended to use regional programming to seed sensitive or complex ideas before growing these ideas at national level where the ground is considered fertile. Regional discussions can also protect national stakeholders around sensitive issues and are often better able to leverage intergovernmental mechanisms, donor programmes and funding.
- Considering six Commonwealth Pacific countries still criminalise homosexuality, regional coalition building could make national discussions less risky. Regional coalitions also recognise that in many island Pacific countries, civil society is small and/or weak. In these countries, NGOs often appreciate learning from the good practice lessons of their allies in other Pacific countries.

- The Pacific Islands Forum Secretariat (PIFS) and SPC both have a lead role in regional policy coordination and should be preferred partners for regional dialogue and policy advocacy for women's and PIDSOGIESC+ rights.
- RRRT should be a priority partner as it is already implementing the Changing Laws, Protecting Women project and the Addressing Pervasive Discrimination Faced by LGBTI Persons in the Pacific project. These projects are relevant and already include Pacific NGO partners.
- The UN – namely UN Women, UNAIDS, UNFPA, OHCHR and UNDP – should be invited as potential partners in law reform efforts: the first four agencies for their thematic expertise and UNDP for its Pacific parliamentary strengthening network and law reform contacts. Note that the UNDP Multi-Country Western Pacific Integrated HIV/TB programme is working with key populations affected by intersectional legal issues (i.e. female sex workers, men who have sex with men and gender-diverse people).
- In terms of civil society:
 - The women's rights movement is strong and has been engaged in law reform activities for many years (primarily advocating for domestic violence and family protection regimes). It has achieved many breakthroughs. Any external support should first be scoped with partners to assess whether additional assistance is required, and if so on what thematic issues and/or in what specific countries.
 - PSGDN and its Commonwealth Pacific members could be useful partners as their network lends itself to supporting a regional advocacy approach. However, it should not be exclusively engaged as a partner as there are many Pacific SOGIESC+ NGOs that are not covered by its umbrella. Fiji, in particular, has a vibrant and diverse SOGIESC+ movement, which brings in different perspectives from less visible groups within PSGDN, including lesbians, transgender men, Indo-Fijians and sex workers. Groups like DIVA for Equality, which are explicitly feminists and representative of women, have a strong understanding of the value and approaches

involved in intersectional feminist and SOGIESC+ advocacy.

- Research suggests that Pacific SOGIESC+ NGOs are prioritising law reform work to (i) decriminalise homosexuality (ii) legislate for gender recognition (iii) and reform employment, education and health laws, births, deaths and marriages and national disaster management. There has been limited work done on gender recognition laws but in 2018 the Asia Pacific Transgender Network initiated a scoping project on legal gender recognition and will produce initial research on entry points for Fiji, Samoa and PNG. There has also been some interest in decriminalising sex work which has been identified as an issue by both women's rights and PIDSOGIESC+ groups.⁸
- Pacific women's NGOs and SOGIESC+ NGOs have already begun working together on common activities and issues. For example, the first Pacific Civil Society Organising Mechanism (PACCOM) dialogue in 2017 brought together a range of women's, SOGIESC+ and human rights CSOs from across the region. Since it was inaugurated in 2016, the two Pacific Feminists Forums have produced the 2016 Pacific Feminist Charter for Change⁹ and the 2019 Pacific Feminist Charter Action Plan,¹⁰ both of which cover women of diverse sexualities (see part 4 for more). Pacific women's NGOs and SOGIESC+ NGOs have also been engaging with inclusion-focused climate justice activities to ensure disaster response and climate mitigation and prevention efforts more effectively integrate the needs of women and PIDSOGIESC+. Such collaborations can explore intersectional advocacy approaches for women's and SOGIESC+ rights. They also offer an opportunity for the Pacific women's movement to share their successful law reform advocacy for future law reform efforts.

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ACRONYMS

APCOM Asia Pacific Coalition on Male Sexual Health	MP Member of Parliament	SFA Samoa Fa'afafine Association
APF Asia Pacific Forum	OP Oceania Pride	SGBV Sexual and Gender-Based Violence
BIMBA Boutokaan Inaomataia ao Mauriia Binabinaine Association (Kiribati)	PacWIN Pacific Women's Information Network	SOGIESC+ Sexual Orientation, Gender Identity and Expressions and Sex Characteristics, with all intersectionalities (e.g. PIDSOGIESC living with HIV, those with disabilities, those from poor backgrounds) ¹²
CEDAW Convention for the Elimination of all forms of Discrimination Against Women	PIDSOGIESC+ Pacific Islanders of Diverse Sexual Orientation and Gender Identity and Sex Characteristics with all intersectionalities (e.g. PIDSOGIESC living with HIV, those with disabilities, those from poor backgrounds) ¹¹	SPC Secretariat for the Pacific Community
EJA Equality & Justice Alliance	PIFS Pacific Islands Forum Secretariat	TLA Tonga Leitis Association
EVAW Eliminating violence against women	PILON Pacific Islands Legal Officers Network	TWCCC Tonga Women and Children's Crisis Centre
FWCC Fiji Women's Crisis Centre	PLGED Pacific Leaders Gender Equality Declaration	UNDP United Nations Development Programme
FWRM Fiji Women's Rights Movement	PPA Pacific Platform for Action on Gender Equality and Women's Rights (2018-2030)	UNFPA UN Population Fund
HOK Haus of Khomeleon	PWNAVAW Pacific Women's Network Against Violence Against Women	UN Women United Nations Entity for Gender Equality and the Empowerment of Women
ILGA International Lesbian, Gay, Bisexual, Trans and Intersex Association	RPF Rainbow Pride Foundation	UPR Universal Periodic Review
KP Kapul Champions	RRRT Regional Rights and Resources Team	VWC Vanuatu Women's Centre
LGBT+ Lesbian, gay, bisexual and transgender people and those of related sexual and gender minorities		

1 Introduction

During the Commonwealth Heads of Government Meeting (CHOGM) in London in April 2018, UK Prime Minister Theresa May announced that as the incoming Chair-in-Office of the Commonwealth of Nations, the UK would support Commonwealth governments who want to reform their laws that discriminate against women and girls, and lesbian, gay, bisexual and transgender people. As many of these laws are a colonial legacy, the Prime Minister acknowledged that these laws were wrong then and are wrong now.

Many Commonwealth Pacific nations maintain, or have even expanded, discriminatory colonial legislation. Their criminal codes contain sexual offences laws that are inequitable and lack protective legislation. For example, many countries have different ages of consent for sexual relations: in Kiribati, Tonga and Tuvalu, the minimum age for sexual consent is only provided for girls. The age of consent for marriage may also differ for males and females: in Nauru and PNG, females can be married at 16 years but males at 18 years, with parental consent enabling marriage even younger.¹³ Rape provisions are often gender specific: in Kiribati, Tonga and Tuvalu, rape laws focus only on female rape and do not cover the rape of males or rape with objects. Marital rape is only illegal in Nauru, PNG, Samoa, Solomon Islands and Tonga. Laws protecting against domestic violence, sexual harassment, forced marriage and other forms of gender-based violence are uneven across the Commonwealth Pacific. Only Fiji, Nauru and Vanuatu have decriminalised consensual same-sex sexual activity in private between adults. Many laws discriminate against gender diverse people including cross-dressing, impersonation and vagrancy laws. Very few Commonwealth Pacific countries have legislation to recognise, prevent and punish hate crimes including those committed on the basis of sexual orientation or gender identity.

The Equality & Justice Alliance (EJA), through funding from the UK Foreign & Commonwealth Office, is providing support to Commonwealth governments, political leaders and civil society looking to reform discriminatory laws. The EJA is comprised of members from the Human Dignity Trust, Kaleidoscope Trust, Sisters for Change and The Royal Commonwealth Society. Collectively, they bring together expertise in law, diplomacy and civil society strengthening to promote equality and eliminate discrimination and violence against women and girls, and LGBT+ people.

The EJA commissioned this report to identify opportunities to progress intersectional law reform in support of gender equality, women's and PIDSOGIESC+ rights in Commonwealth Pacific countries – Fiji, Kiribati, Nauru, Papua New Guinea, Samoa, Solomon Islands, Tonga, Tuvalu and Vanuatu. Reflective of EJA's own mandate, this report includes a specific focus on identifying intersectional approaches to collective advocacy, movement building and law reform which recognise the common challenges faced by gender equality, PIDSOGIESC+ and women's rights activists. This report is intended to be useful to Pacific human rights NGOs, Commonwealth governments and development partners.

2 Methodology

This report focuses on nine Pacific Island Commonwealth member states: Fiji, Kiribati, Nauru, Papua New Guinea (PNG), Samoa, Solomon Islands, Tonga, Tuvalu and Vanuatu. These countries are members of the Pacific Islands Forum – the main leadership body in the region. This report does not cover Australia, New Zealand or the two Commonwealth countries that are in free association with New Zealand and also members of the Pacific Islands Forum (Cook Islands¹⁴ or Niue). It also does not cover the three states in the North Pacific which are not Commonwealth members (Palau, the Federated States of Micronesia and the Marshall Islands).

Pacific activists have developed their own terminology to describe their movements. Instead of the LGBT+ label, activists refer to the rights of Pacific Islanders of Diverse Sexual Orientation and Gender Identity and Sex Characteristics, with all intersectionalities, e.g. PIDSOGIESC living with HIV, those with disabilities, those from poor backgrounds (PIDSOGIESC+). Pacific NGOs use this term to recognise the range of cultures and communities within the region, including many traditional third gender communities who may not identify as LGBT+. In this report, PIDSOGIESC+ has been used to refer to people and SOGIESC+ to refer to rights, rather than the LGBT+ acronym, except where directly quoting from another document or referencing a specific project or report title.

This report was developed through online research, phone interviews and email exchanges to collect information and gather perspectives from the region around opportunities and challenges in collective advocacy and law reform in support of gender equality, women's rights and SOGIESC+ rights. The consultant invited members of the Pacific Women's Information Network (PacWIN) to share their information and insights and made direct contact with a range of national and regional stakeholders.

The consultant has drawn heavily on the vast amount of research already produced on these topics. As demonstrated in the bibliography attached to this report, there has already been considerable research undertaken around gender equality, women's and PIDSOGIESC+ law reform. Specifically:

- The Regional Rights and Resources Team (RRRT) has recently completed three legislative reviews of PIDSOGIESC+ law reform needs in Kiribati, Tonga and Vanuatu. Over the last decade, RRRT has also produced multiple country reports on eliminating violence against women (EVAW) law reform and implementation. In March 2019, RRRT also published a special issue of the Pacific Law Digest focused on SOGIESC+ case law in the Pacific.
- The DFAT-funded Pacific Women Shaping Pacific Development (Pacific Women) project commissioned the publication *Legislative Barriers to Gender Equality in Pacific Island Countries* (still to be published), as well as publishing three major women's rights sectoral reports in 2017: *Synthesis Report on Eliminating Violence Against Women*; *Synthesis Report on Women's Political Empowerment and Leadership* and *Synthesis Report on Women's Economic Empowerment*.
- In 2016, the International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA) published a major review of countries criminalising PIDSOGIESC+, including Kiribati, PNG, Samoa, Solomon Islands, Tonga and Tuvalu¹⁵ and released an updated report in March 2019.¹⁶
- The Kaleidoscope Human Rights Foundation (Australia) produced two major submissions on SOGIESC+ rights in advance of the UN's Universal Periodic Review (UPR) reporting in 2016 for PNG and Samoa.
- In 2016, APCOM produced the policy brief *Pacific Legal Environments for Men Who Have Sex with Men and Transgender People*.¹⁷

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- In 2015, the Human Dignity Trust (UK) undertook reviews regarding criminalisation of PIDSOGIESC+ and the context for advocacy in Kiribati,¹⁸ PNG,¹⁹ Samoa,²⁰ Solomon Islands,²¹ Tonga²² and Tuvalu,²³ which can now be found as part of its online country database.
- In 2012, UNDP, UNFPA and UNAIDS produced the major publication *Sex Work and the Law in Asia and the Pacific: Laws, HIV and Human Rights in the Context of Sex Work*.²⁴
- In 2007, UN Women and UNDP produced the major publication *Translating CEDAW into Law: CEDAW Legislative Compliance in Nine Pacific Island Countries*.²⁵

These documents have been used to inform the legislative analysis included in this report. Stakeholder responses and additional online research, as well as the consultant's own experience and knowledge of the Pacific, informed the broader analysis on challenges, opportunities and issues guiding future work.

3 Principles of engagement

To ensure development partners approach local issues sensitively and appropriately, a number of suggestions were highlighted by Pacific stakeholders.

- **Do no harm:** Most importantly, stakeholders – particularly those working in the SOGIESC+ space – stressed that partners must ensure their activities do no harm. Gender equality, women's rights and SOGIESC+ rights advocacy remain sensitive issues in many countries. Gender activists may attract threats because of their work and risk ostracisation, particularly when working on religiously sensitive topics such as abortion law reform or marital rape laws. For the PIDSOGIESC+ community working in the Commonwealth Pacific countries where homosexual acts are still criminalised, the risk is considerable. Across the entire region, violence against women and PIDSOGIESC+ communities remains a serious threat and must be considered when raising awareness of these issues. In the context of law reform work, some interviewees warned that partners must be careful not to incite a backlash against PIDSOGIESC+ communities. In some countries, police officers, officials and/or the public may not be aware that homosexual acts are still criminalised and law reform campaigns on the topic may be counter-productive by reminding anti-gay forces that they have the law on their side. Strategies to counter such problems must be locally developed and endorsed.

- **Ensure local ownership:** It is critical that work in this area is genuinely owned and implemented by Pacific partners. Human rights focused work in the Pacific has long been criticised for being externally driven and based on western values. This is not a fair critique considering the strong local human rights movements in the region but it is a perception that must be managed. In the context of SOGIESC+ reform in particular, which has a strong and active Pacific community, external support needs to be provided through channels and strategies that clearly demonstrate the activities are locally owned and driven and not through external agendas. In any case, experience in the Pacific has shown that law reform work is a long-term project which requires strong local ownership to ensure sustainability.

- **Promote partnerships to reduce duplication:** The Pacific is generally recognised as the most heavily donor-funded and donor-workshopped region in the world. The region has both large donors (most notably Australia, New Zealand and the EU, but increasingly China and India), and attracts a large number of UN agencies and international NGOs. So many partners can be overwhelming, particularly in small island states, many of which have limited public services and small, but active, civil society movements. In this respect, it is important for development partners to ensure they work with each other to leverage resources for maximum benefit. Joined up approaches also reduce the burden on Pacific partners to respond to multiple donors and partners on different projects and activities. Working alongside existing programmes and partners, particularly for organisations situated outside the region, can be critical to long-term success. While civil society has indicated that it welcomes strategically directed funding and technical assistance, it also stresses that this help needs to avoid duplication and competition and must respect and complement homegrown efforts to develop and implement advocacy and reform programmes which are culturally appropriate.

4

Overview: Gender equality, women's rights and SOGIESC+ rights in the Pacific

It is not a platitude to reflect that the Pacific is a genuinely unique region in terms of its cultures, perspectives and activities in relation to gender equality, women's rights and PIDSOGIESC+ rights. A number of Pacific jurisdictions had **traditionally matrilineal cultures**, including parts of PNG and Solomon Islands, Samoa and Fiji where women chiefs still preside.²⁶ However, with the growing influence of British colonial culture and the Christian religions that accompanied colonialism, much of the Pacific evolved into **predominantly patriarchal cultures**.²⁷ The impact of religion on Pacific society and its views on women's and PIDSOGIESC+ rights remains substantial, with political leaders often weaving religious references into political and parliamentary debates. **Religious views continue to inform law reform debates**, with the rise of evangelical Christianity also introducing a strand of discourse more openly resistant to human rights based values. Some strands of negative religious discourse continue to resist law reform around sexual and gender-based violence (SGBV), marital rape and SOGIESC+ rights.²⁸ At the same time, Pacific NGOs are increasingly talking with faith based organisations to build their support for women's and SOGIESC+ rights, including through specific analysis of religious texts to identify pro-human rights teachings.

While there has been **some progress in the last decade in protecting women's rights through law reform**, women are still severely under-represented in political life, with only 7.9% female MPs in national parliaments across the region as of December 2018.²⁹ Violence against women remains a major challenge³⁰ despite considerable legislative reform in recent years which explicitly criminalises domestic violence (see Part 5). Women's economic empowerment is also undermined by unequal laws in relation to land and property ownership, equality within marriage, divorce and access to finance.³¹ However, with the exception of Tonga, all Pacific nations specifically enshrine non-discrimination in their constitutions, with sex included as a prohibited ground of discrimination. In fact, Fiji has one of the most progressive constitutions in the world which prohibits discrimination on SOGIESC+ rights.

Across the Commonwealth Pacific, there is a **substantial and visible PIDSOGIESC+ community and traditional third gender communities have long been traditionally recognised** in Kiribati, Samoa, Tonga and Tuvalu,³² but discrimination and stigmatisation against these communities has increased as modern religious and cultural values have evolved. Prior to colonisation and the rise of Christianity, diverse expressions of gender and/or sexual identity were culturally and traditionally common. As one researcher observed: "Identity expressions that would be defined as homosexual or transgendered using western vocabulary often fulfilled important and well-established cultural or ritual functions within various parts of the Pacific [but] contact with Europeans and the subsequent colonisation of the region often resulted in rejection or suppression of these identities."³³ It has also been argued that traditional third gender communities are not appropriately covered by global LGBT+ terminology because not all Pacific third gender people identify as transgender, hence the use of the broader PIDSOGIESC+ term.³⁴ Leiti from Tonga and Fa'afafine from Samoa have talked about how cultural recognition gives them a sense of belonging and community connection. While they still sometimes face discrimination, they are also able to receive support from high profile patrons (e.g. the patron of Samoa's Fa'afafine Association is the Prime Minister and the patrons of the Tonga Leitis Association are the royal family). Conversely, the situation is very different in Melanesia (Fiji, Papua New Guinea, Solomon Islands and Vanuatu) where there is no cultural recognition of gender diverse people. This **stigmatisation is still enshrined in law, with six Commonwealth Pacific countries still effectively criminalising homosexual sex, primarily through sodomy and buggery criminal provisions** (see Part 4) and rejecting same-sex marriage and civil unions. Across the region, lesbian, bisexual and trans-masculine identities are invisible, with these groups often overlooked by the broader movement. Throughout the region, only the 2013 constitution of Fiji enshrines sexual orientation as a prohibited ground of discrimination.

Despite the challenges facing women and PIDSOGIESC+ communities across the region, over the last few decades **Pacific civil society advocates have been active in working with key regional and national stakeholders** to (i) raise awareness of the need to protect and promote the rights of all Pacific people, including women and PIDSOGIESC+; and (ii) lobby for legislative reform to amend existing discriminatory laws and/or enact modern legal frameworks based on a human rights based approach to the law. In this regard, the women's movement has been particularly successful: 12 Pacific Island countries enacted family protection laws in the last 15 years as a direct response to their lobbying efforts (see Parts 6.1 and 7.1 for more). The PIDSOGIESC+ movement is more nascent. Although law reform has been identified as a critical priority, this work has only started to gain momentum in recent years (see Part 6.2).

Significantly, unlike other regions, where there has sometimes been a disconnect between the women's rights and SOGIESC+ rights movements, in the Pacific, there has been much more cooperation and collaboration between civil society actors working in these spaces in recognition of the intersectionality of many of their goals. Some women's rights NGOs have included sexuality and gender diversity advocacy within their own work. Most notably, DIVA for Equality, based in Fiji, is a rare intersectional feminist organisation which promotes the rights of lesbians, transgender men and marginalised women as part of an integrated mandate. The Survivors Action Network (SAN) in Fiji also brings together female, male and transgender sex workers to provide services to sex workers in Fiji and to advocate for legal and institutional reforms to protect sex workers' rights.

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More recently, there has been an increasing trend for **regional human rights meetings and feminist forums to be organised as a collaboration between women's rights and SOGIESC+ rights civil society**. For example, the inaugural 2016 Pacific Feminist Forum (PFF) was a collaboration between Pacific women's rights NGOs, PIDSOGIESC+ NGOs and development partners.³⁵ The Pacific Feminist Charter endorsed at the meeting specifically recognised the diversity of feminists present, stating: "our diversities include women, girls, lesbians, bisexual, trans diverse people, gender non-conforming identities[...]".³⁶ The most recent 2017 Triennial Conference of Pacific Women also specifically used gender inclusive terminology in its final outcomes statement, specifically referring to: "women and girls of all diversities".³⁷ This language obviously includes lesbians, bisexual women and trans masculine individuals but was also intended to include the broad communities of Pacific transgender women. However, it is understood there remained some sensitivity among Pacific officials around incorporating such terminology. The first Pacific Civil Society Organising Mechanism (PACCOM) dialogue, held in Suva in 2017, also brought together a range of women's, PIDSOGIESC+ and human rights CSOs from across the region.³⁸ In 2019, the second Pacific Feminist Forum again brought together a diverse range of Pacific representatives and its new PFF Charter Action Plan was explicit in stating that participants: "insist and ensure that our feminist movement is reflective of our intersectional and diverse identities and inter-linked realities".³⁹ The PIDSOGIESC+ umbrella organisation, PSGDN, has in recent years joined the gender working group of CROP (Council of Regional Organisations in the Pacific) and the joint UN gender coordination group as well as the Pacific Humanitarian Protection Cluster under which there is a gender-based violence in emergencies subgroup.

5

National gender equality, women's rights and PIDSOGIESC+ laws

Across the Commonwealth, many countries inherited the government structures, legal systems and legislation introduced by the United Kingdom during the colonial era. When each gained independence from Britain, they had similar democratic institutions, processes and legal frameworks. In the Commonwealth Pacific, this has proved useful when engaging in law reform, as the countries often have comparable approaches to law and law-making.

This section aims to provide an analysis of the priority law reform issues that remain to be tackled to ensure women and PIDSOGIESC+ people can enjoy equal rights before the law. Annex 1 provides a more detailed analysis of key laws across the Commonwealth Pacific relating to gender equality, women's rights and PIDSOGIESC+ rights. (NB: Cook Islands was included in the analysis for completeness although it is not a full member state of the Commonwealth.)

Annex 1 in summary:

- **All countries except Tonga have a non-discrimination clause in their constitution**, but while all of these include sex as a prohibited ground of discrimination, **only Fiji has clear protection against discrimination on the basis of sexual orientation, gender identity and expression** within its constitution. No Commonwealth Pacific constitution includes being intersex as a prohibited ground of discrimination.
- Only **Fiji has passed a comprehensive anti-discrimination law** (as part of the law setting up the national Human Rights and Anti-Discrimination Commission).⁴⁰
- **Cook Islands, Fiji, Kiribati and Samoa have included sexual orientation (and in Samoa HIV status) as a prohibited ground of discrimination in overarching laws regulating employment**, while Vanuatu has included a clause prohibiting discrimination on the basis of sexual preference in relation to the employment of teachers.

- **Only Fiji, Nauru and Vanuatu have decriminalised homosexual sex. In Kiribati, PNG, Samoa, Solomon Islands, Tonga and Tuvalu (as well as Cook Islands), male homosexual sex is illegal** (primarily through sodomy and buggery provisions in national criminal codes). Cook Islands tabled a Bill in 2017 to decriminalise homosexuality, which lapsed following the 2017 elections.⁴¹ A revised Crimes Bill was tabled in December 2018 which again removes the previous provisions on sodomy and indecent acts.⁴² In **Solomon Islands lesbian sex is also illegal**. That said, lesbian sex is still not culturally accepted across much of the region and attracts similar stigma to male homosexual sex.

- Between 2003 and 2017, **specific domestic violence legislation was passed in Fiji, Vanuatu, Nauru, PNG, Samoa, Tonga, Kiribati, Solomon Islands, Tuvalu and Cook Islands**.⁴³ Much of this work was supported through the Changing Laws, Protecting Women project implemented by the SPC Regional Rights and Resources Team.

- Rape laws are variable across the region. **Fiji, Nauru, PNG, Solomon Islands and Vanuatu all have gender-neutral rape provisions** which make it clear that both men and women can be raped and/or can commit rape. PNG and Solomon Islands also have extremely progressive provisions regarding the definition of consent. In **Kiribati, Tonga and Tuvalu, rape law focuses only on female rape**. Samoa defines rape only as "the act of a male who rapes a female", but also includes a provision criminalising the act of sexual violation by any person, which includes penetration, use of objects and other unwanted contact.

- **Marital rape is explicitly criminalised by legislation in Nauru, PNG, Samoa, Solomon Islands and Tonga**, while in Fiji and Vanuatu case law suggests that it is a criminal offence though the legislation makes no specific reference. In 2017, Kiribati attempted to reform the law on marital rape but the legislation stalled due to resistance from the churches. It is understood⁴⁴ that the proposed amendment is to be sent to communities for more consultation before being considered again by the Kiribati parliament.

- **The age of consent for marriage differs between males and females in Nauru and PNG**, where females have to be 16 years old and males 18 years old. In Samoa the age of consent differs between the sexes, but females have to be 19 years old and males 21 years old. In Cook Islands, the age of consent for marriage is equal for both males and females at 16 years old. Kiribati, Solomon Islands, Tonga, Tuvalu and Vanuatu all have a gender-neutral minimum age for marriage between 18 and 21 years of age. However, in **Nauru, PNG, Samoa, Solomon Islands, Tonga, Tuvalu and Vanuatu, marriage is allowed to take place before the age of 18 with parental consent**.⁴⁵

- **None of the countries of the Commonwealth Pacific have fully decriminalised abortion**.⁴⁶ In Fiji, which has the broadest provisions on abortion, it is allowed where a woman's life is at risk, or where her physical or mental health is affected, or in cases of rape, incest or foetal impairment. Nauru, Samoa and Vanuatu allow abortion only where a woman's life is at risk, or her physical or mental health is affected, and PNG, Solomon Islands, Kiribati, Tonga and Tuvalu only allow abortion where a woman's life is at risk.⁴⁷

- **Sex work is not explicitly made illegal in private in any jurisdiction except Papua New Guinea**,⁴⁸ but **all jurisdictions make it illegal to solicit in public or keep a brothel**.⁴⁹ In practice, sex workers - both male and female - have little protection under the law and still suffer from violence and exploitation, including from the security services.

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- **No country in the Commonwealth Pacific has passed legislation in relation to legal gender recognition**, though Samoa has decriminalised impersonation of women. This is despite a strong historical and cultural tradition of a third gender in many Pacific countries.⁵⁰

6 Supportive global and regional frameworks

6.1 Global frameworks

The 2030 Agenda for Change and the supporting 17 Sustainable Development Goals (SDGs)⁵¹ were globally agreed in 2015 and endorsed by every Pacific Island country. Crucially, the SDGs explicitly apply to everyone, everywhere, with countries committing to **leave no one behind**. This commitment was a clarion call for marginalised and vulnerable groups, including PIDSOGIESC+ and women, who have repeatedly faced human rights violations, been marginalised, ignored, left out and left behind by local, national, regional and international development initiatives.

Of particular relevance to gender equality, women's rights and SOGIESC+ rights law reform, the *SDG 5 on gender equality* includes a number of targets to ensure governments properly focus their laws to serve all members of the community. Specifically, SDG 5 includes, but is not limited to, the following:

- **SDG target 5.1:** end all forms of discrimination against all women and girls everywhere.
- **SDG target 5.2:** eliminate all forms of violence against all women and girls in the public and private spheres, including trafficking and sexual and other types of exploitation.
- **SDG target 5.3:** eliminate all harmful practices, such as child, early and forced marriage and female genital mutilations.
- **SDG target 5.c:** adopt and strengthen sound policies and enforceable legislation for the promotion of gender equality and the empowerment of all women and girls at all levels.

The reference in SDG target 5.c to gender equality in particular, provides a clear opportunity for work to progress both women's and girls' rights and PIDSOGIESC+ rights.

The SDGs also recognise that states must implement overarching human rights commitments, most notably in relation to gender equality and women's rights under the *Convention on the Elimination of Discrimination against Women (CEDAW)*. Notably, CEDAW has been ratified by every Commonwealth Pacific country, except Tonga,⁵² and provides the strongest global framework for action in this area. As described below, Pacific regional statements frequently reference the need to implement CEDAW. Pacific Island countries regularly produce CEDAW progress reports. A number of these country review processes have specifically called on individual Pacific governments to progress gender equality, women's rights and SOGIESC+ law reform, though national responses have varied.

At the global level, Pacific Island countries have also made commitments to protecting SOGIESC+ rights. Most notably, between 2006 and 2011, a series of joint statements on sexual orientation and gender identity were developed and endorsed by member states at the UN General Assembly and Human Rights Council. Specifically, the *Joint Statement on Ending Acts of Violence and Related Human Rights Violations Based on Sexual Orientation and Gender Identity* was produced calling on states to take action and for the Office of the High Commissioner for Human Rights (OHCHR) to address these issues. The statement specifically calls for law reform, stating that:

“States should respect international human rights standards, including by reviewing, repealing and establishing a moratorium on the application of: laws that criminalise same-sex conduct between consenting adults; laws that criminalise transgender people on the basis of their gender expression; other laws used to arrest, punish or discriminate against people on the basis of their sexual orientation, gender identity or gender expression.”

In the Commonwealth Pacific, Fiji, Nauru, Samoa, Tuvalu and Vanuatu all endorsed the Joint Statement.⁵³

Although not a binding declaration, the 2006 *Yogyakarta Principles on the application of international human rights law in relation to sexual orientation and gender identity*,⁵⁴ and the updated principles endorsed in 2017,⁵⁵ provide a universal guide to applying international human rights law to abuses experienced on the grounds of SOGIESC+. These principles have now become recognised as an authoritative statement on the human rights of PIDSOGIESC+ and are recognised by Pacific advocates as a critical framework for advocacy.

6.2 Key regional frameworks

As far back as 1994, delegates from all 22 member countries and territories of the Secretariat for the Pacific Community (SPC) endorsed a *Pacific Platform for Action on Gender Equality and Women's Rights (1994)*, which was taken to the fourth World Conference on Women in Beijing in 1995 to identify priorities for progressing women's rights. These two frameworks guided national and regional action to achieve gender equality and equal rights for women. The Pacific platform was reviewed at the 9th Triennial Conference of Pacific Women and replaced by the *Revised Pacific Platform for Action on the Advancement of Women and Gender Equality 2005–2015 (RPPA)*.⁵⁶ The RPPA specifically called on Pacific governments to take action and implement CEDAW, and to enact law reform to address discrimination and violence against women, but it made no mention of PIDSOGIESC+ issues.

The first major regional statement in support of PIDSOGIESC+ rights was published as part of the *conclusions of the Independent Commission on AIDS in the Pacific*.⁵⁷ The commission's report, released in 2009, included specific recommendations on law reform, calling on countries to “provide legislative protection and enforcement mechanisms for people living with HIV and their families; their protection from human rights abuses is a matter of priority” and to “undertake progressive legislative reform to repeal legislation that criminalises high-risk behaviour and promotes HIV-related discrimination.”⁵⁸

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In 2012, in anticipation of the conclusion of the RPPA, leaders of the Pacific Islands Forum agreed a new *Pacific Leaders Gender Equality Declaration (PLGED)*, which demonstrated the highest level of commitment to tackling gender inequality. Countries report back on progress annually, with a PLGED report submitted to the annual leaders meeting to track country progress.⁵⁹ The PLGED specifically committed countries to “incorporate articles from the *Convention for the Elimination of all forms of Discrimination against Women (CEDAW)* into legislative and statutory reforms and policy initiatives across government”, as well as including a specific requirement that countries “enact and implement legislation regarding sexual and gender-based violence to protect women from violence and impose appropriate penalties for perpetrators of violence”. The PLGED does not specifically reference PIDSOGIESC+ priorities, but feedback from PIDSOGIESC+ stakeholders suggests that activists are attempting to use the process of developing indicators and monitoring progress to integrate PIDSOGIESC+ priorities as well. Gender equality and women's rights CSOs often reference the commitments in the PLGED to support their own advocacy with governments in the region.

In 2013, two declarations on population and development were endorsed by Pacific MPs which strongly supported efforts to support sexual and reproductive health rights. The *Moana Declaration: Outcome Statement Of Pacific Parliamentarians For Population & Development*, recognised the “important function that parliaments perform in passing appropriate legislation, reviewing existing legislation and mobilising strong support for laws consistent with the [international conference on population and development] agenda” and committed MPs to “ensure access to sexual and reproductive health and rights (SRHR) for all our people, without discrimination.”⁶⁰ Subsequently, all Commonwealth Pacific ministers endorsed the *Asian and Pacific Ministerial Declaration on Population and Development*.⁶¹ Both of these declarations provide useful entry points for advocacy in support of reproductive health rights and anti-discrimination protections.

In 2015, the inaugural Human Rights Conference on Sexual Orientation and Gender Identity and Expression was organised in Tonga, with strong support from the Tongan government and royal family. The event was attended by 96 delegates, including 73 from PIDSOGIESC+ civil society organisations and independent advocates, representing 12 Pacific Islands. The second Pacific Human Rights Conference⁶² was held in Fiji in 2018 with a similar group of attendees.⁶³ Importantly the *outcomes document from the second Pacific Human Rights Conference⁶⁴ on Advancing Human Rights Related to Sexual Orientation, Gender Identity and Expressions and Sex Characteristics* specifically identified law reform as a key priority going forward.⁶⁵ The final statement included a specific recommendation calling for countries to “embed principles of equality across legislation, policies and processes and their enforcement measures across the region [...]”⁶⁶

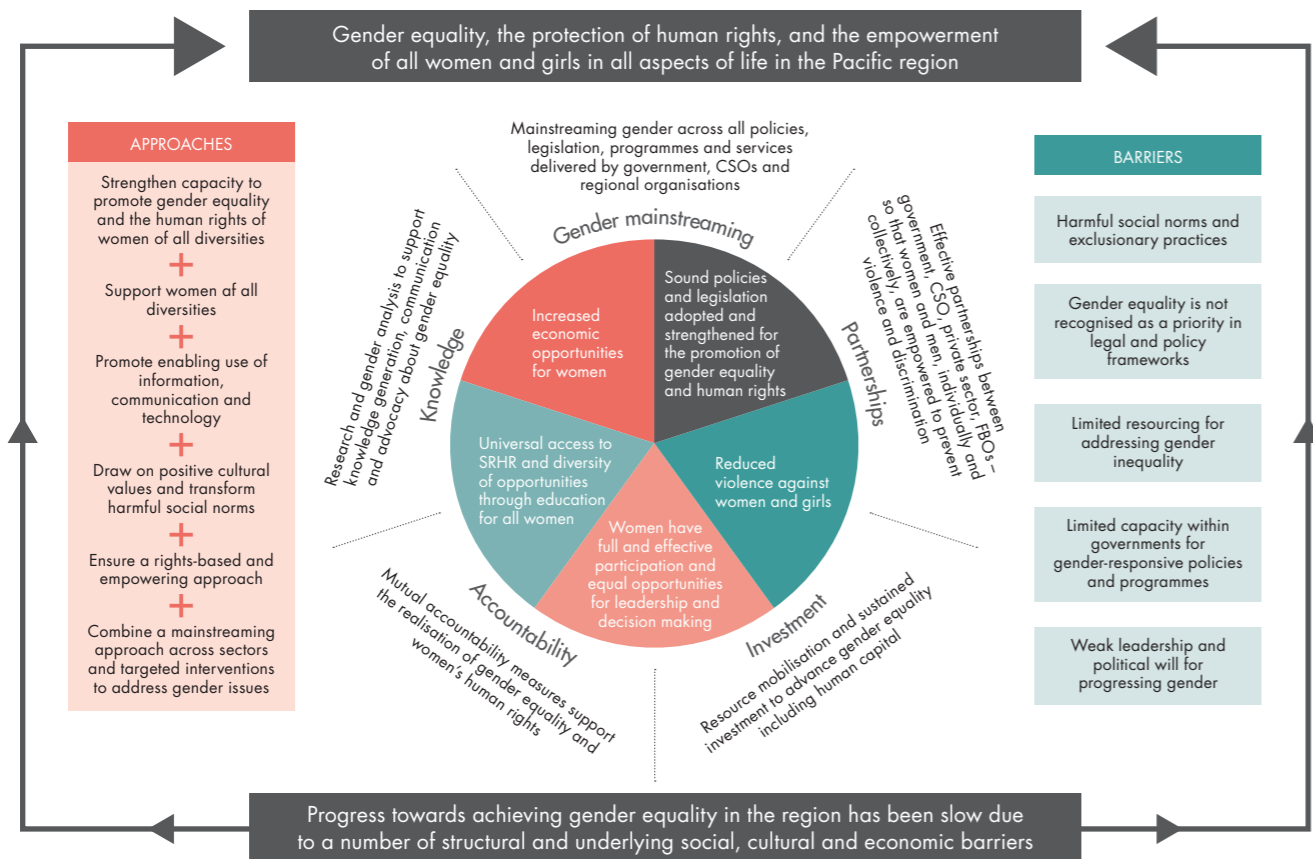
In 2017, the 13th Triennial Pacific Women’s Conference was used as an opportunity to review the RPPA, and to agree a new *Pacific Platform for Action on Gender Equality and Women’s Rights (2018-2030)* (PPA). The PPA has four pillars, one of which is specifically directed at ensuring that “policies and legislation for the promotion of gender equality and women’s human rights are adopted and strengthened”. Notably, the new PPA adopts an intersectional approach to reform by specifically recognising that it “provides a roadmap for achieving gender equality and enhancing the well-being of all women and girls of all diversities in all their diversity, inclusive of [...] women with diverse sexual orientations and gender identities”. SPC is mandated to support governments to implement the PPA and produces regular progress reports on activities undertaken across the region in support of the PPA. PPA implementation strategies are anticipated to be included in national gender

equality strategies (which are also usually developed with SPC technical support). Civil society was closely involved in developing the PPA and actively uses the PPA to engage with governments in support of gender equality and women’s rights efforts. SPC and civil society have also worked closely with national ministries for women to develop comprehensive national gender policies in all nine Commonwealth Pacific member states.⁶⁷ However, most of these national gender policies are cis- and heteronormative so there are few policy statements and actions on PIDSOGIESC+.

In May 2019, the 2nd Pacific Feminist Forum endorsed the *Pacific Feminist Charter Action Plan*,⁶⁸ which explicitly recognised the “centrality of intergenerational and intersectional approaches to feminism”. The action plan went on to specifically include a “joint call for LGBTQI+ human rights, including actions to decriminalise homosexuality in all Pacific small island states, a call for recognition of third gender identities, and for a full review of all legislation, policies and procedures toward compliance with universal human rights”. It also “reaffirm[ed] the commitment of Pacific small island states to the Pattaya Declaration on the decriminalisation of sex work.” The action plan also demanded “universal health services including sexual and reproductive health and rights, that is free from stigma, discrimination, coercion, violence, with full respect for bodily autonomy, privacy, confidentiality and full and informed consent.”

Through interviews with stakeholders, it is understood that work is currently underway within the Pacific Islands Forum Secretariat (PIFS) to develop and progress a **PIFS action plan** in relation to **promoting and protecting PIDSOGIESC+ rights**. PSGDN advised they have been working with key sectoral officers within PIFS to develop a paper on PIDSOGIESC+ issues with the proposed actions being considered by PIFS senior management to provide internal programming guidance.

Figure 1: How the PPA aligns with the Pacific leaders gender equality declaration (excerpt from the PPA)



7

Pacific gender equality, women's rights and PIDSOGIESC+ civil society

The Fiji Women's Crisis Centre and the Fiji Women's Rights Movement were both founded more than 30 years ago to advocate for the protection and promotion of women's rights. Ratification of CEDAW in the 1990s gave the women's movement a strong platform on which to grow their advocacy, with efforts to support CEDAW implementation backed by development partners across the region since the 2000s. In fact, the women's movement is arguably the strongest and largest civil society movement across the region,⁶⁹ not least because gender is recognised as an intersectional issue which cuts across other key Pacific priority areas, such as climate change, disaster risk response, reproductive health rights, youth empowerment and inclusive trade.

Although the Pacific has long had a vibrant and active PIDSOGIESC+ community across the region, advocacy and efforts to remove discrimination against PIDSOGIESC+ has only recently gained attention and momentum. The Pacific Sexual Diversity Network evolved into the Pacific Sexual and Gender Diversity Network (PSGDN) and now operates as the regional PIDSOGIESC+ body supporting the small but dedicated group of national NGOs promoting SOGIESC+ rights. There is also a number of NGOs and community organisations unaffiliated with PSGDN who work at a grassroots level with marginalised PIDSOGIESC+.

A handful of community organisations work intersectionally on gender and SOGIESC+ rights activities. DIVA for Equality is a rare intersectional feminist organisation which promotes the rights of lesbians, bisexual and transgender men and marginalised women more generally. The Survival Advocacy Network (SAN) Fiji brings together female, male and gender diverse sex workers to provide services to sex workers in Fiji and to advocate for legal and institutional reforms to protect sex workers' rights. The Pacific Feminist Forum (PFF) has also provided an opportunity for intersectional advocacy: the inaugural 2017 PFF was organised as a collaboration between Pacific women's rights NGOs, PIDSOGIESC+ NGOs and development partners and identified outcomes which embraced the diverse experiences of Pacific feminists, defined to include "women, girls, lesbians, bisexual, trans diverse people, gender non-conforming identities [...]".⁷⁰

7.1 Gender equality and women's rights civil society actors

There are numerous gender equality and women's rights NGOs across the region which have been active in working with governments, officials and communities to promote women's rights. This review summarises the key NGOs and/or institutional groups which have actively worked on law reform. It should be noted that the small size of many Pacific Island countries means they have similarly small civil society networks.

National Women's Crisis Centres

The Fiji Women's Crisis Centre (FWCC) was established more than 30 years ago and is famous in the region for its groundbreaking work providing crisis and support services to survivors in Fiji and for lobbying governments to take more systematic, institutional action to address violence against women. FWCC also supports the establishment of similar centres across the Pacific – namely the Tonga Women and Children Crisis Centre (TWCCC), Vanuatu Women's Centre (VWC) and crisis services in Kiribati. TWCCC and VWC are also recognised as leading women's NGOs in their home countries and use their experience to lobby for better laws to protect women and children.

Fiji Women's Rights Movement (FWRM)

FWRM was established by the board of FWCC over 30 years ago to focus on policy and law reform in support of EAW and women's rights. FWRM was successful in working with others to lobby for the introduction of the first comprehensive Family Law Act in the region and continues to support law reform efforts on other issues. FWRM also undertakes regional advocacy work to develop the capacities of other women's rights NGOs to undertake similar work.

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Pacific Women's Network Against Violence Against Women (PWNAVAW)

A biennial regional EAW meeting of PWNAVAW bringing together EAW champions from across the region to discuss good practice in law reform. The last meeting was in December 2017 and brought together representatives from 11 countries.⁷¹ The network provides a key platform for regional advocacy and experience sharing on EAW law reform.

National human rights and/or NGO coalitions

In a number of Pacific Island countries, NGOs have formed human rights coalitions to undertake collective advocacy. The most active is the NGO Coalition of Human Rights in Fiji which has strong leadership from both women's rights and democracy NGOs. There is also a human rights coalition in Vanuatu. Each Pacific country has a local NGO peak body which is mandated to support networks of local NGOs and link them to regional and global activities. These peak bodies have variable capacity. The Pacific peak body, PIANGO (the Pacific Islands Association of NGOs) has a coordinating role though its capacities have been variable over the last decade.

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7.2 SOGIESC+ rights civil society actors

The SOGIESC+ rights civil society space is less crowded than the gender equality and women's rights space, in part, because SOGIESC+ advocacy is a riskier area for activists to work in publicly. PIDSOGIESC+ still suffer considerable community stigma. While some urban centres offer safer spaces, village life can be hostile, not least because of the strong influence of the churches at local level.⁷² In some countries, such as PNG, the risk to life is serious, and across the region there is a high risk of targeted violence, verbal abuse and social ostracisation.⁷³ The institutions of the state, in particular the police, are often considered more of a risk than a safety net.

As described in Part 5, male homosexual sex is still a criminal act in six Commonwealth Pacific countries with both male and female homosexual sex a criminal act in Solomon Islands. This means advocacy work on these issues must be carefully managed. Nonetheless, in the last decade, a network of Pacific SOGIESC+ NGOs has been growing across the region, even in small jurisdictions where civil society itself is much smaller (e.g. Tuvalu and Nauru which have populations around 10,000 people or less). National SOGIESC+ rights NGOs have come together under the **umbrella of the Pacific Sexual and Gender Diversity Network**, to boost the impact of individual advocacy. According to PSGDN's strategic documents there was "hardly an LGBTIQ movement in the region [when] PSGDN was formed in 2007 to mobilise sexually and gender diverse communities in the Pacific and address the issues PIDSOGIESC+ people face". One of the key areas of work prioritised in the last two PSGDN strategic plans (2014-19 and 2019-24) is law reform,⁷⁴ including abolishing punitive laws, enacting anti-discrimination legislation and ensuring legal gender recognition.

In addition to PSGDN, there are **many more SOGIESC+ and/or feminist CSOs** that are active in advocacy and awareness raising across the region. Fiji has a large number of organisations that include a number of NGOs which work on SOGIESC+ issues as part of a broader agenda, such as the Pacific Rainbow Advocacy Network, Survival Advocacy Network, DIVA for Equality and Youth Champs 4 Mental Health who focus on mental health in relation to PIDSOGIESC+.

While Pacific SOGIESC+ civil society continues to grow in strength, **concerns have been raised by some activists and partners that the movement is not sufficiently inclusive** of different identity groups, specifically Indo-Fijians, lesbians and transgender men, though it is contested whether this represents a lack of inclusion or self-exclusion. This suggests development partners need to be proactive in reaching out to a suitably diverse range of NGOs when working in the region and do not only channel funding and technical support through a small group of organisations. Concerns have also been raised that regional efforts focus too heavily on participation in international and regional meetings and processes instead of grassroots activism, and that organisational and financial accountability among some NGOs needs to be strengthened to ensure more impactful activities and outcomes. In response, feedback from Pacific CSOs suggested that development partners could dedicate more funding to organisational and individual capacity development to enable activists, whose experience managing organisations may be limited, to effectively build, grow and work within CSOs structures.

8 Regional institutions and organisations

Despite the breadth and diversity of Pacific countries and cultures, the region is committed to working together to address common problems facing its people. Partly due to the size of many Pacific Island countries and their remoteness from global centres of activity, Pacific Island countries often work together to maximise economies of scale to analyse, design and deliver programming to address key priorities. This has been the case in the area of gender equality and is increasingly the case in relation to PIDSOGIESC+ rights. Experience across different advocacy sectors has shown that **efforts to promote regional consensus and commitment among regional leaders – whether within government or civil society – is often a first step towards implementation at the national level**, as Pacific Island countries themselves often appreciate the opportunity to share and learn from their Pacific counterparts as they develop and adapt solutions to their problems.

8.1 Key regional intergovernmental institutions

In recognition of the importance of regional cooperation, the Pacific long ago established a number of regional organisations to address different issues. Together these are referred to as the Council of Regional Organisations of the Pacific or CROP agencies. Of these CROP agencies, two have a particular mandate to support gender equality and PIDSOGIESC+ issues:

- The **Pacific Islands Forum Secretariat (PIFS)** is the Secretariat to Pacific Island leaders. PIFS organises an annual Pacific leaders meeting which convenes to discuss and agree action on key regional issues. PIFS also often acts as a co-convenor of regional meetings bringing together government officials and civil society. Within PIFS, there is both a Gender Equality and Social Inclusion (GESI) Officer and a Non-State Actors Officer who work to support GESI, SOGIESC+ rights and civil society activities and facilitate efforts to engage leaders on these issues. There is also a Legal Advisor and Legislative Drafting Officer who work directly with governments to support law reform in areas prioritised by Pacific leaders.

- The **Secretariat for the Pacific Community (SPC)** is the technical implementing arm of the CROP agencies. Within SPC, the Human Development Programme (HDP) includes a small gender team which supports gender mainstreaming and monitoring. The HDP also has a broader mandate to work with marginalised communities, including young people and PIDSOGIESC+ people. The HDP leads in convening the **Triennial Conference of Pacific Women** and the Pacific Ministers for Women meeting every three years to monitor progress on implementation of the Revised Pacific Platform of Action for the Advancement of Women and Gender Equality.
- The **Regional Rights and Resources Team (RRRT)** has sat within SPC since 2008 but began as a project of the British Council and then of the United Nations Development Programme (UNDP). RRRT's broad mandate is to promote human rights across the Pacific by working with governments and civil society. However, its founding members were leading gender activists in the Pacific and influenced RRRT's priorities which focus on promoting women's rights and gender equality through law reform and legal capacity development.

In 2009, RRRT produced a *Pacific Legislative Lobbying Toolkit*⁷⁵ to assist their civil society partners to advocate more effectively for law reform, especially laws detrimental to women. RRRT has also been implementing the **Changing Laws, Protecting Women** project,⁷⁶ which builds legislative lobbying teams to facilitate the introduction of comprehensive violence against women legislation and family law. The project prioritised Kiribati, Samoa, Solomon Islands, Tonga and Tuvalu. RRRT produced detailed country-focused legislative reviews in support of law reform, lobbied MPs and officials, and was ultimately successful in supporting the enactment of family protection legislation in all five countries.⁷⁷

RRRT is now implementing the **Addressing Pervasive Discrimination Faced by LGBTI Persons in the Pacific Project**, which aims to (i) increase public and key stakeholder awareness and understanding of stigma, discrimination and violence faced by PIDSOGIESC+ in the Pacific region; (ii) develop a rights-based law reform agenda to improve legal protections for the PIDSOGIESC+ community through research to improve understanding of the legal obstacles and gaps; and (iii) build the capacity of Pacific-based PIDSOGIESC+ CSOs to advocate for change and advance human rights. Through the project, **small grants for capacity development** have been given to three organisations – Te Tiare Association in Cook Islands, BIMBA in Kiribati and the Rainbow Pride Foundation in Fiji – to strengthen their capacity to advocate for changes in these countries. This work recognised that many SOGIESC+ organisations needed to build their capacity to be effective. RRRT also dedicated the March 2019 edition of the RRRT *Pacific Human Rights Law Digest* to focus on **SOGIESC+ case law** across the region.⁷⁸

- The **Pacific Islands Law Officer Network (PILON)** brings together attorneys general, solicitors general, directors of public prosecutions (DPPs) and senior law officers from around the Pacific. PILON has a small secretariat which organises the organisation's annual meetings and provides updates and advice to members. PILON has three strategic priorities for 2019-2021, tackling (i) cybercrime, (ii) corruption and (iii) sexual and gender-based violence. They do not currently have a focus on PIDSOGIESC+ law reform, but they work with RRRT on SGBV which could be an entry point for a broader discussion regarding intersectional law reform in support of gender equality, women's and PIDSOGIESC+ rights.

8.2 Key regional development partners

Capitalising on regional cooperation, **UN agencies and development partners in the region have developed and implemented regional programmes in support of gender equality, women's rights and SOGIESC+ rights**, except in relation to PNG, which has approximately 70% of the entire population of the Pacific.⁷⁹ Most development partners have a Pacific office and cover the region through sub-offices and out-posted officers, with many also having a separate PNG country office. Regional programming and meetings are often used as a platform from which to launch national follow-up with regional platforms seen as a direct way to facilitate south-south sharing across the region.

The most relevant development partners for intersectional law reform in relation to gender equality, women's and PIDSOGIESC+ rights are:

UN Women

UN Women Pacific is located in Suva and has sub-offices around the region, with a separate office in PNG. It has long supported law reform efforts in relation to non-discrimination and EAW across the Pacific. This work has been primarily supported through the Pacific regional EAW trust fund which provides grants to national NGOs to work on EAW issues, including law reform.⁸⁰ UN Women regularly hosts Pacific regional meetings of women's NGOs and government partners, usually on specific issues. UN Women Pacific is a strong advocate with national governments on critical law reform issues.

UNAIDS

UNAIDS has a Pacific office located in Suva and a separate office in PNG. It has a clear SOGIESC+ mandate to support the removal of discriminatory laws which impede efforts to address HIV/AIDS. This includes removing laws which criminalise homosexual sex.

United Nations Development Programme (UNDP)

Since the early 2000s, UNDP has supported parliamentary strengthening activities across the region, through both national and regional projects and activities. UNDP organises capacity-building seminars for MPs, often in collaboration with subject matter experts and supports post-election inductions for MPs to build awareness around subject-specific law reform issues (e.g. gender equality, climate change, HIV, human rights). UNDP is the only partner based in the region that supports parliamentary strengthening, though the Commonwealth Parliamentary Association (through its Australian, NZ and headquarter branches) and Inter-Parliamentary Union also intermittently engage with Pacific parliaments.

UNDP also works closely with UNAIDS and other partners. The multi-country Western Pacific integrated HIV/TB programme supported by the Global Fund aims to strengthen control of HIV and tuberculosis (TB) in 11 Pacific island countries: Cook Islands, Federated States of Micronesia (FSM), Kiribati, Nauru, Niue, Palau, Republic of Marshall Islands (RMI), Samoa, Tonga, Tuvalu and Vanuatu. The programme works with key populations (female sex workers, men who have sex with men (MSM), transgender people) who have limited access to prevention and testing services due to stigma, discrimination and other social barriers. The programme works closely with PSGDN on institutional strengthening and Global Equality Project activities.

UNDP also supports law reform and has organised a national consultation on SOGIESC+ issues with the Asia Pacific Forum (APF) and Fijian partners in 2018, as well as commissioning law reform research in Tonga. This work is being implemented as part of the Being LGBTI in Asia and the Pacific project – a partnership between UN organisations, donors and civil society.⁸¹ UNDP and UNAIDS also have strong partnerships with national Pacific ministries of health, who work to decriminalise homosexuality and promote safe homosexual sex through access to health services for marginalised groups.

United Nations Population Fund (UNFPA)

UNFPA supports parliamentary activities for population and development (P&D) issues. From the 2013 P&D conferences it produced the *Moana Declaration* and the *Asia and Pacific Ministerial Declaration on Population and Development*, both of which are entry points for work with MPs and government officials. They also continue to work with Pacific parliaments (including in collaboration with UNDP) supporting MPs to progress law reform and oversight on P&D issues.

Office for the High Commission on Human Rights (OHCHR)

OHCHR Pacific is located in Suva and works from this hub to support the region. OHCHR supports countries in relation to their treaty reporting, though UN Women tends to lead on treaty reporting around CEDAW. OHCHR Pacific launched the Free and Equal campaign in the Pacific in August 2015, at an event which brought together more than 120 people from across regional governments, civil society, UN agencies, religious communities, national human rights institutions and others calling for greater respect for PIDSOGIESC+ in the Pacific.⁸² It is not clear if the campaign is ongoing.

Pacific Women Shaping Pacific Development

Pacific Women is a major 10 year DFAT-funded programme which funds gender equality and women's rights activities across the region. It focuses on three sectoral areas: EAW, women's economic empowerment and women's political empowerment and leadership, with an overarching aim of supporting the development of women's NGOs and coalitions. Pacific Women funds numerous NGO activities supporting law reform and commissioned a review of legislative barriers to gender equality in Pacific Island countries in 2017 (unpublished) to help inform this work.

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US State Department

The US is not a big donor in the region but one of its Pacific priorities is human rights specifically focusing on PIDSOGIESC+ rights.⁸³ Notably, the State Department is funding RRRT's Addressing Pervasive Discrimination Faced by LGBTI Persons in the Pacific project (2017-19).

RELEVANT REGIONAL NGOS

Asia Pacific Forum (APF)

APF is implementing programming to support women's and SOGIESC+ rights, with a focus primarily on countries which have national human rights institutions, namely Fiji, Samoa and Tuvalu. APF's work on women's rights culminated in the *Apia Statement: National Human Rights Institutions on the Rights of Women and Girls in the Pacific Region*,⁸⁴ which captured the outcomes from the APF Pacific Roundtable for National Human Rights Institutions on the Rights of Women and Girls which took place in September 2018.⁸⁵ The statement identified key priorities, including "constitutional and legislative/policy frameworks promoting and protecting gender equality and the rights of women and girls, and implementation by government". In terms of SOGIESC+ rights, APF worked with the Fijian and Samoan human rights commissions in 2018 to progress reforms,⁸⁶ building on a 2017 APF-UNDP training programme on human rights and sexual orientation, gender identity and sex characteristics.⁸⁷

Asia Pacific Transgender Network (APTN)

APTN was launched in 2009 when a group of transgender women from various Asian and Pacific countries came together to champion the health, legal and social rights of transgender women. In 2011, a transgendered man also joined the APTN board. APTN has commissioned research looking at transgender legislation, policies and case law in Fiji, PNG and Samoa to provide a basis for future advocacy work.

Parliamentarians for Global Action (PGA)

PGA is a global organisation of MPs which has initiated a specific project in the Pacific and Caribbean Commonwealth sub-regions to create an environment for legislative reforms. In the Pacific region this includes Samoa, Tonga and Tuvalu. The project focuses on "repealing laws criminalising consensual same-sex conduct and to encourage legislation and policies that are inclusive towards LGBTI people in the target countries". PGA supports increased engagement and dialogue between MPs, SOGIESC+ activists and SOGI champions (i.e. MPs from other countries who promote the protection of SOEGISC+ rights).

9 Potential entry points for engagement

This final section seeks to identify strategies and opportunities for engagement by stakeholders and partners. It reflects discussions with a range of Pacific stakeholders, as well as an analysis of the existing legislative landscape, statements by Pacific leaders and MPs regarding law reform and guidance from Pacific civil society interviewees.

9.1 Law reform issues

As described in Parts 6-8, human rights based law reform has been a specific focus of civil society across the Pacific region for almost two decades, most notably, through the efforts of the Regional Rights and Resources Team (RRRT) in partnership with national NGOs, key UN agencies and development partners. APF's support of national human rights institutions (NHRIs) in the region has also contributed to an increasing acceptance of human rights as a foundation for law reform and development programming. It is a lesson learned that **previous Pacific law reform work took many years to come to fruition**, with lobbying efforts started in the 2000s only seeing results a decade or more later. These **successes were the result of a mix of advocacy at multiple levels (nationally, regionally and internationally), culturally-contextualised lobbying, the provision of timely technical advice and sheer diligence by local NGOs** that worked tirelessly over many years.

Work to support intersectional law reform should build on lessons learned. As discussed in Part 3, it is important this work is done in close partnership with local NGOs and stakeholders, particularly in light of the sensitivity that some of these issues will touch on.

Reflecting the successes already achieved, analysis suggests that law reform efforts could most usefully offer support to:

- **Enacting comprehensive anti-discrimination legislation:** Only Fiji has enacted anti-discrimination legislation, but this could be a more generic entry point for discussions on gender equality, women's rights and SOGIESC+ rights, including the sensitive topics of

homosexuality, transgender and third gender rights. It is also an entry point for discussions around sexual harassment and maternity/paternity rights. To date, activists in the region have tended to take on smaller chunks of specific law reform work rather than advocate for a more wholesale anti-discrimination approach (though constitutional reform processes have often been leveraged to have such discussions), but there is increasing interest in working in this space.

- **Decriminalisation of homosexual acts:** As detailed in Annex 1, six Commonwealth Pacific countries still criminalise homosexual acts which severely impacts on the human rights of PIDSOGIESC+ communities. This is one of the most critical legal issues facing PIDSOGIESC+ in the region but needs to be handled sensitively to ensure that awareness-raising and advocacy efforts do no harm.
- **Modernising rape laws:** There has been considerable progress in strengthening rape laws in the region over the last decade but some jurisdictions lag behind. In Kiribati, Samoa, Tonga and Tuvalu, rape laws still only cover female rape, while Kiribati and Tuvalu also do not appear to criminalise marital rape. In Fiji and Vanuatu the legislation is unclear though case law suggests marital rape is a criminal offence.
- **Enacting specific gender recognition legislation:** Nowhere in the region has yet addressed legal gender recognition, despite the large and visible transgender population in many countries across the region. Some leaders have criticised this as a foreign agenda, however a third gender has long been culturally recognised. The lack of a legal framework is due to the imposition of colonial legislation and modern religious ideas rather than tradition or culture. International stakeholders could engage in this area as it is such an evolving area of lawmaking that the Pacific could benefit from access to global good practice and lessons learned.

- **Decriminalise sex work:** The 2016 Pacific Feminist Charter stated that “we commit to decriminalisation of sex work in all countries of the Pacific”, clarifying that “the call for decriminalisation of sex work is based on evidence that criminalisation makes sex workers less safe by preventing them from securing police protection and by providing impunity to abusers. Decriminalisation does not mean the removal of laws that criminalise exploitation, human trafficking or violence against sex workers. These laws remain. It does mean the removal of laws and policies criminalising or penalising sex work”.⁸⁸ Subsequently, during a consultation on SOGIESC+ issues in Fiji in July 2018, organised by the Fiji Human Rights and Anti-Discrimination Commission, UNDP and APF, the rights of sex workers was a focus of discussions with law reform prioritised.⁸⁹
- **Decriminalise abortion:** The 2016 Pacific Feminist Charter stated that we commit to decriminalisation of abortion in all countries of the Pacific”, clarifying that “decriminalising abortion means the removal of laws and policies that criminalise women who have an abortion, or those who assist women who have an abortion. Laws that put women in jail for having an abortion are unjust, separate women from their families and lead to unsafe abortions that endanger women’s lives”.⁹⁰ A pro-choice approach to abortion is also included in various population and development frameworks endorsed in the Asia-Pacific region and globally, but abortion has not been referenced in any Pacific-specific intergovernmental frameworks on women’s rights. While there have been some indications in Fiji that abortion is a priority advocacy issue, across the rest of the region the heavy influence of the churches has made this a difficult issue around which to advocate. In Tonga for example, abortion was one of the key sticking points for ratification of CEDAW.⁹¹

9.2 Regional entry points and opportunities

SDG 17 recognises that a successful sustainable development agenda requires partnerships between governments, the private sector and civil society. The Pacific has long recognised the **value of regional coalition building and advocacy**, particularly among civil society organisations who often have limited human and financial resources, especially in small island states. **Regional programming provides flexibility to scale national work up or down**, depending on the national context. Pacific politics can be fluid, with changes in government through votes of no confidence not an uncommon occurrence and/or cabinet reshuffles to accommodate shifting political allegiances. Even the threat of such actions make advocacy around law reform much more difficult. Providing technical assistance from a regional platform enables partners to respond quickly where circumstances change for the better, to move their resource to more conducive jurisdictions when the political support for reform wanes.

As noted earlier, PIFS, SPC and RRRT have been providing support to Pacific governments and civil society from their regional platforms for some time. UN agencies and other development partners tend to support regional programming as a first step towards building national partnerships which can be used to design and implement more tailored national activities. APF has also engaged NHRIs as institutional entry points for human rights focused legal and institutional reforms.

Regional meetings are an excellent method for convening MPs, government officials and/or civil society, as **regional meetings can be used to more efficiently: (i) build capacity and share global and regional good practice and lessons learned; (ii) facilitate Pacific-based south-south peer exchanges; (iii) develop Pacific advocacy coalitions; and (iv) identify national champions and entry points for further work.** Notably in this regard, RRRT, PIFS, SPC and UNDP all have strong networks with MPs and government officials (including attorneys general

offices, ministries of justice, ministries of women and ministries of health). These existing partnerships could also be used for the benefit of additional law reform work.

Pacific human rights work has tended to **use regional programming to seed sensitive or complex ideas before growing these ideas at national level** when the ground conditions are right. Regional discussions can also protect national stakeholders around sensitive issues. Operationally, regional approaches are often better able to leverage regional intergovernmental mechanisms, donor programmes and funding. Regional coalition building can be particularly beneficial, especially in relation to PIDSOGIESC+ rights considering that six Commonwealth Pacific countries still criminalise homosexual acts. Regional coalitions also recognise that in many small island Pacific countries, civil society is small and/or weak. In such countries, NGOs often appreciate the good practice and lessons learned of their allies in other Pacific countries.

There are a number of regular regional meetings that can be useful forums for progressing law reform advocacy with key partners. Specifically:

- The annual **Pacific Leaders Meeting** brings together leaders to discuss regional issues and has often been used as an opportunity to focus leaders’ attention on human rights issues. Although discussions are restricted to government officials, the meetings can still be used as an advocacy opportunity - NGOs have worked with PIFS to lobby for the inclusion of their issues on the leaders’ agenda. The Pacific NSA programme usually organises the Pacific CSOs dialogue in advance of the PIFS leaders meeting and/or Pacific Finance and Economic Ministers meeting (FEMM). During this Pacific CSOs dialogue, issues needing regional intervention are discussed, negotiated and prioritised and a small group of CSO representatives are selected to attend the FEMM in May and the PIFS leaders meeting in August/September to make a case on behalf of Pacific CSOs.

- The **Pacific Islands Law Officers Network annual meeting** (PILON) brings together law officials from across the region. PILON has three main areas of work, one of which is tackling SGBV that could be used as an entry point to discuss gender equality, women’s and SOGIESC+ rights.
- RRRT organises an annual **RRRT regional human rights meeting** for MPs which brings together supportive MPs from parliaments across the region for capacity development on key human rights issues.
- The **biennial meeting of the Pacific Women’s Network Against Violence Against Women** is held every two years. The meeting brings together EAW activists to share good practice and lessons learned and identify opportunities for collaboration.
- The **Pacific Islands Regional Multi-Country Coordinating Mechanism (PIRMCCM) annual meeting** is organised to discuss Pacific priorities for the Global Fund for HIV and AIDS, tuberculosis and malaria and brings together government officials, CSOs and development partners. In particular, this meeting provides an opportunity for SOGIESC+ rights CSOs to lobby for support in law reform by leveraging the existing support of the Global Fund for these reforms.
- The **Pacific Feminist Forum** is becoming a regular forum for feminist activists and is noteworthy for its intersectional approach in bringing together women’s rights and SOGIESC+ rights activists.
- The **Pacific Human Rights Conference** (PHRC) was initiated by PSGDN and its partners and is used as an opportunity to discuss SOGIESC+ human rights with a diverse range of stakeholders from the Pacific SOGIESC+ community, allies and partners.

- The **14th Pacific Triennial for Women and 7th Women's Ministers meeting** is scheduled for 2020. The last outcomes statement was strongly intersectional, recognising the needs of "women and girls of all diversities". Given the intersectional approach at the last meeting, the triennial could provide a good opportunity for collective advocacy and lobbying on gender equality, women's and PIDSOGIESC+ rights.

9.3 National entry points and opportunities

In terms of national entry points for law reform, the analysis of the current state of the key Pacific laws provided in this report, indicates that considerable progress has been made in progressing SGBV-related law reform across the whole region but law reform is still needed to ensure equal protection around gender equality, women's rights and SOGIESC+ rights. However, a demonstrated need for law reform does not mean there is political appetite to progress such reforms at this time. Every jurisdiction is different, with different community and political standards guiding national law reform priorities.

Reflecting on the initial legal analysis and stakeholder feedback about national priorities, the following summary identifies the most promising issues and jurisdictions which could be supported to undertake intersectional gender equality, women's rights and SOGIESC+ rights law reform.

- **Fiji** is well-served by its legislative framework because the 2013 constitution already has a strong non-discrimination provision which includes sex, sexual orientation and gender identity and expression as prohibited grounds of discrimination. Fiji also has a strong family law and domestic violence framework. In the context of its strong commitment to human rights based laws, Fiji could be a conducive Pacific jurisdiction in which to advocate for comprehensive gender recognition law reforms and could serve as a Pacific model for other countries in this area. Fiji has a number of SOGIESC+ rights NGOs that have an interest in working in this space, and a strong and supportive women's rights movement. The former President of Fiji and current Speaker Ratu Epeli Nailatikau is a recognised SOGIESC+ champion, while the Fiji Attorney General Aiyaz Sayed-Khaiyum has spoken in support of human, women and SOGIESC+ rights.⁹²

- **Kiribati, Tonga and Vanuatu** have already been identified as priority countries for the RRRT-PSGDN Addressing Pervasive Discrimination Faced by LGBTI Persons in the Pacific project, and RRRT has already completed detailed legislative reviews of PIDSOGIESC+ issues in each country. Tonga has also been identified by Parliamentarians for Global Action for support through their new MPs and law reform project. These three countries all have SOGIESC+ rights NGOs who have indicated an interest in pursuing law reform, and have active women's movements and strong ministries/ departments for women which have prioritised law reform. Kiribati has also been trying to enact amendments to its criminal code in relation to marital rape, which could be supported with advocacy to MPs and community groups.

- **Samoa** already has a strong family protection legal framework but discriminatory laws in respect of PIDSOGIESC+ people remain.⁹³ In 2010, the Samoa Law Reform Commission recommended the abolition of sodomy laws but was criticised by church leaders. The Samoan government subsequently did not include those reforms in the revised Crimes Act 2013.⁹⁴ In response to recommendations following Samoa's 2011 Universal Periodic Review (UPR), the government rejected calls to decriminalise homosexuality stating that decriminalising sodomy was "not possible at this time because of cultural sensitivities and Christian beliefs of the Samoan society."⁹⁵ Samoa underwent the UPR process again in 2016 and a number of recommendations were made regarding both women's rights and SOGIESC+ rights.⁹⁶ During consultations for this report, the Samoa Fa'afafine Association (SFA) advised that its three priorities for technical law reform advice would be on: (i) legal gender recognition; (ii) comprehensive anti-discrimination legislation; and (iii) legally accepted and appropriate health care treatments.

- **Tuvalu and Solomon Islands** had elections in early 2019 and Nauru is set to hold elections in November 2019. Once governments are in place, all three countries may be good places to work with UNDP and other stakeholders to offer briefings to new MPs (whether stand-alone or as part of a bigger induction programme) on intersectional law reform, gender equality, women's rights and SOGIESC+ rights reform priorities. Notably, all three countries introduced comprehensive family protection laws in the last few years, and Nauru also decriminalised homosexuality and reformed its rape laws. Solomon Islands also reformed its rape laws, but both Solomon Islands and Tuvalu could benefit from work on PIDSOGIESC+ law reform.

- **Papua New Guinea** already has strong domestic violence and rape provisions though enforcement is lacking. Women's NGOs in PNG are active but have struggled to come together as a united movement. In recent years, their focus for law reform has been on promoting temporary special measures in politics (an issue not covered here), as well as supporting implementation of existing SGBV laws and programmes, and promoting women's economic empowerment. In 2016 the government stated an intention to amend the Marriage Act 1963 to set a new equal minimum age for marriage for both males and females⁹⁷ but these reforms appear to have lapsed. In the SOGIESC+ rights space, decriminalising homosexual sex remains a key priority but this work is sensitive and risky for activists because of the potential for violence towards PIDSOGIESC+ people. UNAIDS PNG is already working in this area with national partners. APTN has also identified PNG as a partner country for its current project on legal gender recognition in the Pacific.

ANNEX 1 Legislative review of key gender equality, women's rights and PIDSOGIESC+ rights

COOK ISLANDS

ABORTION

Protections: WEAK

Abortion is permitted where the women's life or physical or mental health is threatened, or in cases of rape or incest. It is not permitted on request, on economic or social grounds or foetal impairment.

AGE OF MARRIAGE⁹⁸

Protections: NO

Minimum age for marriage is 16 under the Marriage Act (1973).⁹⁹ However, minors (which in the Cook Islands has been applied to include all persons between 16 and 21) cannot marry in the Cook Islands without the consent of both parents.¹⁰⁰

AGE OF SEXUAL CONSENT

Protections: FEMALE ONLY

Age of consent clauses only focus on females. Section 146 imposes penalties for sex or indecent acts with a female under 12 years and section 147 imposes penalties for sex or indecent acts with a female between 12 and 16 years, though it is a defence if the person committing the act was younger than the female or if the female consents, the man was under 21 years and he believes the female was over 16.¹⁰¹ No provisions for the age of sexual consent among same-sex couples, as same-sex sexual acts are illegal.

ANTI-DISCRIMINATION PROTECTION

Protections: NO

The non-discrimination clause in the constitution does not include sexual orientation as a prohibited ground. Article 64(1) of the constitution protects only against "[...] discrimination by reason of race, national origin, colour, religion, opinion, belief, or sex [...]".¹⁰²

DOMESTIC VIOLENCE

Protections: YES

Domestic violence is criminalised through the Family Protection and Support Act (2017).¹⁰³

EMPLOYMENT

Protections: NO

Section 53 of the Employment Relations Act (2012) requires that: "(1) An employer, or representative of an employer, must not take adverse action against an employee or a prospective employee directly or indirectly because of a prohibited ground of discrimination mentioned in section 55". Prohibited grounds are defined in section 55(e) to include "gender or sexual preference". However, an exception allows discrimination for religious bodies in relation to religious beliefs.¹⁰⁴

GENDER IDENTITY AND EXPRESSION

Protections: NO

The Marriage Amendment Act (2007) was enacted in order to explicitly state that, for the purposes of marriage, "a person who has been born as a male or as a female as the case may be, shall be deemed for the purposes of this Act always to be of that gender, notwithstanding that he or she may have undergone surgical or other medical treatment to give that person the physical characteristics of the opposite gender."¹⁰⁵ There is no specific legislation explicitly providing rights and protections in relation to gender identity issues.

RAPE, INCLUDING MARITAL RAPE

Protections: RAPE: WEAK, MARITAL RAPE: NO

Section 141 of the Crimes Act (1969) defines rape narrowly as applying only to the act of a male having sexual intercourse with a woman or girl without her consent. Section 141(3) explicitly states that: "Notwithstanding anything in subsection (1) of this section, no man shall be convicted of rape in respect of his intercourse with his wife, unless at the time of the intercourse there was a decree nisi or a judicial separation order in force".¹⁰⁶ In 2016, amendments were proposed to the Crimes Act to criminalise marital rape but elections overtook the passage of the Bill, which has not yet been revived in parliament.¹⁰⁷

SAME-SEX SEXUAL ACTIVITY

Protections: MALE: NO, FEMALE: YES

Crimes Act (1969)¹⁰⁸

- Section 154: "(1) Everyone is liable to imprisonment for a term not exceeding five years who, being a male, – (a) indecently assaults any other male; or (b) does any indecent act with or upon any other male; or (c) induces or permits any other male to do any indecent act with or upon him. (2) No boy under the age of fifteen years shall be charged with committing or being a party to an offence against paragraph (b) or paragraph (c) of subsection (1) of this section, unless the other male was under the age of twenty-one years. (3) It is not a defence to a charge under this section that the other party consented."
- Section 155: "(1) Everyone who commits sodomy is liable – (a) where the act of sodomy is committed on a female, to imprisonment for a term not exceeding fourteen years; (b) where the act of sodomy is committed on a male, and at the time of the act that male is under the age of fifteen years and the offender is over the age of twenty-one years, to imprisonment for a term not exceeding fourteen years; (c) in any other case, to imprisonment for a term not exceeding seven years. (2) This offence is complete upon penetration. (3) Where sodomy is committed on any person under the age of fifteen years he shall not be charged with being a party to that offence, but he may be charged with being a party to an offence against section 154 of this Act in any case to which that section is applicable. (4) It is no defence to a charge under this section that the other party consented."

The draft Crimes Bill (2017), announced in August 2017, included provisions to decriminalise same-sex sexual activity between men. Public submissions to the parliamentary committee examining the Bill began on 9 August 2017 but due to the June 2018 general elections, public consultations were put on hold and do not appear to have re-started.¹⁰⁹

SEX WORK

Protections: WEAK

The Crimes Act (1969) provides offences for: brothel keeping (defined to include any place used for the purposes of prostitution, whether by one woman or more) (section 160); living on earnings of prostitution (section 161); procuring (section 162); and soliciting (i.e. being a common prostitute who loiters and importunes persons in any public place for the purpose of prostitution) (section 163).

OTHER

Protections: YES

Section 10 of the Cook Islands Disability Act (2008) prohibits discrimination against disabled people, with subsection (g) clarifying the ground of discrimination to include "the personal status of the person with a disability, which shall include the age, marital or relationship status, gender, or sexual orientation of the person with a disability".¹¹⁰

ANNEX 1 Legislative review of key gender equality, women's rights and PIDSOGIESC+ rights

FIJI

ABORTION

Protections: MODERATE

Abortion is permitted where the women's life or physical or mental health is threatened, or in cases of rape, incest or foetal impairment. It is not permitted on request or on economic or social grounds.

AGE OF MARRIAGE

Protections: YES

Following an amendment by the Marriage Act (Amendment) Decree (2009), under section 12 of the Marriage Act 1963, "Any person may contract a valid marriage under the provisions of this Act, if such person is of the age of eighteen years or upwards."¹¹¹

AGE OF SEXUAL CONSENT

Protections: WEAK

Section 207 of the Crimes Decree (2009) is gender-neutral and states that a child under the age of 13 cannot give consent. Section 212 deals with indecent assault and states that a child under 16 cannot give consent to indecent assault but allows a defence where the two people are of similar age. Section 214 states that carnal knowledge of a child under 13 attracts life imprisonment and section 215 states that carnal knowledge of a child between 13-16 years old attracts a penalty of 10 years.¹¹²

ANTI-DISCRIMINATION PROTECTION

Protections: YES

Article 26(3) of the Fiji constitution states that: "A person must not be unfairly discriminated against, directly or indirectly on the grounds of his or her (a) actual or supposed personal characteristics or circumstances, including race, culture, ethnic or social origin, colour, place of origin, sex, gender, sexual orientation, gender identity and expression, birth, primary language, economic or social or health status, disability, age, religion, conscience, marital status or pregnancy."¹¹³

However, in April 2017 the Ministry of Health advised that gay and bisexual men (no reference to women) were banned from donating blood because they were considered a high risk category.¹¹⁴ The Fiji Human Rights and Anti-Discrimination Commission pledged to investigate but the current status of blood donors is unclear.¹¹⁵

DOMESTIC VIOLENCE

Protections: YES

Domestic violence is criminalised through multiple laws, including the Marriage Law Act (2003) and the Domestic Violence Decree (2009) and the Crimes Decree (2009).

EMPLOYMENT

Protections: YES

Section 6(2) of the Employment Relations Promulgation (2007) provides: "No person shall discriminate against any worker or prospective worker on the grounds of [...], sexual orientation, [...], marital status, [...], state of health including real or perceived HIV status, [...] in respect of recruitment, training, promotion, terms and conditions of employment, termination of employment or other matters arising out of the employment relationship." The promulgation entered into force on 1 October 2007.¹¹⁶

GENDER IDENTITY AND EXPRESSION

Protections: NO

There is no specific legislation explicitly providing rights and protections in relation to gender identity issues.

RAPE, INCLUDING MARITAL RAPE

Protections: RAPE: STRONG, MARITAL RAPE: YES

The Crimes Decree (2009) replaced the earlier definition of rape as the 'forced penile penetration of the female organ' with a gender-neutral definition of rape as non-consensual sexual penetration, broadly defined, as penetration of genitalia, anus or mouth by means of a finger or other object. Cases that were tried as indecent assault would now be tried as rape, drawing the stiffer penalty of 25 years to life.¹¹⁷ Marital rape is not acknowledged explicitly in the Crimes Decree but has been recognised in case law.¹¹⁸

SAME-SEX SEXUAL ACTIVITY

Protections: YES

Decriminalised by the courts in 2004 and by amendment of the Crimes Act through the Crimes Decree (2010).¹¹⁹

SEX WORK

Protections: WEAK

The Crimes Decree (2009) provides offences for procuring any person to become a common prostitute (section 217); knowingly living on the earnings of prostitution (section 230); soliciting (section 231); seeking or using the services of a prostitute in a public place (section 231); and brothel keeping (section 233). Sex work in private is not specifically criminalised.

OTHER

Protections: YES

The Mental Health Decree (2010) stated that people are not to be considered mentally ill if they refuse or fail to express a particular sexual orientation and prohibited any conversion therapy in the field of mental health.¹²⁰

ANNEX 1 Legislative review of key gender equality, women's rights and PIDSOGIESC+ rights

KIRIBATI ¹²¹

ABORTION Protections: VERY WEAK

Abortion is only permitted where the women's life is threatened. It is not permitted where the women's physical or mental health is threatened, in cases of rape, incest or foetal impairment, on economic or social grounds or on request.

AGE OF MARRIAGE Protections: YES

21 for females and males. 18 with parental consent or with a licence to marry provided by a minister.

AGE OF SEXUAL CONSENT Protections: WEAK

Under the Penal Code, it is a felony to have intercourse with a female under 13 years whether or not she consented and attracts a life sentence (section 134). Intercourse with a female who is between 13 and 15 years of age is a misdemeanour, and liable to five years imprisonment (section 135).¹²² There are no provisions for the age of sexual consent among same-sex couples as same-sex sexual acts are illegal.

ANTI-DISCRIMINATION PROTECTION Protections: NO

The non-discrimination clause in the constitution does not include sexual orientation as a prohibited ground.¹²³ The constitution also allows restrictions on the protected rights and freedom if public interest, public morality and competing rights between persons require such restriction, which could be used to undermine protections for PIDSOGIESC+ rights.¹²⁴

DOMESTIC VIOLENCE Protections: YES

Domestic violence is criminalised through the Family Peace Act for Domestic Violence (2014) (also known by its i-Kiribati name, the Te Rau N Te Mwenga Act (2014)).

EMPLOYMENT Protections: YES

Section 107 of the Employment and Industrial Relations Code states that: "(1) An employer shall not discriminate, directly or indirectly, against any employee or prospective employee in respect of recruitment, training, promotion, terms and conditions of employment, termination of employment, or other matters arising out of the employment relationship, for a prohibited reason or for reasons including a prohibited reason. (2) For the purpose of subsection (1), a prohibited reason shall be a reason that is affected by any of the following attributes of the employee or prospective employee, whether actual or perceived: [...] (b) sex, pregnancy, marital status, sexual orientation or family responsibilities; [...]"¹²⁵

GENDER IDENTITY AND EXPRESSION Protections: NO

Kiribati is home to a traditional transgender population. *Binabinaaine* refers to people who were assigned male at birth but act, dress and behave as female, while *binabinamane* refers to a person assigned female at birth but who behaves as male.¹²⁶ These gender roles have traditionally been accepted by Kiribati society and are not perceived as immoral but as belonging to a third gender alongside male and female.¹²⁷ However, there is no specific legislation explicitly providing rights and protections in relation to gender identity issues.

RAPE, INCLUDING MARITAL RAPE Protections: RAPE: WEAK, MARITAL RAPE: NO (UNDER REVIEW)

Section 128 of the Penal Code currently only defines rape to apply to females in limited circumstances.¹²⁸ It was reported in late 2017 that "the Penal Code Amendment Bill 2017 passed the first reading in parliament in August 2017. This Bill aims to modernise the provisions of rape and indecent assaults by expanding and clarifying definitions of penetration and other related provisions. This Act was developed based on best practice legislations comparable in the Pacific jurisdiction taking into account evolving legal jurisprudence. Initially, a provision on marital rape was included but eventually withdrawn for further consultation with the church and communities".¹²⁹ No update regarding the passage of the Bill has yet been located.

SAME-SEX SEXUAL ACTIVITY Protections: MALE: NO, FEMALE: YES

Penal Code [Cap 67] Revised Edition (1977)¹³⁰

- Section 153: "Any person who (a) commits buggery with another person or with an animal; or (b) permits a male person to commit buggery with him or her, shall be guilty of a felony, and shall be liable to imprisonment for 14 years."
- Section 154: "Any person who attempts to commit any of the offences it specified in the last preceding section, or who is guilty of any assault with intent to commit the same, or any indecent assault upon any male person shall be guilty of a felony, and shall be liable to imprisonment for seven years."
- Section 155: "Any male person who, whether in public or private, commits any act of gross indecency with another male person, or procures another male person to commit any act of gross indecency with him, or attempts to procure the commission of any such act by any male person with himself or with another male person, whether in public or private, shall be guilty of a felony, and shall be liable to imprisonment for five years."

SEX WORK Protections: WEAK

The Penal Code provides offences for procuring (section 136); being a male person living on the earnings of prostitution (section 145); being a woman controlling the prostitution of another woman (section 146); having suspicious premises where there is reason to suspect that any house is used for purposes of prostitution (section 147); keeping or permitting the use of premises for a brothel (section 148); a common prostitute behaving in a disorderly or indecent manner in any public place (section 167(c)); soliciting for immoral purposes in any public place (section 167(f)).

ANNEX 1 Legislative review of key gender equality, women's rights and PIDSOGIESC+ rights

NAURU

ABORTION Protections: VERY WEAK

Abortion is only permitted where the women's life is threatened. It is not permitted where the women's physical health or mental health is threatened, in cases of rape, incest or foetal impairment, on economic or social grounds or on request.

AGE OF MARRIAGE Protections: NO

16 for females and 18 for males. Under 16 for females and under 18 for males with parental consent.

AGE OF SEXUAL CONSENT Protections: YES

Division 7.3 of the Crimes Act (2016)¹³¹ deals with offences against children. The terminology is gender-neutral. Under section 117 and 118, a person commits offences if engaging in sexual conduct with children under 16 and during sentencing, if the child is under 13 it will be treated as an aggravating circumstance.

ANTI-DISCRIMINATION PROTECTION Protections: NO

The non-discrimination clause in the constitution does not include sexual orientation as a prohibited ground. Article 3 states that "[...] every person in Nauru is entitled to the fundamental rights and freedoms of the individual [described in the constitution], that is to say, has the right, whatever his race, place of origin, political opinions, colour, creed or sex, but subject to respect for the rights and freedoms of others and for the public interest."¹³²

DOMESTIC VIOLENCE Protections: YES

Domestic violence is criminalised through the Family Protection Act (2017).¹³³

EMPLOYMENT Protections: NO

There is no specific legislation providing employment protections for PIDSOGIESC+.

GENDER IDENTITY AND EXPRESSION Protections: NO

There is no specific legislation explicitly providing rights and protections in relation to gender identity issues.¹³⁴

RAPE, INCLUDING MARITAL RAPE Protections: RAPE: STRONG, MARITAL RAPE: YES

The Crimes Act (2016)¹³⁵ defined rape as a gender-neutral offence, with section 105 criminalising conduct where the defendant intentionally engages in sexual intercourse with another person without their consent or commits a set of other acts without consent. Section 104 of the Crimes Act (2016) specifically extended the definition of rape to include rape in legal and de facto marriages.

SAME-SEX SEXUAL ACTIVITY Protections: YES

Decriminalised in 2016 through amendment of the Crimes Act (2016).

SEX WORK Protections: WEAK

The Crimes Act (2016) makes it an offence to hold an interest in premises used for commercial sexual services (section 108) and for compelling prostitution and giving earnings from prostitution (section 109).

ANNEX 1 Legislative review of key gender equality, women's rights and PIDSOGIESC+ rights

PAPUA NEW GUINEA ¹³⁶

ABORTION

Protections: VERY WEAK

Abortion is only permitted where the women's life is threatened. It is not permitted where the women's physical or mental health is threatened, in cases of rape, incest or foetal impairment, on economic or social grounds or on request.

AGE OF MARRIAGE

Protections: NO

16 for females and 18 for males. 14 for females and 16 for males with a court order.

AGE OF SEXUAL CONSENT

16 years, applying to both male and female. Section 15 of the Criminal Code (Sexual Offences and Crimes against Children) Act (2002) inserts a new clause 229A into the Criminal Code stating that: "(i) A person who engages in an act of sexual penetration with a child under the age of 16 years is guilty of a crime."¹³⁷ But there are no provisions for the age of sexual consent among same-sex couples as same-sex sexual acts are illegal.

ANTI-DISCRIMINATION PROTECTION

Protections: NO

The non-discrimination clause in the constitution does not include sexual orientation as a prohibited ground. Article 55 (Equality of Citizens) states: "(1) Subject to this constitution, all citizens have the same rights, privileges, obligations and duties irrespective of race, tribe, place of origin, political opinion, colour, creed, religion or sex."¹³⁸

DOMESTIC VIOLENCE

Protections: YES

Domestic violence is criminalised through the Family Protection Act (2013).¹³⁹

EMPLOYMENT

Protections: NO

There is no specific legislation providing employment protections for PIDSOGIESC+.

GENDER IDENTITY AND EXPRESSION

Protections: NO

There is no specific legislation explicitly providing rights and protections in relation to gender identity issues.

SAME-SEX SEXUAL ACTIVITY

Protections: MALE: NO, FEMALE: YES

Criminal Code (1974), as amended in 2002¹⁴⁰

- Section 210. Unnatural offences: "(1) A person who (a) sexually penetrates any person against the order of nature; or (b) sexually penetrates an animal; or (c) permits a male person to sexually penetrate him or her against the order of nature, is guilty of a crime. Penalty: imprisonment for a term not exceeding 14 years. (2) A person who attempts to commit an offence against subsection (1) is guilty of a crime. Penalty: imprisonment for a term not exceeding seven years."
- Section 212. Indecent practices between males: "(1) A male person who, whether in public or private (a) commits an act of gross indecency with another male person; or (b) procures another male person to commit an act of gross indecency with him; or (c) attempts to procure the commission of any such act by a male person with himself or with another male person, is guilty of a misdemeanour. Penalty: imprisonment for a term not exceeding three years."

RAPE, INCLUDING MARITAL RAPE

Protections: RAPE: STRONG, MARITAL RAPE: YES

PNG has an extremely progressive rape law, introduced through the Criminal Code (Sexual Offences and Crimes against Children) Act (2002).¹⁴¹ This Act applies to all acts against men or women and includes very detailed provisions describing what consent means and when it can be taken not to be given. It also removed the marital immunity that had previously protected husbands from a charge of rape.

SEX WORK

Protections: WEAK

Summary Offences Act (1977) provides offences for living on the earnings of prostitution (section 55); keeping a brothel (section 56); and letting or permitting premises to be used for the purposes of prostitution (section 57). The Criminal Code provides offences for keeping a house, room, set of rooms or place of any kind for purposes of prostitution (section 231).

ANNEX 1 Legislative review of key gender equality, women's rights and PIDSOGIESC+ rights

SAMOA¹⁴²

ABORTION

Protections: VERY WEAK

Abortion is only permitted where the women's life, physical health or mental health is threatened. It is not permitted in cases of rape, incest or foetal impairment, on economic or social grounds or on request.

AGE OF MARRIAGE

Protections: SOME

19 for females and 21 for males. 16 for females and 18 for males with parental or guardian consent.

AGE OF SEXUAL CONSENT

Protections: SOME

The Crimes Act (2013) defines ages for consent in gender-neutral terms. Section 58 states that: "A person who has sexual connection with a child [under 12 years] is liable to imprisonment for life" and section 59(1) states that: "A person who has sexual connection with a young person [who is over 12 years and under 16 years] is liable to imprisonment for a term not exceeding 10 years".¹⁴³ But there are no provisions for the age of sexual consent among same-sex couples as same-sex sexual acts are illegal.

ANTI-DISCRIMINATION PROTECTION

Protections: NO

The non-discrimination clause in the constitution does not include sexual orientation as a prohibited ground. Article 15(2) states only that: "No law and no executive or administrative action of the state shall, either expressly or in its practical application, subject any person or persons to any disability or restriction or confer on any person or persons any privilege or advantage on grounds only of descent, sex, language, religion, political or other opinion, social origin, place of birth, family status, or any of them."¹⁴⁴

DOMESTIC VIOLENCE

Protections: YES

Domestic violence is criminalised through the Crimes Act (2013) and Family Safety Act (2013).

EMPLOYMENT

Protections: YES

Both sexual orientation and perceived or actual HIV status were added as protected grounds to employment laws in Samoa in 2013 through enactment of the Labour and Employment Relations Act (2013).¹⁴⁵ However, employment discrimination on the basis of gender identity and intersex status is not prohibited.

GENDER IDENTITY AND EXPRESSION

Protections: SOME

Samoa has a large transgender or third gender community called fa'afafine.¹⁴⁶ The Samoa Fa'afafine Association has stated that the "terms Fa'afafine and Fa'afatama are culturally unique and specific to Samoa's third gender. It is a social and communal gender-fluid based status given to effeminate males and butch females within the Samoan cultural context [...] Fa'afafines and Fa'afatamas, are not all transgender [...] Boxing our issues together with transgender issues under the LGBTIQ framework ignores our cultural connection [...] The Samoa Fa'afafine Association is challenging this perception that Fa'afafines and Fa'afatamas are transgender for the sake of convenience in the LGBTIQ framework".¹⁴⁷

Gender identify issues have not been dealt with comprehensively, but some progress has been made:

- The Crimes Act (2013) removed provisions contained in the previous Crimes Ordinance (1961) which criminalised males impersonating females in a public place, and which could be used to target transgender women and sex- and gender-diverse people.¹⁴⁸

- Section 7 of the Sentencing Act (2016) states that: "(1) In sentencing or otherwise dealing with a defendant, the court must take into account the following aggravating factors to the extent that they are applicable in the case: [...] that the defendant committed the offence partly or wholly because of hostility towards a group of persons who have an enduring common characteristic such as race, colour, nationality, religion, gender identity, sexual orientation, age, or disability; and (i) the hostility is because of the common characteristic; and (ii) the defendant believed that the victim has that characteristic [...]".¹⁴⁹

RAPE, INCLUDING MARITAL RAPE

Protections: RAPE: WEAK, MARITAL RAPE: YES

Section 49(1)(a) of the Crimes Act (2013) defines rape only as "the act of a male who rapes a female" but section 49(1)(b) recognises the broader act of sexual violation by any person, including penetration, use of objects and other unwanted contact. In relation to marital rape, section 49(4) specifically states that: "A person may be convicted of sexual violation in respect of sexual connection with another person notwithstanding that those persons were married to each other at the time of that sexual connection".¹⁵⁰

SAME-SEX SEXUAL ACTIVITY

Protections: MALE: NO, FEMALE: YES

The Crimes Act (2013)¹⁵¹ removed provisions in the previous Crimes Ordinance (1961) which criminalised "indecent acts between males". However, sodomy is still a crime:

- Article 67. Sodomy: "(1) A person who commits sodomy is liable: (a) where the act of sodomy is committed on a female, to imprisonment for a term not exceeding seven years; or (b) where the act of sodomy is committed on a male, and at the time of the act that male is under the age of 16 years and the offender is of or over the age of 21 years, to imprisonment for a term not exceeding seven years; or (c) in any other case, to imprisonment for a term not exceeding five years. (2) Sodomy is complete upon penetration. (3) It is no defence to a charge under this section that the other party consented."
- Article 68. Attempts to commit sodomy: "A person is liable to imprisonment for a term not exceeding five years who: (a) attempts to commit sodomy; or (b) assaults any person with intent to commit sodomy."
- Article 71 also punishes "keeping [a] place of resort for homosexual acts". Since place of resort is not defined, this provision can potentially be used to criminalise same-sex couples living together, as well as their landlords or real estate agents.

In 2010, the Samoa Law Reform Commission recommended the abolition of sodomy laws but was widely criticised by church leaders, such that the Government of Samoa subsequently rejected the recommendations.¹⁵² Nonetheless, reforms were progressed with some amendments made to remove anti-SOGIESC+ provisions from the law.

SEX WORK

Protections: VERY WEAK

The Crimes Act (2013) makes prostitution a crime (section 72); criminalises solicitation (section 73); living on the earnings of prostitution (section 74); procuring sexual intercourse (section 75) and brothel keeping (section 70). It also specifically criminalises "keeping a place of resort for homosexual acts" (section 71).

OTHER

Protections: YES

The Mental Health Act (2007) stated that people are not to be considered mentally ill if they refuse or fail to express a particular sexual orientation, and prohibited any conversion therapy in the field of mental health.¹⁵³

ANNEX 1 Legislative review of key gender equality, women's rights and PIDSOGIESC+ rights

SOLOMON ISLANDS

ABORTION

Protections: VERY WEAK

Abortion is only permitted where the women's life is threatened. It is not permitted where the women's physical or mental health is threatened, in cases of rape, incest or foetal impairment, on economic or social grounds or on request.

AGE OF MARRIAGE

Protections: SOME

18 for both males and females. 15 for females and males with the father's consent, if possible, or with the mother's, guardian's or a judge's/magistrate's consent.

AGE OF SEXUAL CONSENT

15 years, applying to both males and females. The Penal Code (Amendment) (Sexual Offences) Act 2016 makes it an offence to have sex with a child under the age of 15 years of age, with different penalties where a child is under 15, where a child is under 13 years of age and/or where the offender is in a position of trust.¹⁵⁴ It is also an offence to have sex with a child between 15 and 18 years where the offender is in a position of trust. But there are no provisions for the age of sexual consent among same-sex couples as same-sex sexual acts are illegal.

ANTI-DISCRIMINATION PROTECTION

Protections: SOME

The non-discrimination clause in the constitution does not include sexual orientation as a prohibited ground. Article 15 protects only against discrimination, defined as "affording different treatment to different persons attributable wholly or mainly to their respective descriptions by race, place of origin, political opinions, colour, creed or sex [...]".¹⁵⁵

Notably, Solomon Islands has been attempting to pursue constitutional reform for more than 15 years, which may provide an opportunity to advocate for a more comprehensive non-discrimination clause referencing sexual orientation. A 2009 draft recognised sexual orientation as a prohibited ground of discrimination but subsequent drafts removed that reference and a 2014 draft was explicit in stating that sexual orientation was not a prohibited ground.¹⁵⁶

DOMESTIC VIOLENCE

Protections: YES

Domestic violence is criminalised through the Family Protection Act (2015).¹⁵⁷

EMPLOYMENT

Protections: NO

There is no specific legislation providing employment protections for PIDSOGIESC+.

GENDER IDENTITY AND EXPRESSION

Protections: NO

There is no specific legislation explicitly providing rights and protections in relation to gender identity issues.

RAPE, INCLUDING MARITAL RAPE

Protections: RAPE: STRONG, MARITAL RAPE: YES

The Penal Code (Amendment) (Sexual Offences) Act 2016 redefined rape as a gender-neutral offence, with section 136F stating that: "(1) A person commits an offence if the person has sexual intercourse with another person: (a) without the other person's consent; and (b) knowing about or being reckless as to the lack of consent. Maximum penalty: life imprisonment". The Act criminalised marital rape, with section 136F(2) stating that "(2) To avoid doubt, subsection (1) applies even if the persons are married or in a marriage-like relationship".¹⁵⁸

SAME-SEX SEXUAL ACTIVITY

Protections: NO

Penal Code (Revised Edition 1996).¹⁵⁹

- Section 160: "Any person who (a) commits buggery with another person or with an animal; or (b) permits a male person to commit buggery with him or her, shall be guilty of a felony, and shall be liable to imprisonment for 14 years."
- Section 161: "Any person who attempts to commit any of the offences specified in the last preceding section, or who is guilty of any assault with intent to commit the same, or any indecent assaults upon any male person shall be guilty of a felony, and shall be liable to imprisonment for seven years."
- Section 162: (inserted by Act 9 of 1990, section 2) "Any person who, whether in public or private (a) commits any act of gross indecency with another of the same sex; (b) procures another of the same sex to commit any act of gross indecency; or (c) attempts to procure the commission of any act of gross indecency by persons of the same sex, shall be guilty of a felony and be liable to imprisonment for five years."

In 2008, the Law Reform Commission proposed legalising gay and lesbian acts but the move was strongly opposed.¹⁶⁰

SEX WORK

Protections: WEAK

The Penal Code (Amendment) (Sexual Offences) Act 2016 makes it an offence to procure a person to provide commercial sexual services, in Solomon Islands or elsewhere (section 141) and makes child commercial sexual exploitation a specific offence (section 143). It also prohibits internal people trafficking (section 145). The Penal Code provides offences for knowingly living on the earnings of prostitution; persistently soliciting or importuning for immoral purposes in a public place; or exercising control, direction or influence over the movements of a prostitute in such a manner as to show that he or she is aiding abetting or compelling her prostitution with any other person or generally (section 153); brothel keeping, or permitting premises to be used as a brothel or for habitual prostitution; or letting premises to be used as a brothel (section 155).

ANNEX 1 Legislative review of key gender equality, women's rights and PIDSOGIESC+ rights

TONGA ¹⁶¹

ABORTION

Protections: VERY WEAK

Abortion is only permitted where the women's life is threatened. It is not permitted where the women's physical or mental health is threatened, in cases of rape, incest or foetal impairment, on economic or social grounds or on request.

AGE OF MARRIAGE

Protections: SOME

18 for both females and males, 15 with parental or guardian consent.

AGE OF SEXUAL CONSENT

Protections: NO

The Criminal Offences Act (1988) only sets age limits for sex with females. Section 121 states that: "Any person who carnally knows any girl under the age of 12 years shall be liable on conviction thereof to imprisonment for any period not exceeding life", and section 124 states in relation to indecent assault on a female that: "(2) A girl under the age of 16 years cannot in law give any consent which would prevent an act being an indecent assault for the purposes of this section." There are no provisions for the age of sexual consent among same-sex couples as same-sex sexual acts are illegal.

ANTI-DISCRIMINATION PROTECTION

Protections: NO

The constitution makes no direct reference to PIDSOGIESC+ matters and unusually, has no specific non-discrimination clause at all. Article 4 states that: "There shall be but one law in Tonga for chiefs and commoners for non-Tongans and Tongans. No laws shall be enacted for one class and not for another class but the law shall be the same for all the people of this land." This could operate to prevent discrimination but appears more interested in class than other grounds of discrimination. Article 5 could also actively undermine PIDSOGIESC+ rights, stating: "All men are free to practise their religion and to worship God as they may deem fit [...] but it shall not be lawful to use this freedom to commit evil and licentious acts or under the name of worship to do what is contrary to the law and peace of the land."¹⁶² When considering CEDAW ratification (Tonga is the only Pacific Islands country not to have ratified), one of the objections has been that CEDAW would require implementation of same-sex marriage, which the government has rejected.¹⁶³

DOMESTIC VIOLENCE

Protections: YES

Domestic violence is criminalised through the Family Protection Act (2014).¹⁶⁴

EMPLOYMENT

Protections: NO

There is no specific legislation providing employment protections for PIDSOGIESC+.

GENDER IDENTITY AND EXPRESSION

Protections: NO

Traditionally, Tongan culture has been supportive of transgenderism in the form of the fakaleiti (also known as the fakafefine; literally like a lady), who are people assigned male at birth but act, dress and behave as female.¹⁶⁵ They have traditionally been accepted by Tongan society, but a rise in religiousness has meant that fakaleiti now face regular discrimination and stigma despite being an integral part of Tongan society.¹⁶⁶

Section 81(5) of the Criminal Offences Act (1988) specifically criminalises female impersonation: "Any male person who, whilst soliciting for an immoral purpose, in a public place with intent to deceive any other person as to his true sex, has on or about his person any article intended by him to represent that he is a female or in any other way impersonates or represents himself to be a female shall be guilty of an offence and shall upon conviction be liable to a fine not exceeding \$100 or to imprisonment for a period not exceeding one year or to both such imprisonment and such fine."¹⁶⁷

In late 2016, the Tonga Leitis Association launched a national consultation with government officials in order to decriminalise homosexuality and cross-dressing.¹⁶⁸

RAPE, INCLUDING MARITAL RAPE

Protections: RAPE: WEAK, MARITAL RAPE: YES

Section 118 of the Criminal Offences Act (1988) defines rape narrowly as applying only to the non-consensual carnal knowledge of a female. Notably, section 118(2) states that: "Sexual intercourse by a man with his wife shall not be deemed rape unless consent to such sexual intercourse has been withdrawn through process of law" (i.e. through a formal separation order).¹⁶⁹ However, it is understood that this provision has been overridden by section 29 of the Family Protection Act (2013) which allows that, in addition to prosecution under the Act, "a respondent may also be prosecuted under other criminal laws for the time being in force for his acts if the facts disclose the commission of a separate criminal offence under those provisions. Note: For example, (without limitation), assault, offences endangering life and health, grievous bodily harm, rape, other sexual offences [...]". In reality, the Family Protection Act only applies between spouses, and the ability for one of the parties to be prosecuted for rape means that marital rape is now criminalised.¹⁷⁰

ANNEX 1 Legislative review of key gender equality, women's rights and PIDSOGIESC+ rights

TONGA continued

SAME-SEX SEXUAL ACTIVITY

Protections: MALE: NO, FEMALE: YES

Laws of Tonga, Criminal Offences [Cap 18] 1988 Edition¹⁷¹

- Section 136: "Whoever shall be convicted of the crime of sodomy with another person or bestiality with any animal shall be liable at the discretion of the court to be imprisoned for any period not exceeding 10 years and such animal shall be killed by a public officer." (Substituted by Act 9 of 1987.)
- Section 139: "Whoever shall attempt to commit the said abominable crime of sodomy or shall be guilty of an assault with intent to commit the same or of any indecent assault upon any male person shall be liable at the direction of the court to imprisonment for any term not exceeding 10 years."
- Section 140: "On the trial of any person upon a charge of sodomy or carnal knowledge it shall not be necessary to prove the actual emission of seed but the offence shall be deemed complete on proof of penetration only."
- Section 142: "Whenever any male person shall be convicted of any offence against sections 106, 107, 115, 118, 121, 122, 125, 132, 136 and 139 of this Act the court may, in its discretion in lieu of or in addition to any sentence of imprisonment authorised under this Act order the person so convicted to be whipped in accordance with the provisions of section 31 of this Act." (Substituted by Act 9 of 1987.)
- Section 81(5) is also used to harass homosexual men: "Any person who in any public place solicits or importunes for immoral purposes shall be liable to imprisonment for any period not exceeding six months."

In late 2016, the Tonga Leitis Association launched a national consultation with government officials in order to decriminalise homosexuality and cross-dressing.¹⁷²

SEX WORK

Protections: WEAK

Criminal Offences Act (1988) provides offences for keeping a brothel (section 80); trading in prostitution, including knowingly living on the earnings of prostitution, exercising control, direction or influence over a prostitute's movements in a way which shows she is aiding, abetting or compelling her prostitution, soliciting for immoral purposes in a public place (section 81(1)-(4)). It is an offence for a male person who, while soliciting for an immoral purpose, in a public place with intent to deceive any other person as to his true sex, to impersonate or represent himself to be a female (section 81(5)).

TUVALU

ABORTION

Protections: VERY WEAK

Abortion is only permitted where the women's life is threatened. It is not permitted where the women's physical or mental health is threatened, in cases of rape, incest or foetal impairment, on economic or social grounds or on request.

AGE OF MARRIAGE

Protections: SOME

21 for both females and males. 16 with the father's consent if possible, or the mother's, guardian's or a registrar-general's consent.

AGE OF SEXUAL CONSENT

Protections: NO

Under the Penal Code, it is a felony to have intercourse with a female under 13 years old whether or not she consented and attracts a life sentence (section 134). Intercourse with a female who is between 13 and 15 years of age is a misdemeanour, and liable to five years imprisonment (section 135).¹⁷³ There are no provisions for the age of sexual consent among same-sex couples as same-sex sexual acts are illegal.

ANTI-DISCRIMINATION PROTECTION

Protections: NO

The non-discrimination clause in the constitution does not include sexual orientation as a prohibited ground. Article 27 (freedom from discrimination) states that: (1) In this section, discrimination refers to the treatment of different people in different ways wholly or mainly because of their different (a) races; or (b) places of origin; or (c) political opinions; or (d) colours; or (e) religious beliefs or lack of religious beliefs, in such a way that one such person is for some such reason given more favourable treatment or less favourable treatment than another such person."¹⁷⁴

Notably, Tuvalu is near the end of a two year constitutional review process which may still provide an opportunity to advocate for a more comprehensive non-discrimination clause referencing sexual orientation.

DOMESTIC VIOLENCE

Protections: YES

Domestic violence is criminalised through the Family Protection and Domestic Violence Act (2014).¹⁷⁵

EMPLOYMENT

Protections: NO

There is no specific legislation providing employment protections for PIDSOGIESC+.

GENDER IDENTITY AND EXPRESSION

Protections: NO

Tuvalu is home to a significant transgender population, called *pinapinaaine*,¹⁷⁶ who historically would play certain societal and communal roles.¹⁷⁷ Nonetheless, there is no specific legislation explicitly providing rights and protections in relation to gender identity issues.

ANNEX 1 Legislative review of key gender equality, women's rights and PIDSOGIESC+ rights

TUVALU continued

RAPE, INCLUDING MARITAL RAPE Protections: RAPE: WEAK, MARITAL RAPE: NO

Rape is defined only to apply to females, under section 128 of the Penal Code: "Any person who has unlawful sexual intercourse with a woman or girl, without her consent, or with her consent if the consent is obtained by force or by means of threats or intimidation of any kind, or by fear of bodily harm, or by means of false representations as to the nature of the act, or in the case of a married woman, by impersonating her husband, is guilty of the felony termed rape".¹⁷⁸ There is no reference to marital rape and it does not appear that it is prosecuted as an offence.

SAME-SEX SEXUAL ACTIVITY Protections: MALE: NO, FEMALE: YES

Laws of Tuvalu, Penal Code [Cap 8] Revised Edition (1978)¹⁷⁹

- Section 153: "Any person who (a) commits buggery with another person or with an animal; or (b) permits a male person to commit buggery with him or her, shall be guilty of a felony, and be liable to imprisonment for 14 years".
- Section 154: "Any person who attempts to commit any of the offences specified in the last proceeding section [sic], or who is guilty of any assault with intent to commit the same, or any indecent assault upon any male person shall be guilty of a felony, and shall be liable to imprisonment for seven years."
- Section 155: "Any male person who, whether in public or private, commits any act of gross indecency with another male person, or procures another male person to commit any act of gross indecency with him, or attempts to procure the commission of any such act by any male person with himself or with another male person, whether in public or private, shall be guilty of a felony, and shall be liable to imprisonment for five years."

SEX WORK Protections: WEAK

The Penal Code provides offences for a male person living on earnings of prostitution or persistently soliciting for immoral purposes (section 145); a woman exercising control, direction or influence over the movements of a prostitute in such a manner as to show that she is aiding, abetting or compelling her prostitution (section 146); use of premises for purposes of prostitution, and living wholly or in part on the earnings of a prostitute, or is exercising control, direction or influence over the movements of the prostitute (section 147); keeping a brothel (section 148).

VANUATU ¹⁸⁰

ABORTION Protections: VERY WEAK

Abortion is only permitted where the women's life, physical health or mental health is threatened. It is not permitted in cases of rape, incest or foetal impairment, on economic or social grounds or on request.

AGE OF MARRIAGE Protections: SOME

21 for both females and males. 16 for females and 18 for males with parental consent.

AGE OF SEXUAL CONSENT Protections: YES

15 years for both males and females. The Penal Code (Amendment) Act 2006 repealed the provision that set age of consent for homosexual sex at 16. Section 97 now provides that no person shall have sexual intercourse with a child under 15. Sexual intercourse is defined by Section 89A to include heterosexual and homosexual sex.¹⁸¹

ANTI-DISCRIMINATION PROTECTION Protections: NO

The non-discrimination clause in the constitution does not include sexual orientation as a prohibited ground. Article 5(1) states that "[...] subject to any restrictions imposed by law on non-citizens, all persons are entitled to the following fundamental rights and freedoms of the individual without discrimination on the grounds of race, place of origin, religious or traditional beliefs, political opinions, language or sex but subject to respect for the rights and freedoms of others and to the legitimate public interest in defence, safety, public order, welfare and health [...]."

DOMESTIC VIOLENCE Protections: YES

Domestic violence is criminalised through the Family Protection Act (2008).¹⁸²

EMPLOYMENT Protections: SOME

The Teaching Service Act (2013), section 18(2)(f) states, "[...] ensure that the recruitment, promotion, professional development, transfer and all other aspects of the management of its employees is carried out without discrimination on the basis of [...] sexual preference [...]."¹⁸³ However, there is no overarching legislation protection against such discrimination in public or private employment.

GENDER IDENTITY AND EXPRESSION Protections: NO

There is no specific legislation explicitly providing rights and protections in relation to gender identity issues.

ANNEX 1 Legislative review of key gender equality, women's rights and PIDSOGIESC+ rights

VANUATU continued

RAPE, INCLUDING MARITAL RAPE Protections: RAPE: STRONG, MARITAL RAPE: UNCLEAR

The Penal Code describes rape in gender-neutral terms, stating at section 90 that: "Any person who has sexual intercourse with another person (a) without that person's consent; or (b) with that person's consent if the consent is obtained (i) by force; or (ii) by means of threats of intimidation of any kind; or (iii) by fear of bodily harm; or (iv) by means of false representation as to the nature of the act; or (v) in the case of a married person, by impersonating that person's husband or wife; commits the offence of sexual intercourse without consent."¹⁸⁴ Marital rape is not specifically addressed, but there have been media reports of a successful prosecution for marital rape.¹⁸⁵

SAME-SEX SEXUAL ACTIVITY Protections: YES

Decriminalised in 2006.

SEX WORK Protections: WEAK

The Penal Code provides offences for procuring, aiding or facilitating the prostitution of another person or sharing in the proceeds of prostitution whether habitual or otherwise, or being subsidised by any person engaging in prostitution (section 101); soliciting for immoral purposes in a public place (section 148).

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- ¹ Cook Islands has not generally been included in the narrative analysis, except where there has been notable progress of relevance to other Commonwealth Pacific states, but it has been included in the legislative analysis at Annex 1. Although Cook Islands is not a full member state of the Commonwealth, it is part of the Commonwealth by virtue of being a self-governing island territory in free association with New Zealand, and is a full member of the Pacific Islands Forum and its legislature is also a member of the Commonwealth Parliamentary Association.
- ² *Changing Laws, Protecting Women*, Regional Rights Resource Team
- ³ *Changing Laws: Legislative Lobbying Toolkit* (FWRM/RRRT, 2010) <https://rrrt.spc.int/resources/publications/changing-laws-a-legislative-lobbying-toolkit>
- ⁴ *Constitution of Fiji (2013)*, Article 26 'Right to equality and freedom from discrimination', Clause 3a, www.wipo.int/edocs/lexdocs/laws/en/fj/fj013en.pdf
- ⁵ Marshall Islands and Palau have also domestic violence legislation in place.
- ⁶ Eleanor Kleiber, *Research Guides: Gender Identity and Sexual Identity in the Pacific and Hawai'i: Introduction* (Research Guides) <https://guides.library.manoa.hawaii.edu/c.php?g=105466&p=686754>
- ⁷ Te Tiare Association (Cook Islands); Haus of Khameleon (Fiji); Oceania Pride (Fiji); Rainbow Pride Foundation (Fiji); BIMBA (Kiribati); Ewaki 'N lumwinumwin (Nauru); Kapul Champions (PNG); Samoa Fa'afafine Association (Samoa); The Rogers (Samoa); Tonga Leitis Association (Tonga); Tuvalu Pina Association (Tuvalu); VPride (Vanuatu).
- ⁸ The 2017 Pacific Feminist Charter endorsed by a cross section of Pacific civil society, identified decriminalising sex work as a priority. More recently, a 2018 workshop in Fiji that brought together PIDSOGIESC+ activists also identified sex work law reform as a key issue (see Parts 5-8 below for more details).
- ⁹ www.fwrp.org.fj/images/PFF/PFF-Charter-Final-2Dec2016.pdf
- ¹⁰ www.fwrp.org.fj/images/PFF/WEBSITE/PFF_Charter_Action_Plan.pdf
- ¹¹ This is the working definition adopted by the Pacific Sexual and Gender Diversity Network (PSGDN), a key regional network of SOGIESC+ civil society organisations, in their strategic plan.
- ¹² Ibid.
- ¹³ *Child, Early and Forced Marriage Legislation in 37 Asia-Pacific Countries*, pp.11-12 <https://primarysources.brillonline.com/browse/human-rights-documents-online/child-early-and-forced-marriage-legislation-in-37-asiapacific-countries;hrdhrd10212016001> Statistics for child marriage are lower in many Pacific Island countries, compared with other regions, but they are still a cause for concern. For example, one in five girls in Kiribati is married before the age of 18 and 3% are married before their 15th birthday.
- ¹⁴ However, the legal analysis at Annex 1 includes the Cook Islands as this research was already completed at the time of writing and was considered potentially useful to the broader Pacific community. Cook Islands may be referenced in the narrative report where law reform lessons learned are relevant to other Commonwealth Pacific members.
- ¹⁵ A. Carroll, *A World Survey of Sexual Orientation Laws: Criminalisation, Protection And Recognition* (ILGA, May 2016) pp 193. The report also covers Cook Islands.
- ¹⁶ This report was written prior to the launch of the 2019 updated ILGA report. However, the peer review process occurred from March to May 2019. As such, references refer to the 2016 ILGA report which was used to inform the initial research.
- ¹⁷ APCOM, *Policy Brief Pacific Legal Environments for Men Who Have Sex with Men and Transgender People* (Unpublished, 2016).
- ¹⁸ Human Dignity Trust, *Criminalisation of Homosexuality in Kiribati* (October 2015) www.humandignitytrust.org/country-profile/kiribati
- ¹⁹ Human Dignity Trust, *Criminalisation of Homosexuality in Papua New Guinea* (October 2015) www.humandignitytrust.org/country-profile/papua-new-guinea
- ²⁰ Human Dignity Trust, *Criminalisation of Homosexuality in Samoa* (October 2015) www.humandignitytrust.org/country-profile/samoa
- ²¹ Human Dignity Trust, *Criminalisation of Homosexuality in Solomon Islands* (October 2015) www.humandignitytrust.org/country-profile/solomon-islands
- ²² Human Dignity Trust, *Criminalisation of Homosexuality in Tonga* (October 2015) www.humandignitytrust.org/country-profile/tonga
- ²³ Human Dignity Trust, *Criminalisation of Homosexuality in Tuvalu* (October 2015) www.humandignitytrust.org/country-profile/tuvalu
- ²⁴ www.undp.org/content/dam/undp/library/hiv/aids/English/HIV-2012-SexWorkAndLaw.pdf
- ²⁵ www.asia-pacific.undp.org/content/rbap/en/home/library/gender-equality/TICL_Pacific.html
- ²⁶ Eluse Huffer, *Matriliney and Land in the Pacific – Matriarchies of Today & the Past* (Pacific Islands Forum Secretariat, 2008) <https://mmstudies.com/matriarchies/matriliney>
- ²⁷ Ibid.
- ²⁸ *Foreign Aid and Religion in the Pacific* www.lowyinstitute.org/the-interpreter/aid-and-accounting-religion-pacific
- ²⁹ *National Women MPs – Pacific Women in Politics* <https://www.pacwip.org/women-mps/national-women-mps>
- ³⁰ *Ending Violence Against Women Roadmap: Synthesis Report* (Pacific Women Shaping Pacific Development, 2017) <https://pacificwomen.org/key-pacific-women-resources/pacific-women-ending-violence-women-roadmap-synthesis-report>
- ³¹ *Women's Economic Empowerment Synthesis Report* (Pacific Women Shaping Pacific Development, 2017) https://pacificwomen.org/wp-content/uploads/2017/11/WEE_SynthesisReport_FINAL_updatedJan2018.pdf

- ³² *Fa'afafine* (Samoa) in Samoan culture is a third-gendered individual, and an integral part of traditional Samoan culture, *Fa'afafine*, born biologically male, embody both male and female gender traits; *Fakaleiti / Fakeleti / Fakalati / Fakafefine* (Tonga) in Tongan culture a male who behaves in the manner of a woman and may also be considered a third gender; *Pinapinaaine / Binabinaaine* (Tuvalu and Kiribati) a man who might regard himself as, or be regarded by others as, a woman; *Vaka sa lewa lewa* (Fiji) in Fijian culture this refers to men who may present themselves, or live their lives as, women and may also be considered a third gender similar to transgender women (male-to-female): Kleiber (fn. 4).
- ³³ Ibid.
- ³⁴ Samoa SFA Universal Period Review 25 Submission (Samoa Fa'afafine Association, undated) <https://uprdoc.ohchr.org/uprweb/downloadfile.aspx?filename=2505&file=EnglishTranslation>
- ³⁵ The forum was organised by the Fiji Women's Rights Movement, partnering with Bold Alliance, DIVA for Equality, Haus of Kameleon, the Pacific Young Women's Leadership Alliance (PYWLA), International Women's Development Agency (IWDA), the University of the South Pacific, UN Women, the Westpac Women's Markets and FemLINKpacific: Pacific Feminist Forum (PFF) – 28th to 30th November, 2016 www.femlinkpacific.org.fj/index.php/en/actions/archive/474-pacific-feminist-forum-pff-28th-to-30th-november-2016
- ³⁶ www.fwrm.org.fj/images/PFF/PFF-Charter-Final-2Dec2016.pdf
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- ³⁹ www.fwrm.org.fj/images/PFF/WEBSITE/PFF_Charter_Action_Plan.pdf
- ⁴⁰ *Human Rights Commission decree No. 11 2009*, www.fhradc.org.fj/about-us/constitutional-provisions/hrc-decree-no-112009
- ⁴¹ Sela Jane Hopgood, *Cooks Bill Puts Spotlight on Pacific's Anti-Gay Laws*, (RNZ News, 21 August 2017) www.radionz.co.nz/international/pacific-news/337461/cooks-bill-puts-spotlight-on-pacific-s-anti-gay-laws
- ⁴² *Crimes Bill 2017*, <https://2ea1d92bczh11rmgm1rcot6-wpengine.netdna-ssl.com/wp-content/uploads/2018/12/Crimes-Bill-2017-final.pdf>
- ⁴³ Kosrae State, a state in the Federated States of Micronesia also passed family protection legislation: Ruby Awa, *Implementing Domestic Violence Legislation in the Pacific – an Early Reflection*. Information regarding Nauru was collected directly from the Pacific Legal Information Institute.
- ⁴⁴ Based on advice provided by email from the Kiribati Office of the Attorney General.
- ⁴⁵ *Child, Early and Forced Marriage Legislation in 37 Asia-Pacific Countries*(fn. 9) pp11-12.
- ⁴⁶ Wikipedia, *Abortion law*, https://en.wikipedia.org/wiki/Abortion_law [Accessed 8 February 2019].
- ⁴⁷ Ibid.
- ⁴⁸ John Godwin and United Nations Development Programme, *Sex Work and the Law in Asia and the Pacific: Laws, HIV and Human Rights in the Context of Sex Work* (2012) (*Sex Work and the Law in Asia and the Pacific*); Kate Schuetze, *Outlawed and Abused: Criminalizing Sex Work in Papua New Guinea* (Amnesty International USA, 23 May 2016) www.amnestyusa.org/wp-content/uploads/2017/04/png_report_-_sex_workers_rights_-_embargoed_-_final.pdf
- ⁴⁹ Godwin and United Nations Development Programme (fn. 44).
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- ⁵¹ A/RES/70/1, *Transforming Our World: The 2030 Agenda for Sustainable Development* (United Nations, 21 October 2015) www.un.org/ga/search/view_doc.asp?symbol=A/RES/70/1&Lang=E
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- ⁵⁴ www.amnestyusa.org/pdfs/YogyakartaPrinciples.pdf?sm_au=iVV5402rZ6PZQ066
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- ⁵⁶ *Revised Pacific Platform for Action on Advancement of Women and Gender Equality* (RPPA) 2005-2015, (Secretariat for the Pacific Community, 2004).
- ⁵⁷ The Independent Commission on AIDS in the Pacific, established in October 2007 by UNAIDS with a mandate to study and consider the real and potential impacts of HIV on the Pacific region, and to recommend strategies for accelerated and strengthened responses to HIV: Joint United Nations Programme on HIV/AIDS (ed), *Turning the Tide: An Open Strategy for a Response to AIDS in the Pacific: Report of the Commission on AIDS in the Pacific Presented to Mr. Ban Ki-Moon, UN Secretary General, on 2 December 2009 in New York* (UNAIDS Pacific Region, 2009).
- ⁵⁸ Ibid pp.6.
- ⁵⁹ *Pacific leaders gender equality declaration trend assessment report 2012-2016*, (PIFS: Suva, 2016). www.aidsdatahub.org/sites/default/files/publication/Pacific_Leaders_Gender_Equality_Declaration_2016.pdf
- ⁶⁰ *Moana Declaration Outcome Statement of Pacific Parliamentarians For Population & Development*, (UNFPA/IPPF, 15 August 2013) <http://icpdtaskforce.org/resources/PACIFICCONFERENCEOFPARLIAMENTARIANSFORADVOCACYONICPDBEYOND2014OutcomeStatement.pdf>
- ⁶¹ The declaration specifically expressed concerns about acts of violence and discrimination committed against individuals on the grounds of their sexual orientation and gender identity and included policy directions to reduce vulnerability and eliminate discrimination based on (among other things) sexual orientation and gender identity. The declaration also noted that challenges from multiple forms of inequality, disempowerment and discrimination needed to be addressed "through commitment to equality before the law and non-discrimination for all persons, without distinction of any kind" and there was a "need to promulgate or enforce laws that punish any kind of discrimination, violence or hate crimes, and to take active steps to protect people in the region from discrimination, stigma and violence", *E/ESCAP/APPC(6)/3 - Report of the Sixth Asian and Pacific Population Conference* (Economic and Social Commission for Asia and the Pacific, 18 November 2013) paras 8 & 84.
- ⁶² The 2018 PHRC is jointly organised by the Pacific Sexual and Gender Diversity Network (PSGDN), DIVA for Equality, Haus of Kameleon, Rainbow Pride Foundation, Youth Champs 4 Mental Health and the Pacific Community (SPC) Regional Rights Resource Team (RRRT) and Social Development Programme.
- ⁶³ 115 community delegates representing our diverse sexual orientations, gender identities, expressions and sex characteristics which include: lesbians, gay men, bisexual people, trans diverse people, gender non-conforming identities, vakasalewalewa, brasto, palopa, pina, fa'afafine, fa'atama, akava'ine, tututane, fakafifine, leiti, binabinaine of different ethnicities and indigenous minorities, and of all ages and abilities, sex workers, those living with HIV and AIDS, and those living in rural and remote areas from 11 Pacific small islands, large ocean countries – American Samoa, Cook Islands, Fiji, Kiribati, Nauru, Papua New Guinea, Republic of Marshall Islands, Samoa, Tonga, Tuvalu and Vanuatu – came together as a diverse, strong and growing SOGIESC+ movement to discuss the theme 'My Voyage, One Ocean, Our Journey'.
- ⁶⁴ The 2018 PHRC is jointly organised by the Pacific Sexual and Gender Diversity Network (PSGDN), DIVA for Equality, Haus of Kameleon, Rainbow Pride Foundation, Youth Champs 4 Mental Health and the Pacific Community (SPC) Regional Rights Resource Team (RRRT) and Social Development Programme.
- ⁶⁵ "Outdated legislation and absence of anti-discrimination laws, policies and processes across the region is a systemic discrimination that affects legal and citizenship status of individuals and their human relationships as well as their personal security. In addition, a lack of enforcement and fair and dignified protection and treatment of LGBTQI+ people before the law further compounds the injustices. Structural and systemic discrimination and exclusion is evident across sectors and policy spaces which retain conservative restrictions on who and what is included in development", 2nd Pacific Human Rights Conference: Outcomes Document (2018).
- ⁶⁶ The Statement further called for countries to "review national legislation to identify the range of reforms which include decriminalising sodomy, sex work, indecency between males, and female impersonation, et al. The definition of 'de facto' relationships needs to be established and expanded on to include all forms of couples. Hate crimes need to be considered as serious crimes with corresponding degrees of punishment. Non-discrimination clauses need to be included in constitutions and other relevant legislation. Legislation and policy processes must include meaningful involvement and representation of PIDSOGIESC+ identity groups including sex workers at all stages of planning, policy and implementation", *ibid*.
- ⁶⁷ www.aidsdatahub.org/sites/default/files/publication/Pacific_Leaders_Gender_Equality_Declaration_2016.pdf
- ⁶⁸ www.fwrm.org.fj/images/PFF/WEBSITE/PFF_Charter_Action_Plan.pdf
- ⁶⁹ The nuclear non-proliferation movement is usually recognised as the first pan-Pacific civil society movement but these efforts have largely stopped as nuclear non-proliferation goals were largely achieved in the 1990s. Subsequently, the environmental/climate change movement is probably the only comparable civil society movement.
- ⁷⁰ The forum was organised by the Fiji Women's Rights Movement, partnering with Bold Alliance, DIVA for Equality, Haus of Kameleon, the Pacific Young Women's Leadership Alliance (PYWLA), International Women's Development Agency (IWDA), the University of the South Pacific, UN Women, the Westpac Women's Markets and FemLINKpacific: Pacific Feminist Forum (PFF) – 28th to 30th November, 2016 (fn. 31).
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- ⁷² *AAL, LGBTI Rights in the South Pacific: Creating Momentum for Change*, (Australasian Lawyer) www.australasianlawyer.com.au/news/lgbti-rights-in-the-south-pacific-creating-momentum-for-change-225395.aspx *LGBTI Rights in the South Pacific; Why the Pacific Islands Are No Gay Paradise*, Monash University www.monash.edu/news/opinions/why-the-pacific-islands-are-no-gay-paradise
- ⁷³ Ibid.
- ⁷⁴ The remaining two IOs were: "IO 1.4: The resilience of PIDSOGIESC+ has increased before, during and after disasters (gender and ecological justice); IO 1.5: All PIDSOGIESC+ students will complete their secondary education without stigma and discrimination and free from bullying or any other violation of their human rights."
- ⁷⁵ *Changing Laws: Legislative Lobbying Toolkit* (fn. 3).
- ⁷⁶ Regional Rights Resource Team, *Changing Laws, Protecting Women*, (fn. 2).
- ⁷⁷ Tonga passed the *Family Protection Act* in 2013; Samoa passed its *Family Safety Act* in 2013; Kiribati passed the *Family Peace Act* in 2014; Tuvalu passed the *Family Protection Act and Domestic Violence Act* in 2014; and Solomon Islands passed its *Family Protection Act* in 2015: *Ibid*.

- ⁷⁸ Pacific Human Rights Law Digest Vol.6 (RRRT, 2019) <https://rrrt.spc.int/resources/publications/pacific-human-rights-law-digest-vol6>
- ⁷⁹ Wikipedia List of Oceanian countries by population. [Accessed 21 January 2019] https://en.wikipedia.org/wiki/List_of_Oceanian_countries_by_population
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- ⁸¹ www.asia-pacific.undp.org/content/rbap/en/home/programmes-and-initiatives/being-lgbt-in-asia.html
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- ⁸³ U.S. Department of State, U.S. Engagement in the Pacific, <https://2009-2017.state.gov/p/eap/rls/2017/267084.htm>
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